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DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

REPORT OF INVESTIGATION


<b>SUBJECT</b> (b)(6); (b)(7)(C) Acting Deputy Assistant Director Federal Bureau of Investigation (b)(6); (b)(7)(C)		<b>CASE NUMBER</b> 2023-007168
<b>OFFICE CONDUCTING INVESTIGATION</b> Washington Field Office	<b>DOJ COMPONENT</b> Federal Bureau of Investigation	
<b>DISTRIBUTION</b> <input checked="" type="checkbox"/> <b>Field Office</b> WFO <input checked="" type="checkbox"/> <b>AIGINV</b> <input checked="" type="checkbox"/> <b>Component</b> FBI <input type="checkbox"/> <b>USA</b> <input type="checkbox"/> <b>Other</b>	<b>STATUS</b> <input type="checkbox"/> <b>OPEN</b> <input type="checkbox"/> <b>OPEN PENDING PROSECUTION</b> <input checked="" type="checkbox"/> <b>CLOSED</b> <b>PREVIOUS REPORT SUBMITTED:</b> <input type="checkbox"/> <b>YES</b> <input checked="" type="checkbox"/> <b>NO</b> <b>Date of Previous Report:</b>	

SYNOPSIS

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the Federal Bureau of Investigation (FBI) alleging that on (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) FBI Acting Deputy Assistant Director (b)(6); (b)(7)(C) harassed (b)(6); (b)(7)(C) who was (b)(6); (b)(7)(C) subordinate, when (b)(6); (b)(7)(C) made an inappropriate sexual and religious joke and gesture. The information alleged (b)(6); (b)(7)(C) thrust his genitals on (b)(6); (b)(7)(C) buttocks several times, while both were clothed and (b)(6); (b)(7)(C) told a joke in reference to Catholic priests engaging in anal sex.

The OIG investigation substantiated the allegation that (b)(6); (b)(7)(C) sexually harassed (b)(6); (b)(7)(C) in violation of the Department's zero tolerance policy on sexual harassment and FBI policy, harassed (b)(6); (b)(7)(C) based on religion, in violation of DOJ and FBI policy, and engaged in unprofessional conduct on duty, in violation of FBI policy, when (b)(6); (b)(7)(C) made an inappropriate sexual and religious joke and gesture, physically simulating a sex act while holding (b)(6); (b)(7)(C) arms, in the workplace and physically touched the buttocks of (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) provided a letter to the FBI and participated in an interview with the OIG. In both the letter and interview, (b)(6); (b)(7)(C) said he was in the office of (b)(6); (b)(7)(C) having a work-related discussion when the conversation turned personal. According to (b)(6); (b)(7)(C) he and (b)(6); (b)(7)(C) began to discuss the Catholic Church, specifically, how they used to attend confession and how confessionals were set up. During the discussion, (b)(6); (b)(7)(C) entered the office

<b>DATE</b> November 29, 2023 (b)(6); (b)(7)(C)	<b>SIGNATURE</b> (b)(6); (b)(7)(C)
<b>PREPARED BY SPECIAL AGENT</b> <b>DATE</b> November 29, 2023 Russell W. Cunningham	<b>SIGNATURE</b>  Digitally signed by Russell W. Cunningham Date: 2023.11.29 13:05:29 -05'00'
<b>APPROVED BY SPECIAL AGENT IN CHARGE</b>	

OIG Form III-210/1 (04/15/2022)

Portions of the Report of Investigation may not be exempt under the Freedom of Information Act (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a).

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and asked, "What is so funny?" (b)(6); (b)(7)(C) explained what they were talking about. According to (b)(6); (b)(7)(C) then shut the door and said, "This is going to be bad." In (b)(6); (b)(7)(C) letter and interview, (b)(6); (b)(7)(C) said that (b)(6); (b)(7)(C) then turned (b)(6); (b)(7)(C) around, pushed (b)(6); (b)(7)(C) right shoulder forward, and placed (b)(6); (b)(7)(C) right arm under (b)(6); (b)(7)(C) right arm, and said, "What do you call this? Half Nelson." (b)(6); (b)(7)(C) said that (b)(6); (b)(7)(C) then took his left hand and arm and placed it under (b)(6); (b)(7)(C) left arm, and said, "What do you call this? A full nelson." (b)(6); (b)(7)(C) then thrust his genitals several times against (b)(6); (b)(7)(C) buttocks and said, "What do you call this? A Father Nelson." (b)(6); (b)(7)(C) said he was "in utter disbelief this actually just happened." The following day (b)(6); (b)(7)(C) advised (b)(6); (b)(7)(C) he wanted to report the incident.

During an interview with the OIG (b)(6); (b)(7)(C) confirmed (b)(6); (b)(7)(C) allegation that (b)(6); (b)(7)(C) while in (b)(6); (b)(7)(C) office, held (b)(6); (b)(7)(C) arms from behind to show a half nelson and full nelson while telling a joke that was sexual in nature about a Catholic Priest and that (b)(6); (b)(7)(C) thrust his hips, no more than four times, toward (b)(6); (b)(7)(C) buttocks while he was holding him. However, due to where (b)(6); (b)(7)(C) was sitting in her office, she said she was unable to see "if there was actual touching" between (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C).

During a compelled OIG interview, (b)(6); (b)(7)(C) admitted to telling the joke that was sexual in nature about a Catholic Priest in (b)(6); (b)(7)(C) office and that he made a thrusting motion with his hips toward (b)(6); (b)(7)(C). However, (b)(6); (b)(7)(C) said he only made one thrusting motion to get the punchline of the joke across and his groin never contacted (b)(6); (b)(7)(C) buttocks. (b)(6); (b)(7)(C) admitted the joke was inappropriate and that he should not have told the joke in an office setting. At the time of his OIG interview, (b)(6); (b)(7)(C) was no longer serving at an Acting Deputy Assistant Director (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C)

The OIG has completed its investigation and is providing this report to the FBI for appropriate action.

Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether DOJ personnel have committed misconduct. The Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C. § 7701(c)(1)(B); 5 C.F.R. § 1201.56(b)(1)(ii).

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## DETAILS OF INVESTIGATION

### Predication

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the Federal Bureau of Investigation (FBI) alleging that on (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) FBI Acting Deputy Assistant Director (b)(6); (b)(7)(C) harassed (b)(6); (b)(7)(C) who was (b)(6); (b)(7)(C) subordinate, when (b)(6); (b)(7)(C) made an inappropriate sexual and religious joke and gesture. The information alleged (b)(6); (b)(7)(C) thrust his genitals on (b)(6); (b)(7)(C) buttocks several times, while both were clothed and (b)(6); (b)(7)(C) told a joke in reference to Catholic priests engaging in anal sex.

### Investigative Process

The OIG's investigative efforts consisted of the following:

Interviews of the following FBI personnel:

- (b)(6); (b)(7)(C)
- (b)(6); (b)(7)(C) Acting Deputy Assistant Director
- (b)(6); (b)(7)(C)

Review of the following:

- Predicating materials
- Analysis of (b)(6); (b)(7)(C) government cell phone
- Analysis of (b)(6); (b)(7)(C) FBI UNET email
- Analysis of (b)(6); (b)(7)(C) FBINET email
- Analysis of (b)(6); (b)(7)(C) FBI UNET electronic messages
- Analysis of (b)(6); (b)(7)(C) FBINET electronic messages
- Analysis of (b)(6); (b)(7)(C) FBI desk phone

(b)(6); (b)(7)(C) Sexually Harassed (b)(6); (b)(7)(C) Harassed (b)(6); (b)(7)(C) Based on Religion, and Engaged in Unprofessional Conduct on Duty

The information provided to the OIG alleged FBI Acting Deputy Assistant Director (b)(6); (b)(7)(C) harassed (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) on (b)(6); (b)(7)(C) when (b)(6); (b)(7)(C) made an inappropriate sexual and religious joke and gesture. (b)(6); (b)(7)(C) said (b)(6); (b)(7)(C) thrust his genitals on his buttocks several times when (b)(6); (b)(7)(C) told a joke that referenced anal sex between children and Catholic priests.

Attorney General Policy Memorandum #2015-04 – Prevention of Harassment in the Workplace, dated October 9, 2015, states in part:

The Department of Justice will maintain a zero-tolerance work environment that is free from harassment (including sexual harassment) based on sex, race, color, religion, national origin, gender identity, age, disability (physical or mental), genetic information, status as a parent, sexual orientation, marital status, political affiliation, or any other impermissible factor . . . Harassing conduct is defined as any unwelcome verbal or physical conduct that is based on any of the above-referenced characteristics when this conduct explicitly or implicitly affects an

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individual's employment; unreasonably interferes with an individual's work performance; or creates an intimidating, hostile, or offensive work environment.

To enforce this zero-tolerance policy, the Department will treat harassing conduct as misconduct, even if it does not rise to the level of harassment actionable under Title VII of the Civil Rights Act of 1964, as amended. The Department will not wait for a pattern of offensive conduct to emerge before addressing claims of harassment. Rather, the Department will act before the harassing conduct is so pervasive and offensive as to constitute a hostile environment. Even where a single utterance of an ethnic, sexual, racial, or other offensive epithet may not be severe enough to constitute unlawful harassment in violation of Title VII, it is the Department's view that such conduct must be prevented whenever possible through awareness, robust policies and effective and appropriate follow-up, investigation, and enforcement of the zero-tolerance policy.

FBI Offense Code 5.3, titled "Discrimination," prohibits "[e]ngaging in conduct for or against another person based on that person's protected status (race, color, religion, national origin, sex, disability, parental status, or sexual orientation)."

FBI Offense Code 5.4, titled "Disruptive Behavior," prohibits "[e]ngaging in inappropriate verbal or physical conduct, while on official business or in an FBI space or vehicle, which is disruptive or negatively impacts the workplace."

FBI Offense Code 5.20, titled "Sexual Harassment," prohibits "[m]aking unwelcome or unwanted sexual advances, unwelcome requests for sexual favors, or engaging in other unwelcome verbal or physical conduct of a sexual nature." The offense "includes any unwelcome verbal or physical conduct of a sexual nature, and is not limited to conduct that creates a 'hostile work environment' under federal or state law."

FBI Offense Code 5.22, titled "Unprofessional Conduct – On Duty," applies to misconduct not otherwise delineated in a specific FBI Offense Code and prohibits FBI employees from "engaging in conduct, while on duty, which dishonors, disgraces, or discredits the FBI; seriously calls into question the judgment or character of the employee; or compromises the standing of the employee among his peers or the community."

FBI Harassment Policy, 1038D, prohibits harassment: "Harassment is defined as unwelcome verbal, nonverbal, written, or physical conduct by a supervisor or a coworker that is based on race, color, religion, sex (including gender identity, sexual orientation, pregnancy, and sexual harassment), national origin, age, disability, parental status, genetic information, or retaliation for prior equal employment opportunity (EEO) activity, and it constitutes unlawful discrimination that unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment. All forms of harassment on any of the aforementioned bases are prohibited." The policy states that harassment may include, but is not limited to, "[o]ral or written communications that contain degrading comments directed toward members of any aforementioned class" or "[j]okes or anecdotes based on stereotypes of any aforementioned protected class."

FBI Harassment Policy, 1038D, defines "Sexual Harassment" as "a form of harassment based on sex and is characterized by (1) unwelcome sexual advances; (2) requests for sexual favors; and (3) other verbal, nonverbal, or physical conduct of a sexual nature that is directed at an individual of the same or opposite sex when: Submission to, or rejection of, this conduct by an individual is made a term or a condition of an individual's employment, either explicitly or implicitly. [O]r [t]his conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." (Section numbers omitted.) According to the policy, sexual harassment may include, but is not limited to:

- Oral or written comments of a sexual nature.
- Statements, jokes, or anecdotes with sexual content or innuendos.
- Sexual comments or gestures regarding an individual's body.
- Gestures that contain sexual innuendos or are sexually degrading in nature.

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- Physical touching or the threat of physical contact.
- Display of posters, calendars, books, pictures, diagrams, or magazines with sexual content.
- Persistent pressuring of an individual for a date or a sexual encounter.

In a letter to the FBI Inspection Division (INSD), (b)(6); (b)(7)(C) said on (b)(6); (b)(7)(C) he was in (b)(6); (b)(7)(C) office where they were having a work-related discussion. The conversation turned personal, and they began discussing the Catholic Church, specifically, how they used to attend confession and how a confessional room was set up. While they were discussing the Catholic Church, they had laughed at the fact they had shared similar Catholic experiences despite growing up in different cities. (b)(6); (b)(7)(C) stated in his letter that, during the discussion, (b)(6); (b)(7)(C) came into the office and asked, "What is so funny?" and (b)(6); (b)(7)(C) explained what they were talking about. (b)(6); (b)(7)(C) then said, "Let me close the door. This is going to be bad." (b)(6); (b)(7)(C) stated that once (b)(6); (b)(7)(C) shut the door he turned (b)(6); (b)(7)(C) around, so (b)(6); (b)(7)(C) was facing away from (b)(6); (b)(7)(C). According to (b)(6); (b)(7)(C) letter, (b)(6); (b)(7)(C) then "took his right arm and placed it under my right arm (from behind) and then placed the palm of his right hand on the back of my neck [sic] and said 'What do you call this? Half Nelson.'" (b)(6); (b)(7)(C) then took his "left hand and arm in that position and did the same position with his left arm – under my left arm with his left palm on the back of my neck – then said, 'What do you call this? A full nelson.'" (b)(6); (b)(7)(C) said in his letter to the INSD that (b)(6); (b)(7)(C) then thrust his genitals several times against (b)(6); (b)(7)(C) buttocks and said, "What do you call this? A Father Nelson." (b)(6); (b)(7)(C) said he clearly felt (b)(6); (b)(7)(C) genitals "thrusting onto my rear-end numerous times as I stood there, in front of my boss, (b)(6); (b)(7)(C) while I was in a head lock position by DAD (b)(6); (b)(7)(C)".

On (b)(6); (b)(7)(C) as discussed below, (b)(6); (b)(7)(C) told (b)(6); (b)(7)(C) he wanted to report the incident to the Equal Employment Opportunity Office and FBI INSD. After (b)(6); (b)(7)(C) informed (b)(6); (b)(7)(C) that he wanted to report the incident, (b)(6); (b)(7)(C) informed (b)(6); (b)(7)(C) of the incident. In an email to (b)(6); (b)(7)(C) dated, (b)(6); (b)(7)(C) provided an "overview of facts regarding an event which occurred in my office yesterday afternoon." Relevant excerpts from (b)(6); (b)(7)(C) email are below:

- On (b)(6); (b)(7)(C) at approximately 4:45pm, (b)(6); (b)(7)(C) was in my office and we were joking about our upbringing in the Catholic Church and the differences between going to confession behind the screen vs. face-to-face. During the conversation, there were discussions about ongoing issues as they pertain to sexual abuse within the Catholic Church.
- (b)(6); (b)(7)(C) stopped by my office on his way out of work and (b)(6); (b)(7)(C) and I both mentioned that we were discussing the Catholic Church as it pertained to confession. Again, there was back and forth conversations between (b)(6); (b)(7)(C) and I regarding the sexual abuse issues within the Catholic Church. It is at this time (b)(6); (b)(7)(C) shut the door of my office and made a comment that he wanted to share a joke. I was unable to hear exactly what (b)(6); (b)(7)(C) said but it was to the effect that he was shutting the door because he didn't want anyone else to hear it.
- At that time, I was seated in a chair and (b)(6); (b)(7)(C) was standing with (b)(6); (b)(7)(C) directly behind him. (b)(6); (b)(7)(C) mentioned he had heard the joke from his son's godfather and moved toward (b)(6); (b)(7)(C) to act out the joke. I cannot remember if he asked (b)(6); (b)(7)(C) if he could do so, but (b)(6); (b)(7)(C) put his arm around one of (b)(6); (b)(7)(C) arms in a 'half-nelson' position and asked "what is this?" at which time (b)(6); (b)(7)(C) said "a half-nelson". He then intertwined his other arm around (b)(6); (b)(7)(C) and again asked "what is this?" with (b)(6); (b)(7)(C) replying "a full-nelson". (b)(6); (b)(7)(C) then began to thrust his groin area on (b)(6); (b)(7)(C) and said "this is a Fr. Nelson". We all laughed and afterward (b)(6); (b)(7)(C) opened the door and proceeded to leave for the day. I believe (b)(6); (b)(7)(C) also said some to the effect of "okay on that note, there's nothing more to say" and he left too.
- On (b)(6); (b)(7)(C) at approximated 9:00am, I walked into (b)(6); (b)(7)(C) office to say hello to he and another (b)(6); (b)(7)(C). After the other (b)(6); (b)(7)(C) left the office, (b)(6); (b)(7)(C) casually mentioned the encounter from the previous day. He made a comment that he didn't even tell his wife about it but that only in the FBI do we see this type of behavior. It was clear he was trying to make light of the situation, but I could sense some concern. I did advise that at anytime if he felt uncomfortable, he had options to report. We discussed a few other administrative matters and then I left the room. Shortly afterwards we got on a previously scheduled skype call at 10:00am with (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) personnel, to include (b)(6); (b)(7)(C) to discuss (b)(6); (b)(7)(C).

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The OIG reviewed (b)(6); (b)(7)(C) FBI communications obtained from the Enterprise Security Operations Center (ESOC) and did not find any pertinent information regarding the (b)(6); (b)(7)(C) incident.

In an interview with the OIG on (b)(6); (b)(7)(C) explained that (b)(6); (b)(7)(C) was his reviewing official at the time of the interview, and that (b)(6); (b)(7)(C) was his rating official. (b)(6); (b)(7)(C) believed (b)(6); (b)(7)(C) had been the Acting Deputy Assistant Director for approximately three months prior to the (b)(6); (b)(7)(C) incident. (b)(6); (b)(7)(C) described his relationship with (b)(6); (b)(7)(C) as "very formal." (b)(6); (b)(7)(C) said he and (b)(6); (b)(7)(C) had minimal incidental conversations that were not related to work and any informal conversations he had with (b)(6); (b)(7)(C) were usually in the presence of (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) told the OIG that, on (b)(6); (b)(7)(C) at approximately 4:15 PM, (b)(6); (b)(7)(C) was in (b)(6); (b)(7)(C) office for an end of the day closeout meeting. After the meeting concluded, (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) began discussing their personal experiences about being raised Catholic, Catholicism, and the Catholic Church. Specifically, they discussed confessional booths at the Catholic Church, how the booths were dark, and how you talk to a priest while in confession. During the conversation, (b)(6); (b)(7)(C) said they started laughing about how common their lives were; specifically, growing up in the (b)(6); (b)(7)(C) and despite growing up in different cities and states.

At this point in their conversation, (b)(6); (b)(7)(C) said that (b)(6); (b)(7)(C) walked into (b)(6); (b)(7)(C) office and asked, "What's so funny?" (b)(6); (b)(7)(C) recalled that he stood a few inches away from the office door and (b)(6); (b)(7)(C) was seated in a guest chair near her desk, approximately three feet away from (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) recalled he wore suit pants, shirt and tie, and a fleece jacket and that (b)(6); (b)(7)(C) wore a full suit, which included suit pants, jacket, and vest. (b)(6); (b)(7)(C) responded to (b)(6); (b)(7)(C) and told him they were talking about childhood memories regarding the Catholic Church, and they were laughing about similarities they experienced at the Catholic Church despite growing up in separate cities. (b)(6); (b)(7)(C) then said, "Let me close the door." In his interview with the OIG, (b)(6); (b)(7)(C) said that after (b)(6); (b)(7)(C) shut the door, (b)(6); (b)(7)(C) told (b)(6); (b)(7)(C) to turn around and face away from him, placed his hand on (b)(6); (b)(7)(C) back, and said, "This is going to be bad. I can't do this to her, but I can do this to you."

(b)(6); (b)(7)(C) recalled (b)(6); (b)(7)(C) then took (b)(6); (b)(7)(C) right arm, placed it underneath (b)(6); (b)(7)(C) right arm, and placed the palm of (b)(6); (b)(7)(C) right hand on the back of (b)(6); (b)(7)(C) neck. (b)(6); (b)(7)(C) then said, "What do you call this? This is a half nelson." (b)(6); (b)(7)(C) then took (b)(6); (b)(7)(C) left arm, placed it underneath (b)(6); (b)(7)(C) left arm, placed (b)(6); (b)(7)(C) left palm on the back of (b)(6); (b)(7)(C) neck. This action caused both of (b)(6); (b)(7)(C) arms to be out to his side. (b)(6); (b)(7)(C) then pushed the back of (b)(6); (b)(7)(C) neck forward which also caused (b)(6); (b)(7)(C) to lean forward. (b)(6); (b)(7)(C) then said, "What do you call this? A full nelson." (b)(6); (b)(7)(C) said (b)(6); (b)(7)(C) then started "grinding his genitals on my rear end" and did this "[o]ver, and over, and over again" while (b)(6); (b)(7)(C) said, "What do you call this?" (b)(6); (b)(7)(C) then whispered in (b)(6); (b)(7)(C) ear, "Father Nelson." (b)(6); (b)(7)(C) repeated "Father Nelson" a second time, but in a louder voice. (b)(6); (b)(7)(C) recalled also saying "Father Nelson" at the same time (b)(6); (b)(7)(C) made the second comment. (b)(6); (b)(7)(C) said he thought to himself, "What is he doing?" Immediately after his joke, (b)(6); (b)(7)(C) laughed hysterically, released (b)(6); (b)(7)(C) and took a step back.

(b)(6); (b)(7)(C) said he "clearly felt his (b)(6); (b)(7)(C) genitals pressing against me, over and over, in a thrusting motion" and that (b)(6); (b)(7)(C) "clearly knew his genitals were pressing up against me, and it wasn't a light touch." (b)(6); (b)(7)(C) further explained, "It was a full press. And then, he released the full press, again. This happened four or five times."

(b)(6); (b)(7)(C) said the event happened rapidly and he did not find (b)(6); (b)(7)(C) comments funny or interpret them as a joke. (b)(6); (b)(7)(C) explained, "So, I start nervously laughing as well. Looking at (b)(6); (b)(7)(C) she's looking at me. I'm kind of going with the flow here because I just realized I was assaulted, and that I was sexually assaulted. And then, there was this unbelievable joke against Catholicism, which is something I believe in." (b)(6); (b)(7)(C) said once (b)(6); (b)(7)(C) stopped laughing, (b)(6); (b)(7)(C) held his right fist up and gave him a "fist-bump." (b)(6); (b)(7)(C) trying to deescalate the situation, instinctively gave a fist-bump back to (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) said, "I tried to just, you know, dismiss what he did as a joke. I'm nervously laughing. I'm thinking to myself, all of these thoughts. Like, I can't believe what he just did. He said, it was going to be bad. And he was right." (b)(6); (b)(7)(C)

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continued, "He's demonstrating anal sex on me, excuse me, in front of my supervisor." (b)(6); (b)(7)(C) said he took the joke as (b)(6); (b)(7)(C) under the guise of acting as if he's a priest having anal sex."

(b)(6); (b)(7)(C) said once (b)(6); (b)(7)(C) completed his joke and started laughing, (b)(6); (b)(7)(C) face was "in utter disbelief," explaining, "Her eyes were huge. Her mouth wide open, jaw dropped . . . all with the face of surprise." (b)(6); (b)(7)(C) recalled (b)(6); (b)(7)(C) laughed but added, "it's very clear to me that (b)(6); (b)(7)(C) is laughing in a very nervous, shocked kind of laugh." (b)(6); (b)(7)(C) said he wanted to leave the office but could not leave because (b)(6); (b)(7)(C) was standing in the doorway and (b)(6); (b)(7)(C) started telling a funny story from her childhood. (b)(6); (b)(7)(C) felt (b)(6); (b)(7)(C) told the story to help defuse the situation in the office. During a break in (b)(6); (b)(7)(C) story, (b)(6); (b)(7)(C) says to (b)(6); (b)(7)(C) "I'm going to go ahead and leave for the day" and exited the office without further interaction with (b)(6); (b)(7)(C).

On (b)(6); (b)(7)(C) entered his office in the morning to discuss a work matter. (b)(6); (b)(7)(C) said that, after a brief conversation, (b)(6); (b)(7)(C) said, "By the way, yesterday, in reference to yesterday's conduct of (b)(6); (b)(7)(C) you have 45 days to report this incident. If you want to talk about it, to let me know." According to (b)(6); (b)(7)(C) at approximately 11:15 A.M. (b)(6); (b)(7)(C) went to (b)(6); (b)(7)(C) office and said he officially wanted to report the incident to the Equal Employment Opportunity office and INSD.

(b)(6); (b)(7)(C) said at the time of his interview with that he had not had any contact or conversation with (b)(6); (b)(7)(C) since the incident. (b)(6); (b)(7)(C) said he never experienced any similar situations with (b)(6); (b)(7)(C) or was aware of similar incidents with other FBI employees.

During an interview with the OIG on (b)(6); (b)(7)(C) confirmed (b)(6); (b)(7)(C) and that (b)(6); (b)(7)(C) who was the (b)(6); (b)(7)(C) also confirmed (b)(6); (b)(7)(C) was her direct supervisor. (b)(6); (b)(7)(C) said on the day of the incident, (b)(6); (b)(7)(C) had only been in his current role for a few days. (b)(6); (b)(7)(C) described both her relationship with (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) as "friendly" and never had any major issues with either individual. (b)(6); (b)(7)(C) was not aware of any other issues that involved inappropriate touching or jokes by (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) told the OIG that on (b)(6); (b)(7)(C) toward the end of the workday, (b)(6); (b)(7)(C) came into her office for an informal work meeting. During the informal meeting, their conversation turned into a discussion about the Catholic Church and going to confession. (b)(6); (b)(7)(C) noted both (b)(6); (b)(7)(C) and her grew up attending Catholic schools. In their conversation, (b)(6); (b)(7)(C) mentioned how he had never heard of going to a face-to-face confession and had always attended confession behind a screen. (b)(6); (b)(7)(C) continued by stating that during the conversation, they made jokes "about some of the allegations with priesthood" and "[a]nd things like that." During this conversation, (b)(6); (b)(7)(C) entered (b)(6); (b)(7)(C) office, and (b)(6); (b)(7)(C) asked (b)(6); (b)(7)(C) if he was Catholic. (b)(6); (b)(7)(C) responded, "No, (b)(6); (b)(7)(C) then told (b)(6); (b)(7)(C) they were discussing growing up Catholic and were talking about the Catholic Church.

At some point during their three-person conversation about the Catholic Church, (b)(6); (b)(7)(C) said something to the effect, "I have a joke," and shut (b)(6); (b)(7)(C) office door. (b)(6); (b)(7)(C) said this transition happened very quickly. (b)(6); (b)(7)(C) described that she was sitting in a guest chair in front of her desk, (b)(6); (b)(7)(C) was standing in front of her and (b)(6); (b)(7)(C) was approximately six to eight inches behind (b)(6); (b)(7)(C) next to the closed office door. (b)(6); (b)(7)(C) recalled (b)(6); (b)(7)(C) then "wrapped his right arm around (b)(6); (b)(7)(C) shoulder and said, 'What's this? A half nelson.'" (b)(6); (b)(7)(C) then took his other arm "up and under" (b)(6); (b)(7)(C) shoulder and said, "What's this? It's a full nelson." (b)(6); (b)(7)(C) believed she even commented "Full Nelson" at the same time (b)(6); (b)(7)(C) made his comment. (b)(6); (b)(7)(C) then "thrust his groin area" and while laughing, said, "This is a Father Nelson." (b)(6); (b)(7)(C) said from where she was sitting, she could not tell if (b)(6); (b)(7)(C) groin area contacted (b)(6); (b)(7)(C) buttocks, but confirmed (b)(6); (b)(7)(C) did thrust his hips a couple of times. (b)(6); (b)(7)(C) could not recall exactly how many thrusts (b)(6); (b)(7)(C) made but felt it was less than four. (b)(6); (b)(7)(C) added (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) were both standing upright during the encounter and neither (b)(6); (b)(7)(C) nor (b)(6); (b)(7)(C) were bent forward.

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(b)(6); (b)(7)(C) said everybody "kind of giggled" at the joke and recalled (b)(6); (b)(7)(C) said, "Okay, well, on that note." (b)(6); (b)(7)(C) said there were a couple of short conversations after (b)(6); (b)(7)(C) joke and then everybody left her office and went home for the day. There was no further mention about this incident on (b)(6); (b)(7)(C).

Prior to (b)(6); (b)(7)(C) entering her office, (b)(6); (b)(7)(C) said (b)(6); (b)(7)(C) demeanor was "normal, everyday, kind of, run-of-the-mill laughing." (b)(6); (b)(7)(C) said she felt (b)(6); (b)(7)(C) face did not appear mortified at the time. After the incident, (b)(6); (b)(7)(C) did not notice a change in (b)(6); (b)(7)(C) demeanor or change in his facial expression.

(b)(6); (b)(7)(C) felt when (b)(6); (b)(7)(C) said "Father Nelson" he was trying to deliver the punch line of a joke and was not trying to say it in a sexual manner. When (b)(6); (b)(7)(C) made the comment, he was directly behind (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) did not observe or hear (b)(6); (b)(7)(C) whisper the comment into the ear of (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) was asked by the OIG what her interpretation of the joke and punchline was, and she replied, "I think that it was, you have these wrestling moves called nelson. Right? Half nelson. Full nelson. And then with the extra thrusts, that's your Father Nelson. It's almost simulating the sex abuse that occurred." (b)(6); (b)(7)(C) continued by saying (b)(6); (b)(7)(C) did not get "sexual gratification from it," but that he "was making a sexual joke."

In her interview with the OIG, (b)(6); (b)(7)(C) said that the following day, on (b)(6); (b)(7)(C), (b)(6); (b)(7)(C) entered (b)(6); (b)(7)(C) office to talk to him and another (b)(6); (b)(7)(C) who was present. After the other (b)(6); (b)(7)(C) departed (b)(6); (b)(7)(C) office, (b)(6); (b)(7)(C) said to (b)(6); (b)(7)(C) "How about yesterday with (b)(6); (b)(7)(C)? I didn't even tell my wife. If that happened in the private sector, he'd be fired." (b)(6); (b)(7)(C) said she felt (b)(6); (b)(7)(C) was embarrassed when he shared the comment about not telling his wife about the incident because she knew (b)(6); (b)(7)(C) told his wife everything. (b)(6); (b)(7)(C) responded by telling (b)(6); (b)(7)(C) if he felt uncomfortable that he should report the incident. (b)(6); (b)(7)(C) said they engaged in conversation about reporting the incident for a few minutes. After this brief discussion, they had to attend a meeting, and the conversation about the incident ended. After the meeting, (b)(6); (b)(7)(C) received an instant message saying he wanted to come to her office. (b)(6); (b)(7)(C) entered (b)(6); (b)(7)(C) office, shut the door, and said, "I've been thinking about it, and I was thinking about what you said, and I've talked to my attorney. I'm going to report." (b)(6); (b)(7)(C) said she was confused on what to do and told (b)(6); (b)(7)(C) she would have to inform (b)(6); (b)(7)(C) of the incident. (b)(6); (b)(7)(C) recalled (b)(6); (b)(7)(C) was out of the office on (b)(6); (b)(7)(C) and sent him an email stating she needed to speak to him about a "personal matter." (b)(6); (b)(7)(C) contacted (b)(6); (b)(7)(C) immediately and asked her to write-up the incident.

In a compelled OIG interview on (b)(6); (b)(7)(C), (b)(6); (b)(7)(C) confirmed he was the Acting Deputy Assistant Director (b)(6); (b)(7)(C) and that he supervised (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) said he had a "fantastic" relationship with (b)(6); (b)(7)(C) and had known her for several years, even attending FBI happy hours together. Prior to the incident, (b)(6); (b)(7)(C) said he had a good working relationship with (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) further detailed they joked around at the office and the humor was mostly related to the FBI. (b)(6); (b)(7)(C) said he never had any personal or professional issues with (b)(6); (b)(7)(C).

(b)(6); (b)(7)(C) told the OIG that on (b)(6); (b)(7)(C) at approximately 4:00 P.M., he walked into (b)(6); (b)(7)(C) office and initially started listening to (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) conversation. (b)(6); (b)(7)(C) knew they were not talking about work matters due to (b)(6); (b)(7)(C) standing up and (b)(6); (b)(7)(C) being seated in her guest chair, which was in front of her desk. (b)(6); (b)(7)(C) described their mood as "jovial." (b)(6); (b)(7)(C) asked (b)(6); (b)(7)(C) if he was Catholic. (b)(6); (b)(7)(C) responded, "No." (b)(6); (b)(7)(C) then started to talk about going to confession when she was in grammar school. (b)(6); (b)(7)(C) described that when you go to confession, you can either go to a "screened side" where there is a screen between you and the priest or you have the option of going into an open room, where the priest can see you. (b)(6); (b)(7)(C) responded to the story by saying that going into an open room with a priest being able to see you was "creepy." Once (b)(6); (b)(7)(C) heard the word "creepy," it reminded him of a joke he had heard several years ago. (b)(6); (b)(7)(C) then shut (b)(6); (b)(7)(C) office door while guiding (b)(6); (b)(7)(C) away from the door, in preparation for demonstrating a joke. (b)(6); (b)(7)(C) said to (b)(6); (b)(7)(C) "Come here a second," because (b)(6); (b)(7)(C) was facing (b)(6); (b)(7)(C) and he needed (b)(6); (b)(7)(C) to face away from him so he could demonstrate the joke. (b)(6); (b)(7)(C) described that he was next to the door, (b)(6); (b)(7)(C) was in front of him and facing away from him, and (b)(6); (b)(7)(C) was seated in a chair in front of (b)(6); (b)(7)(C).

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(b)(6); (b)(7)(C) said he put his right hand under (b)(6); (b)(7)(C) right arm and rested his right hand on top of (b)(6); (b)(7)(C) right shoulder and said, "Do you know what this is? It's a half nelson." According to (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) responded "curiously" and said, "OK." (b)(6); (b)(7)(C) then put his left hand under (b)(6); (b)(7)(C) left arm and said, "This is a full nelson." (b)(6); (b)(7)(C) said due to both him and (b)(6); (b)(7)(C) being "larger," he did not sink in the "wrestling moves" and only got as close to (b)(6); (b)(7)(C) as was necessary to demonstrate the joke; however, (b)(6); (b)(7)(C) chest was on (b)(6); (b)(7)(C) back. (b)(6); (b)(7)(C) then "rocked his hips back and forward once" and said, "This is a Father Nelson," and let go of (b)(6); (b)(7)(C) who then turned and faced (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) said he did not whisper "Father Nelson" into (b)(6); (b)(7)(C) ear. (b)(6); (b)(7)(C) said he made the comment in a normal voice because it was the punch line of the joke and made the comment loud enough for (b)(6); (b)(7)(C) to hear it. However, (b)(6); (b)(7)(C) said his groin area never touched (b)(6); (b)(7)(C) or (b)(6); (b)(7)(C) buttocks, saying he "deliberately tried not to" touch (b)(6); (b)(7)(C) backside. Additionally, (b)(6); (b)(7)(C) was adamant he only performed one thrust toward (b)(6); (b)(7)(C) because that was all that was necessary to get the punchline of the joke across. After the joke, (b)(6); (b)(7)(C) said (b)(6); (b)(7)(C) was laughing and said, "That almost converted me." (b)(6); (b)(7)(C) thought the comment was just (b)(6); (b)(7)(C) adding to the joke but did not fully understand what the comment meant. (b)(6); (b)(7)(C) also observed (b)(6); (b)(7)(C) roll her eyes when he made the joke. (b)(6); (b)(7)(C) said the conversation naturally concluded and he went back to his office.

On (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) received a call from (b)(6); (b)(7)(C) who informed him a complaint had been made against him. (b)(6); (b)(7)(C) initially did not know what the complaint was about or who made the complaint. However, after thinking about what it could be, (b)(6); (b)(7)(C) said, "Shit, I probably insulted (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) further said, "It was inappropriate, probably not the joke, probably not the right audience, probably not the right time." (b)(6); (b)(7)(C) knew (b)(6); (b)(7)(C) was Catholic but was unaware of how religious he was. (b)(6); (b)(7)(C) said he misread his relationship with (b)(6); (b)(7)(C) because they had been jovial about certain topics in the past. (b)(6); (b)(7)(C) said at no time was the joke intended to be a sexual act or for sexual gratification but just "it's a creep joke about a dirty priest." (b)(6); (b)(7)(C) described how remorseful he was about the joke.

The OIG pressed (b)(6); (b)(7)(C) on the discrepancy on the number of thrusts he performed, and (b)(6); (b)(7)(C) stated, "There were absolutely not that many thrusts (4-5)." (b)(6); (b)(7)(C) said his groin was approximately one inch away from (b)(6); (b)(7)(C) backside and, to (b)(6); (b)(7)(C) it probably seemed closer than it was.

At the time of his OIG interview, (b)(6); (b)(7)(C) was no longer serving at an Acting Deputy Assistant Director (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

#### *OIG's Conclusion*

The OIG investigation substantiated the allegations that (b)(6); (b)(7)(C) sexually harassed (b)(6); (b)(7)(C) and harassed (b)(6); (b)(7)(C) based on religion and engaged in unprofessional conduct on duty, in violation of the Department's zero tolerance policy on sexual harassment and harassment based on religion, FBI Harassment Policy, 1038D, and FBI Offense Code 5.3, 5.4, 5.20, and 5.22. The OIG determined (b)(6); (b)(7)(C) made an inappropriate sexual and religious joke and gesture, physically simulating a sex act while holding (b)(6); (b)(7)(C) arms, in the workplace and physically touched the buttocks of (b)(6); (b)(7)(C) who was (b)(6); (b)(7)(C) subordinate. (b)(6); (b)(7)(C) conduct, which was directed at a subordinate and occurred on duty, "seriously call[ed] into question (b)(6); (b)(7)(C) judgment." FBI Offense Code 5.22.

The OIG reached this determination based on the interviews of (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) as well as (b)(6); (b)(7)(C) acknowledgment to the OIG that he made an inappropriate joke at work and rocked his hips back and forward behind (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) made a joke and gesture in reference to Catholic priests engaging in anal sex, which (b)(6); (b)(7)(C) described to the OIG as "a creep joke about a dirty priest." (b)(6); (b)(7)(C) said the incident was unexpected and unwanted and caused him distress at work, including embarrassment in front of his female supervisor.

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The harassment and unprofessional conduct was exacerbated by (b)(6); (b)(7)(C) intentional physical contact with the buttocks of his subordinate. The OIG found it more likely than not that (b)(6); (b)(7)(C) groin area made contact with (b)(6); (b)(7)(C) buttocks when (b)(6); (b)(7)(C) thrust his hips, physically simulating a sex act, while holding (b)(6); (b)(7)(C) in a full nelson. (b)(6); (b)(7)(C) told the OIG that he felt genitals pressing against him, "over and over, in a thrusting motion" four or five times. We credited (b)(6); (b)(7)(C) account because we identified no reason for him to fabricate what he felt. Further, (b)(6); (b)(7)(C) account was consistent with other evidence. Although (b)(6); (b)(7)(C) was not in a position to see whether (b)(6); (b)(7)(C) groin area contacted (b)(6); (b)(7)(C) buttocks, she confirmed in her interview that (b)(6); (b)(7)(C) thrust his hips a couple of times, which was inconsistent with (b)(6); (b)(7)(C) claim of thrusting once. That (b)(6); (b)(7)(C) groin area contacted (b)(6); (b)(7)(C) buttocks is also consistent with the closeness of (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) other body parts, including the arm contact that was necessary for the full and half nelson. (b)(6); (b)(7)(C) also acknowledged to the OIG that his chest was on (b)(6); (b)(7)(C) back and his groin was approximately one inch away from (b)(6); (b)(7)(C) backside. Finally, that (b)(6); (b)(7)(C) decided to shut the door—and tell (b)(6); (b)(7)(C) that "[t]his is going to be bad" and "I can't do this to her, but I can do this to you," according to (b)(6); (b)(7)(C)—suggests that (b)(6); (b)(7)(C) knew the joke was not only highly inappropriate and (b)(6); (b)(7)(C) did not want anyone to hear the joke but also that the joke would involve physical contact between (b)(6); (b)(7)(C) and (b)(6); (b)(7)(C) that he did not want others outside of (b)(6); (b)(7)(C) office to see.<sup>1</sup>

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<sup>1</sup> Consistent with the OIG's ordinary process, (b)(6); (b)(7)(C) was afforded an opportunity to review and provide comment on a draft of this report, which bore redactions to protect individuals' privacy. In his response, (b)(6); (b)(7)(C) through counsel, stated that he did not contest the OIG's findings of misconduct as they pertained to violating FBI Policy 1038D and FBI Offense Code 5.2, 5.4, and 5.22, but disputed without explanation the application of FBI Offense Code 5.3, Discrimination, and maintained there were insufficient facts in the record to support the elements of FBI Offense Code 5.3. (Note: FBI Offense Code 5.2 was not cited in the draft of the report; it appears (b)(6); (b)(7)(C) meant to refer to FBI Offense Code 5.20, which was cited in the draft of the report.) (b)(6); (b)(7)(C) agreed that he made an inappropriate sexual and religious joke and gesture simulating a sex act while holding (b)(6); (b)(7)(C) arms in the workplace. Consistent with his OIG interview, (b)(6); (b)(7)(C) denied that he physically touched (b)(6); (b)(7)(C) buttocks. In support of his contention, (b)(6); (b)(7)(C) stated that a "disinterested witness" did not corroborate (b)(6); (b)(7)(C) account that (b)(6); (b)(7)(C) touched (b)(6); (b)(7)(C) buttocks but instead corroborated (b)(6); (b)(7)(C) account on that issue. (b)(6); (b)(7)(C) reference to a "disinterested witness" was apparently in reference to (b)(6); (b)(7)(C) (whose name was redacted in the draft of the report), who (b)(6); (b)(7)(C) had indicated in his OIG interview was in the room during the incident. Contrary to (b)(6); (b)(7)(C) response, (b)(6); (b)(7)(C) was not a disinterested witness; in fact, she was (b)(6); (b)(7)(C) supervisor and (b)(6); (b)(7)(C) subordinate at the time of the incident. Further, (b)(6); (b)(7)(C) did not "corroborate" (b)(6); (b)(7)(C) on the physical touching issue. As stated in the report, (b)(6); (b)(7)(C) was not in a position to see whether (b)(6); (b)(7)(C) groin area contacted (b)(6); (b)(7)(C) buttocks but confirmed in her interview that (b)(6); (b)(7)(C) thrust his hips a couple of times, which was inconsistent with (b)(6); (b)(7)(C) claim of thrusting once.

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