

# An Investigation of Allegations of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General



**U.S. Department of Justice  
Office of Professional Responsibility**



**U.S. Department of Justice  
Office of the Inspector General**

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# CHAPTER ONE

## INTRODUCTION

### I. Scope of the Investigation

In March 2007, the Office of Professional Responsibility (OPR) and the Office of the Inspector General (OIG) began a joint investigation of allegations that in 2006 several United States Attorneys (U.S. Attorneys) were forced to resign for improper reasons, including improper political purposes. We also received an allegation that Monica Goodling, the Department of Justice's (DOJ or Department) White House Liaison and Senior Counsel to the Attorney General, had discriminated on the basis of political affiliation against a candidate for a career position as an Assistant United States Attorney (AUSA). We therefore expanded our investigation to include the allegation that Goodling inappropriately used political or ideological affiliations in the hiring process for career Department employees.

On May 23, 2007, Goodling testified before the United States House of Representatives Committee on the Judiciary pursuant to a grant of immunity issued by the United States District Court for the District of Columbia. In both her written statement and verbal testimony, Goodling acknowledged that she took political considerations into account in assessing candidates for career positions in the Department. Goodling described three categories of such positions.

First, Goodling stated that “[i]n a very small number of cases [regarding AUSAs], I believe that my decisions may have been influenced in part based on political considerations.”<sup>1</sup>

Second, Goodling stated that “[i]n some cases, I learned and considered political information” when assessing career attorneys who applied for temporary detail positions in the Office of the Deputy Attorney General, the Office of Legal Policy, the Office of the Associate Attorney General, the National Security Division, and the Executive Office for United States Attorneys.

Third, Goodling stated that “[i]n reviewing resumes and soliciting applications [for immigration judges and Board of Immigration Appeals members] . . . I sometimes took political considerations into account.”

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<sup>1</sup> Prepared Statement of Monica Goodling, submitted in connection with her May 23, 2007, congressional testimony before the Committee on the Judiciary, United States House of Representatives.

Goodling added that Office of the Attorney General (OAG) Chief of Staff Kyle Sampson had told her that the Office of Legal Counsel had “provided guidance . . . indicating that Immigration Judge appointments were not subject to the civil service rules applicable to other career positions.” Goodling testified that she “assumed” that Board of Immigration Appeals (BIA) member appointments were also not subject to civil service laws.

As a result of Goodling’s testimony and other information developed during the course of this investigation, we included in the scope of our investigation Goodling’s role in the selection and hiring of candidates for AUSA and other career attorney positions, career attorney details to Department offices, and immigration judge (IJ) and BIA positions. We also examined whether Goodling’s predecessors as the Department’s White House Liaison, Susan Richmond and Jan Williams, and Goodling’s immediate supervisor, OAG Chief of Staff Kyle Sampson, considered political or ideological affiliations when assessing candidates for career positions within the Department.<sup>2</sup>

In addition, during our investigation we learned of allegations that Goodling had discriminated on the basis of rumored sexual orientation against a career Department attorney who had applied for several temporary details. We investigated those allegations as well.

Finally, we investigated whether several witnesses to or subjects of our investigation provided inaccurate or misleading information to us during our investigation or to other Department officials related to the issues in this investigation.

## **II. Methodology of the Investigation**

During the course of our investigation, we interviewed more than 85 individuals, some more than once. Some of these people were also interviewed in connection with the other joint investigations by our offices. We also interviewed former Attorney General Alberto Gonzales, former

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<sup>2</sup> In addition to this investigation and the investigation of the removal of several U.S. Attorneys mentioned previously, we jointly investigated allegations that officials overseeing the Department’s Honors Program and Summer Law Intern Program used political or ideological affiliations in assessing candidates for those programs. We also jointly investigated allegations that former Civil Rights Division Acting Assistant Attorney General (AAG) Bradley Schlozman and others used political or ideological affiliations in hiring and personnel decisions in the Civil Rights Division. On June 24, 2008, we issued a separate report describing our findings regarding allegations of politicized hiring in the Honors Program and the Summer Law Intern Program. We will issue separate reports describing our findings regarding the removal of several U.S. Attorneys and the Civil Rights Division when those investigations are completed.

Deputy Attorney General Paul McNulty, and numerous current and former employees of the OAG, the Office of the Deputy Attorney (ODAG), the Executive Office for United States Attorneys (EOUSA), and the Executive Office for Immigration Review (EOIR). We also interviewed many individuals who were alleged victims or beneficiaries of political discrimination in Department hiring decisions.

Monica Goodling declined our request to be interviewed. Because she is not currently employed by the Department, we could not compel her to cooperate.

In addition to our interviews, we reviewed thousands of documents, including documents from the OAG, ODAG, EOUSA, EOIR, and numerous U.S. Attorneys' Offices (USAO). We also reviewed relevant e-mails of numerous current and former Department employees. We searched the computer hard drives of several former OAG employees, including Sampson and Goodling, for documents relevant to this investigation. We also reviewed the hard-copy documents in Goodling's and Sampson's offices after they resigned from the Department.

We sent a written survey to every person we could identify who was interviewed by Goodling or others in the OAG for any position from January 1, 2004, to April 2007, seeking information about their interviews. The survey asked for information about the positions for which the candidates applied, who interviewed them, and the kinds of questions the candidates were asked during the interviews. Of the 484 people to whom we sent the questionnaire, approximately 300 responded.

### **III. Organization of this Report**

This report is divided into eight chapters. In Chapter Two, we provide a factual overview of Goodling's and Sampson's duties and responsibilities while they worked in the Department. We also discuss the duties and responsibilities of Goodling's two predecessors as the Department's White House Liaison, Susan Richmond and Jan Williams. We briefly describe the Department components that are discussed in this report, and we identify the leaders of those components during the relevant time periods. We then describe applicable legal standards and policies governing the hiring of career employees by the Department.

In Chapter Three, we describe Goodling's role in hiring Department attorneys and the methods she used to evaluate candidates. In Chapters Four, Five, and Six, we describe our findings and analysis as to whether Goodling inappropriately considered political or ideological affiliations when assessing AUSA or other career attorney candidates; whether Goodling, Richmond, or Williams considered political or ideological affiliations to

assess candidates for DOJ details; and whether Sampson, Williams, or Goodling considered political or ideological affiliations to assess candidates for IJ and BIA positions. In Chapter Six, we also discuss whether Jan Williams provided inaccurate information to our investigators and whether Goodling provided inaccurate information to Civil Division attorneys defending a lawsuit involving the selection of IJs.

In Chapter Seven, we discuss several issues that arose during our investigation, including whether EOUSA Deputy Director John Nowacki provided senior Department officials with inaccurate information about whether Goodling had used political or ideological affiliations to evaluate candidates for EOUSA detail positions, and whether Goodling discriminated against a detailee candidate on the basis of her alleged sexual orientation.

In Chapter Eight, we provide our conclusions and recommendations.

## **CHAPTER TWO BACKGROUND**

In this Chapter we describe Monica Goodling's and Kyle Sampson's duties and responsibilities while working in the Department. We also provide a brief description of the duties and responsibilities of Jan Williams and Susan Richmond, Goodling's predecessors as Department White House Liaisons. We then describe the functions of several Department offices that were involved in the events we investigated. Finally, we briefly summarize Department policy and federal law applicable to the hiring of career employees.

### **I. Monica Goodling**

Goodling graduated from Messiah College in 1995 and received a law degree from the Regent University School of Law in 1999. From 1999 to February 2002, she worked for the Republican National Committee (RNC) where she held the positions of research analyst, senior analyst, and deputy director for research and strategic planning. Among her duties was what she described on her résumé as "a broad range of political research."

In 2002, Goodling left the RNC to work at the Department, where she held a variety of political positions. From February 2002 to August 2004 she worked in the Office of Public Affairs (OPA) as, successively, Senior Counsel, Deputy Director, and Principal Deputy Director. According to Goodling's résumé, while at OPA she worked closely with the OAG regarding public communications about the Department's work, including media events, press releases, speeches, and talking points. In September 2004, Goodling began a 6-month detail as a Special Assistant United States Attorney in the USAO for the Eastern District of Virginia, where she handled criminal felony and misdemeanor cases.

At the conclusion of her detail to the USAO in March 2005, Goodling served in EOUSA as a Schedule C (political appointee) Deputy Director.<sup>3</sup> Goodling worked at EOUSA for 9 months until October 2005. According to her résumé, her responsibilities at EOUSA included oversight of and coordination between EOUSA and the USAOs; liaison between the USAOs and Department components; and supervision of various EOUSA legal and administrative staffs handling EOUSA's legal policy, legislative analysis,

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<sup>3</sup> The political Schedule C Deputy Director position for Goodling was a new position within EOUSA. Contemporaneous e-mails of senior managers within the OAG and ODAG indicate that OAG personnel approved Goodling's appointment as a political Deputy Director.

legal programs, data analysis, and the unit processing political appointments for U.S. Attorneys. As an EOUSA Deputy Director, Goodling also processed requests by interim U.S. Attorneys to hire AUSAs. These requests from interim U.S. Attorneys, called “waiver” requests, are discussed in detail in Chapter Four.

Goodling was one of two or three EOUSA Deputy Directors (the number varied over time) who reported directly to the Director of EOUSA. When Goodling arrived at EOUSA in March 2005, the Director was Mary Beth Buchanan, who was also serving as the U.S. Attorney for the Western District of Pennsylvania. In June 2005, Buchanan was replaced as EOUSA Director by Michael Battle, the former U.S. Attorney for the Western District of New York.

In October 2005, Goodling moved from EOUSA to the OAG, where she remained until she resigned from the Department in April 2007.<sup>4</sup> From October 2005 to April 2006, Goodling was Counsel to the Attorney General. In April 2006, she became the Department’s White House Liaison and Senior Counsel to the Attorney General. Goodling’s major responsibility as White House Liaison was to interview and process applicants for political positions in the Department. In that job, she also interviewed and was involved in the selection of career attorneys who were candidates for temporary details to various Department offices, and candidates for immigration judge and Board of Immigration Appeals positions. In addition, Goodling continued to process waiver requests by interim U.S. Attorneys, although neither of her predecessors as White House Liaison, Susan Richmond and Jan Williams, had done so. Goodling’s direct supervisor during her tenure in the OAG was Chief of Staff Kyle Sampson.

## **II. Kyle Sampson**

Sampson graduated from Brigham Young University in 1993 and from the University of Chicago Law School in 1996. After a federal appellate court clerkship and 2 years in private practice, Sampson served for 2 years as Counsel to the U.S. Senate Committee on the Judiciary, where, among other things, he worked on nominations of candidates for political positions in the Department of Justice. In 2001, Sampson moved to the White House as Special Assistant to the President and Associate Director for Presidential Personnel, where he handled presidential appointments to the Department of Justice.

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<sup>4</sup> Goodling’s official resignation date from the Department was in April 2007. However, her last work day was in the middle of March.

Later in 2001 and continuing until 2003, Sampson served as Associate Counsel to the President. During that time Sampson worked on legislative, policy, and environmental matters.

In August 2003, Sampson moved to the Department. From August 2003 to 2005, he served as Counselor to Attorney General Ashcroft. In February 2005, Sampson became Deputy Chief of Staff to the Attorney General, and in September 2005, he became Chief of Staff to Attorney General Gonzales. He remained in that position until his resignation from the Department in March 2007.

### **III. Susan Richmond and Jan Williams**

Goodling's immediate predecessors as the Department's White House Liaison were Susan Richmond and Jan Williams.

Richmond graduated from Palm Beach Atlantic College in 1995. She obtained masters degrees in Public Policy and Business Administration from Regent University in 1998 and 1999. From 1998 to 2000, she worked for Missouri Senator John Ashcroft as a research director and aide to his Chief of Staff.

Richmond accompanied Ashcroft to the Department when he became Attorney General in February 2001. From February 2001 to May 2003, she served as an advisor to the Attorney General and as the Department's Deputy White House Liaison. In May 2003, she became the Department's White House Liaison and served in that position until she resigned from the Department in March 2005.

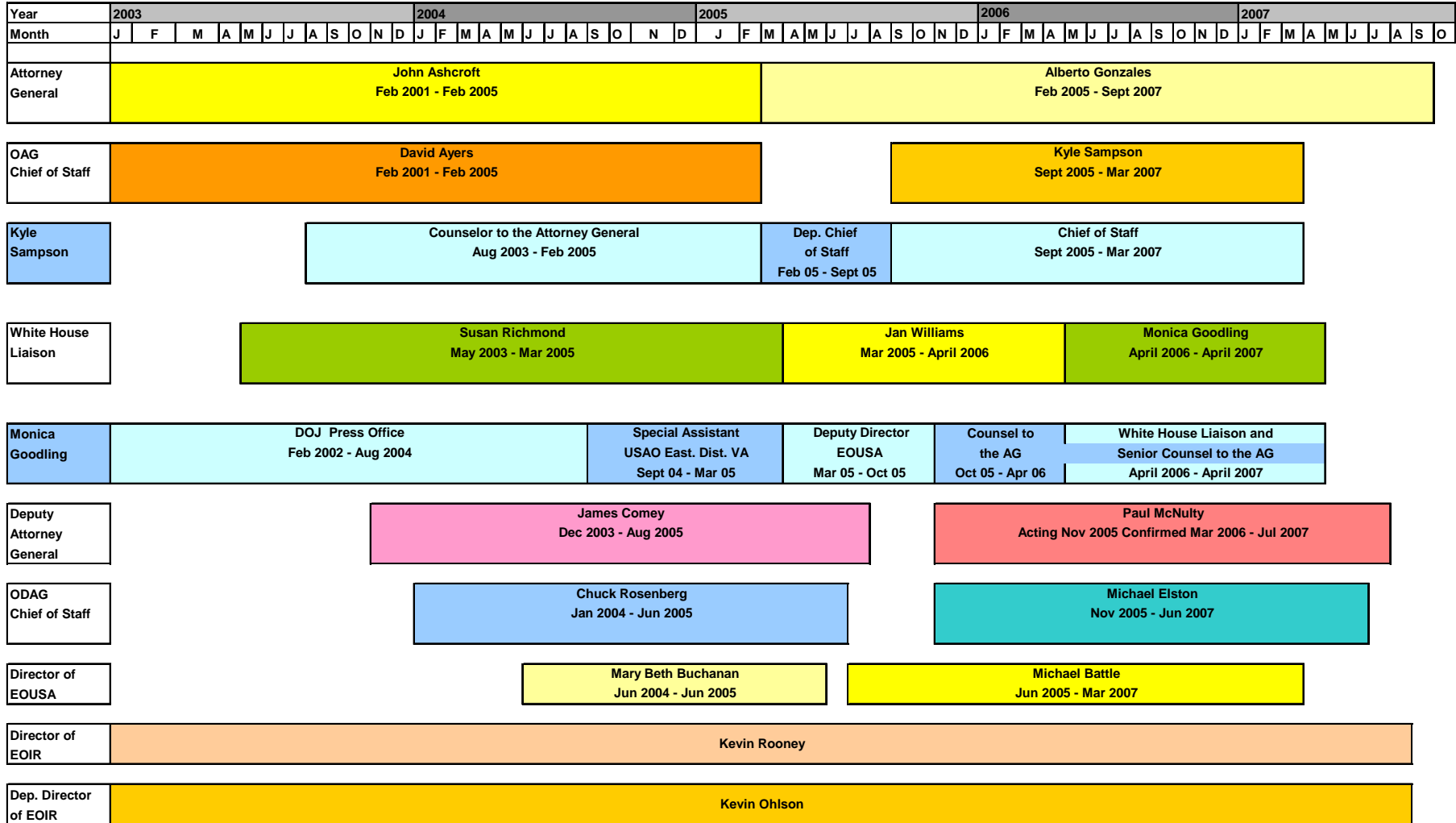
Williams graduated from Brigham Young University in 1997. From 1997 to January 2001, she worked at the Federalist Society, first as the Assistant Lawyers Division Director and then as Senior Deputy Lawyers Division Director. In 2001, she moved to the White House, where she served as a staff assistant and secretary to Kyle Sampson in the Presidential Personnel Office. From November 2001 to March 2005, Williams was a Deputy Associate Director in that office. She joined the Department in March 2005 and served as White House Liaison until she resigned in April 2006. Sampson served as her direct supervisor while at the Department.

### **IV. Department Components and Personnel**

In this section we briefly describe the Department components that were most relevant to the allegations we examined in this report. Our description generally covers the time period from early 2004 until March 2007.

Chart 1 identifies the Department's senior managers at the time of the events discussed in this report.

## CHART 1 Department of Justice Management January 2003 - October 2007



The Office of the Attorney General is a relatively small office that in fiscal year (FY) 2006 was staffed with 25 employees, 7 of whom were detailed there on temporary duty assignments from other Department components. John Ashcroft served as Attorney General from February 2001 to February 2005. Alberto Gonzales served as Attorney General from February 2005 to September 2007.

David Ayres served as the Chief of Staff to Attorney General Ashcroft from February 2001 to February 2005. Kyle Sampson served first as Deputy Chief of Staff and then as the Chief of Staff to Attorney General Gonzales from February 2005 to March 2007. Susan Richmond, Jan Williams, and Monica Goodling served as the Department's White House Liaisons from May 2003 to March 2005, March 2005 to April 2006, and April 2006 to April 2007, respectively.

The Office of the Deputy Attorney General advises and assists the Attorney General in formulating and implementing Department policies and programs and provides supervision and direction throughout the Department. In FY 2006, the ODAG was staffed with 35 employees, 14 of whom were detailed there on temporary duty assignments from other Department components. James Comey served as Deputy Attorney General from December 2003 to August 2005. Paul McNulty was appointed to be the Acting Deputy Attorney General in November 2005, and was confirmed as the Deputy Attorney General in March 2006. He resigned from the Department in July 2007.

Chuck Rosenberg served as ODAG Chief of Staff from January 2004 until June 2005. Michael Elston served as Chief of Staff from November 2005 until he resigned from the Department in June 2007.

The Executive Office for U.S. Attorneys serves as the liaison between the 94 U.S. Attorneys' Offices throughout the country, Department components in Washington, D.C., and other federal agencies. EOUSA is a large organization with more than 500 employees.

According to its website, EOUSA provides USAOs assistance with policy development, direction and oversight, and operational support. EOUSA also provides budget and fiscal assistance and guidance to USAOs. In addition, EOUSA evaluates the performance of USAOs on a periodic basis.

EOUSA also assists the Department with the appointment of U.S. Attorneys and provides general support to USAOs regarding AUSA appointments. Mary Beth Buchanan served as EOUSA director from June 2004 to June 2005. Michael Battle was EOUSA Director from June 2005 until he resigned from the Department in March 2007.

The Executive Office for Immigration Review is the office within the Department responsible for interpreting and administering federal immigration laws by conducting immigration court proceedings and appellate review of such proceedings. At the time of the events discussed in this report, the Director of EOIR was Kevin Rooney and the Deputy Director was Kevin Ohlson.

The Office of Legal Policy (OLP) is responsible for developing and implementing many of the Department's significant policy initiatives. OLP also handles special projects and serves as a policy advisor to the Attorney General and the Deputy Attorney General. At the time of the events discussed in this report, the Assistant Attorney General (AAG) for OLP was Rachel Brand.

The Office of Public Affairs handles media relations and communications issues for the Department. It also coordinates with public affairs units in other Department components.

## **V. Hiring Standards**

### **A. Department Career and Political Attorney Positions**

For purposes of this investigation, we distinguish between two broad categories of Department attorneys: career and political.

Most attorney positions in the Department are designated by the Office of Personnel Management as Schedule A positions. Schedule A positions are "positions which are not of a confidential or policy-determining character," 5 C.F.R. § 213.3101; 5 C.F.R. § 213.3102(d), and are considered career positions. The Department has several types of Schedule A attorney positions, including AUSAs, trial attorneys in litigating divisions, other types of attorneys in a variety of Department components, and immigration judges. In addition, the Department employs attorneys in a variety of career Senior Executive Service (SES) positions. Among the members of the career SES at the Department are the chair and one of the vice chairs of the Board of Immigration Appeals, most Deputy Directors at EOUSA, and the Director of EOIR.

In addition, the Department has several types of political attorney positions, including presidential appointees requiring Senate approval (such as U.S. Attorneys and Assistant Attorneys General), non-career SES attorneys, and Schedule C attorneys. Schedule C positions are "positions which are policy-determining or which involve a close and confidential working relationship with the head of an agency or other key appointed officials." 5 C.F.R. § 213.3301(a). Schedule C positions are commonly referred to as political appointments.

For several reasons, the Department has traditionally used some career attorneys to help staff, on a temporary basis, the Department's leadership offices, the OAG and the ODAG, as well as other Department offices such as OLP and EOUSA.<sup>5</sup> These assignments are referred to as "details," and individuals who obtain such positions are commonly referred to as "detailees." As noted above, a significant portion of the OAG and ODAG staff are detailees from other Department components. When career attorneys are detailed to offices such as the OAG, ODAG, or OLP, they may have significant policy-related responsibilities usually associated with Schedule C attorneys. We discuss this issue more fully below.

## **B. Legal Standards**

It is not improper to consider political affiliations when hiring for political positions. However, both Department policy and federal law prohibit discrimination in hiring for Department career positions on the basis of political affiliations.

The Department's policy on non-discrimination is contained in the Code of Federal Regulations, Section 42.1(a) of 28 C.F.R. Part 42, Subpart A, which states:

It is the policy of the Department of Justice to seek to eliminate discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, **political affiliation**, age, or physical or mental handicap in employment within the Department and to assure equal employment opportunity for all employees and applicants for employment (emphasis added).<sup>6</sup>

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<sup>5</sup> Political appointees can be detailed to temporary career positions as well. For example, as noted above Goodling was detailed to the USAO for the Eastern District of Virginia for 6 months as a Special AUSA.

<sup>6</sup> While the language of 42.1(a) is aspirational, it is clear that the regulation prohibits the conduct it describes. See 28 C.F.R. § 42.1(b) ("No person shall be subject to retaliation for opposing any practice prohibited by the above policy [42.1(a)]"); Attorney General Order 2037-46, adopting the current version of 42.1(a), stating that it amended 42.1 "to include sexual orientation as a prohibited basis for discrimination" and characterized 42.1(b) as prohibiting "retaliation for opposing a prohibited practice." 61 Fed. Reg. 34,729, 34,729 (July 3, 1996); Action Memorandum for the Attorney General from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, Re: Final Rule Amending the Policy Statement Regarding Equal Employment Opportunity Within the Department of Justice (June 18, 1996) (stating that the proposed order would "codify the Department's policy prohibiting discrimination on the basis of sexual orientation").

While the regulation does not define “political affiliation,” courts have considered “political affiliation” to include “commonality of political purpose, partisan activity, and political support.” See, e.g., *Curinga v. City of Clairton*, 357 F.3d 305, 311 (3rd Cir. 2004).

The Office of Attorney Recruitment and Management (OARM), the Department component with primary responsibility for overseeing career attorney hiring, states on its website:

The U.S. Department of Justice is an Equal Opportunity/ Reasonable Accommodation Employer. Except where otherwise provided by law, there will be no discrimination based on color, race, religion, national origin, **politics**, marital status, disability, age, sex, sexual orientation, status as a parent, membership or nonmembership in an employee organization, or personal favoritism (emphasis added).<sup>7</sup>

In addition to Department policies, the *Civil Service Reform Act* (CSRA) prohibits the Department from discriminating in hiring for career positions based on political affiliation. For example, the CSRA states that federal agencies must adopt hiring practices for career employees in which:

selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

5 U.S.C. § 2301(b)(1).

Moreover, the CRSA sets forth a series of merit system principles by which federal agencies are to manage personnel decisions. One principle directly addresses employment discrimination:

All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to **political affiliation**, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

5 U.S.C. § 2301(b)(2) (emphasis added).

CRSA Section 2302 sets forth a list of “prohibited personnel practices” and prohibits “any employee who has authority to take, direct

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<sup>7</sup> See [www.usdoj.gov/oarm/attvacancies.html](http://www.usdoj.gov/oarm/attvacancies.html).

others to take, recommend, or approve any personnel action” from engaging in those enumerated practices.<sup>8</sup> 2302(b). The CSRA defines a “personnel action” to include “an appointment” and “a detail.”<sup>9</sup> 2302(a)(2)(A) (i) and (iv).

Section 2302(b) applies to “an employee in, or applicant for, a covered position.” 2302(a)(2)(A). A “covered position” includes career attorneys:

‘covered position’ means, with respect to any personnel action, any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include any position which is, prior to the personnel action . . . (i) excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character . . . .

2302(a)(2)(B). Department Schedule A career attorneys are included within the scope of 2302(b) because Schedule A positions are defined as “not of a confidential or policy-determining character.” 5 C.F.R. § 213.3102(d).

The use of political affiliation as a criterion for considering applicants for career attorney appointments or details may violate several prohibited personnel practices. Section 2302(b)(1)(E) prohibits “discriminat[ing] for or against any employee or applicant for employment . . . on the basis of . . . political affiliation, as prohibited under any law, rule, or regulation.”<sup>10</sup> Section 2302(b)(12) of the CSRA also makes it unlawful to “take or fail to take any other personnel action if the taking or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.” In addition, as noted above, one

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<sup>8</sup> The actions specifically covered by Section 2302(b) are discussed below.

<sup>9</sup> As set forth more fully below, we investigated allegations that Goodling and Richmond considered political or ideological affiliations when assessing career attorney candidates for detail positions in Department offices.

<sup>10</sup> However, the use of political affiliation violates 2302(b)(1)(E) only when it also violates some other “law, rule or regulation.” We asked the Department’s Office of Legal Counsel (OLC) whether the policy on non-discrimination contained in 28 C.F.R. § 42.1 qualifies as a predicate for a violation of 2302(b)(1)(E). OLC responded that “[o]ur informal conclusion is that 28 C.F.R. § 42.1 (2007) and the First Amendment constitute ‘law[s], rule[s] or regulation[s]’ that prohibit considering political affiliation in hiring career attorneys to Excepted Service Schedule A positions at DOJ.” Career attorneys in the Department are Excepted Service Schedule A positions.

merit system principle is that “all employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation . . . .” 5 U.S.C. 2301(b)(2).

These policies and laws do not define “political affiliation.” Nonetheless, selecting candidates for career positions based on the activities or organizations with which they are affiliated can be used as a proxy for political affiliation and thus can violate CSRA’s prohibition. Using ideological affiliation can also create the appearance that candidates are being discriminated against based on political affiliation.

As a result, Department policy and the CSRA prohibit using political affiliations and may also prohibit using certain ideological affiliations in assessing candidates for career attorney positions.

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## **CHAPTER THREE**

### **GOODLING'S ROLE IN DEPARTMENT HIRING**

During Goodling's tenure in the Office of Public Affairs, EOUSA, and in the OAG before she became White House Liaison, her primary responsibilities did not include hiring personnel.<sup>11</sup> When she was in EOUSA, she was involved in the approval of waiver requests from interim U.S. Attorneys to hire AUSAs, and we investigated her actions in that role. However, the bulk of Goodling's hiring activities for the Department occurred after she became the Department's White House Liaison, and most of the allegedly improper hiring practices occurred during her time in that position. We discuss in this chapter Goodling's methods for screening candidates for their political or ideological affiliations.

As White House Liaison, Goodling's primary responsibility was to screen candidates for political positions. Based on our witness interviews and review of documents, and the results of our survey, we found that most of the people Goodling screened or interviewed had applied for political positions. However, Goodling also assessed candidates for various types of career positions, including candidates for AUSA positions requested by interim U.S. Attorneys, career attorneys applying for details to Department offices, and candidates for IJ and BIA positions. We also found that Goodling interviewed many candidates who were interested in obtaining any position in the Department, whether career or political.

Our investigation demonstrated that Goodling sometimes used for career applicants the same political screening techniques she employed in considering applicants for political positions. In addition, she used for candidates who were interested in any position, whether career or political, the same political screening she used for applicants who applied solely for political positions, and some of these candidates were placed in career positions.

In the sections that follow, we describe the process Goodling used as White House Liaison to screen candidates for political positions within the Department. We note where applicable the evidence that she used similar techniques in assessing candidates for career positions.

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<sup>11</sup> We found no evidence that Goodling was involved in hiring during her tenure in the Office of Public Affairs.

As detailed in this chapter, Goodling used a variety of methods to screen candidates, including interview questions, Internet searches, employment forms, and reference checks.

## **I. Interview Questions**

According to witnesses we interviewed and documents we reviewed, Goodling regularly asked interview questions designed to determine how politically conservative the candidates were. We interviewed Angela Williamson, who was the Department's Deputy White House Liaison and reported to Goodling during most of Goodling's tenure as White House Liaison.<sup>12</sup> Williamson attended numerous interviews conducted by Goodling and told us that Goodling asked the same questions "all the time" and tried to ask the same questions of all candidates. Williamson said she became so familiar with the questions, Goodling occasionally allowed her to conduct portions of interviews or entire interviews on her own.<sup>13</sup>

After Goodling resigned, Williamson typed from memory the list of questions Goodling asked as a guide for future interviews. Among other questions, the list included the following:

Tell us about your political philosophy. There are different groups of conservatives, by way of example: Social Conservative, Fiscal Conservative, Law & Order Republican.

[W]hat is it about George W. Bush that makes you want to serve him?

Aside from the President, give us an example of someone currently or recently in public service who you admire.

We found that this last question often took the form of asking the candidate to identify his or her most admired President, Supreme Court Justice, or legislator. Some candidates were asked to identify a person for all three categories. Williamson told us that sometimes Goodling asked candidates: "Why are you a Republican?"

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<sup>12</sup> Williamson, who was not an attorney, joined the OAG in July 2006 and remained there after Goodling resigned. Williamson graduated from the College of the Ozarks in 2000 and had worked as an intern at the White House before joining the Department as a press assistant in May 2004. She moved to the Office of First Lady Laura Bush in September 2005, and joined the OAG in July 2006.

<sup>13</sup> Our review of Goodling's handwritten interview notes confirmed that she asked similar questions of many candidates. Those notes suggest that Goodling asked candidates either all or a subset of her standard questions, although the notes do not show that every candidate was asked exactly the same questions.

Several candidates interviewed by Goodling told us they believed that her question about identifying their favorite Supreme Court Justice, President, or legislator was an attempt to determine the candidates' political beliefs. For example, one candidate reported that after he stated he admired Secretary of State Condoleezza Rice, Goodling "frowned" and commented, "but she's pro-choice." Another candidate commented that when Goodling asked him to name his favorite judge, it seemed to him that she was trying to "get at my political views."

Williamson said that she and Goodling took notes during candidate interviews, which were maintained in folders for the candidates.<sup>14</sup> We also found that many of Goodling's and Williamson's interview notes reflected that the topics of abortion and gay marriage were discussed during interviews. It appeared that these topics were discussed as a result of the question seeking information about how the applicant would characterize the type of conservative they were. We received information from our survey that 34 persons interviewed by Goodling or Williamson said they discussed abortion, and 21 said they discussed gay marriage.

Some of Goodling's interview questions elicited complaints from a senior Department official. Regina Schofield, former Assistant Attorney General for the Office of Justice Programs, said she complained to OAG Chief of Staff Kyle Sampson about Goodling asking inappropriate questions of OJP candidates, such as questions about abortion. Schofield said she told Sampson that Goodling needed to be trained, and that Sampson seemed to agree with the suggestion. Sampson told us he did not have a specific recollection of Schofield calling him to complain about Goodling asking questions about abortion, but that he had some recollection about discussing interviewer training with Schofield. We found no evidence that Goodling received any such training or was instructed about the type of questions that should be asked in interviews as a result of Schofield's complaint.

The evidence also indicates that Goodling knew she should not ask applicants for career positions the same questions she asked of applicants for political positions. For example, an AUSA who interviewed with Goodling in September 2006 for a possible position in the ODAG said that Goodling told her there were two types of positions potentially available, political and non-political. Goodling told the candidate that if she was interested in a political position, she would ask her separate

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<sup>14</sup> Goodling and Williamson maintained candidates' résumés and supporting materials in manila folders. We examined hundreds of such folders. Goodling's interview notes were usually contained on the inside flap of the folder or on separate pieces of paper that were inserted into the folder.

questions, which included questions about political activities and voting history.<sup>15</sup>

## **II. Internet Research**

As noted above, prior to joining the Department Goodling worked for the Republican National Committee. According to her résumé, her duties there included “a broad range of political research.” When asked during her congressional testimony whether she used such skills in researching candidates at the Department, Goodling replied that she “certainly used Westlaw and Nex[i]s.”

We found that Goodling’s Internet research on candidates for Department positions was extensive and designed to obtain their political and ideological affiliations.<sup>16</sup> We determined that while working in the OAG, Goodling conducted computer searches on candidates for career as well as political Department positions. Goodling used an Internet search string in her hiring research that she had received from Jan Williams, her predecessor as the Department’s White House Liaison. At some time during the year Williams served as White House Liaison, she had attended a seminar at the White House Office of Presidential Personnel and received a document entitled “The Thorough Process of Investigation.” The document described methods for screening candidates for political positions and recommended using [www.tray.com](http://www.tray.com) and [www.opensecrets.org](http://www.opensecrets.org) to find information about contributions to political candidates and parties. The document also explained how to find voter registration information. In addition, the document explained how to conduct searches on [www.nexis.com](http://www.nexis.com), and included an example of a search string that contained political terms such as “republican,” “Bush or Cheney,” “Karl Rove,” “Howard Dean,” “democrat!,” “liberal,” “abortion or pro-choice,” as well as generic terms such as “arrest!” and “bankrupt!”

When Williams left the Department in April 2006, she sent an e-mail to Goodling containing an Internet search string and explained:

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<sup>15</sup> We also note that Goodling was asked in her congressional testimony whether she “may have gone too far in asking political questions of applicants for career positions.” Goodling agreed that she had done so. Goodling was not asked at the hearing what questions she posed that were political in nature.

<sup>16</sup> It does not violate federal law or Department policy to search for and consider political information concerning candidates for political positions. However, Goodling also conducted such searches, and considered the results of those searches, for candidates for career positions, including IJs and career candidates for temporary details.

“This is the lexis nexis search string that I use for AG appointments.”  
The string reads as follows:

[First name of a candidate]! and pre/2 [last name of a candidate] w/7 bush or gore or republican! or democrat! or charg! or accus! or criticiz! or blam! or defend! or iran contra or clinton or spotted owl or florida recount or sex! or controvers! or racis! or fraud! or investigat! or bankrupt! or layoff! or downsiz! or PNTR or NAFTA or outsourc! or indict! or enron or kerry or iraq or wmd! or arrest! or intox! or fired or sex! or racis! or intox! or slur! or arrest! or fired or controvers! or abortion! or gay! or homosexual! or gun! or firearm!

In addition, Williams provided to Goodling the White House document described above entitled, “The Thorough Process of Investigation.”<sup>17</sup>

We determined that Goodling conducted much of her Internet screening research herself, but on occasion she delegated the responsibility to her deputy, Angela Williamson. For a 2-week period in December 2006, Goodling was also assisted by a Schedule C political appointee hired in the Office of Intergovernmental and Public Liaison (OIPL), who was not an attorney at that time.<sup>18</sup>

According to Goodling’s testimony to Congress, she did not document her research: “I didn’t really keep that kind of file. Normally, if I found something that was negative about someone, we didn’t hire them, and I wouldn’t have necessarily retained it.”

We determined that Goodling’s Internet searches used the search terms that Williams provided, which focused on political criteria. Goodling kept the search string intact, but added terms when assessing candidates for certain positions, such as IJs, when she added the terms: “or immigrat! or immigrant! or asylum or DHS or ICE or border! or alien! or migrant! or criminal! or justice or judg!” We also found that this search string was included in an e-mail Goodling sent to the OIPL employee, dated December 5, 2006, in which Goodling instructed her to use the search string for all candidates she was asked to screen.

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<sup>17</sup> We found the document in Goodling’s records after she left the Department. The cover page had a message (“I know you know this stuff – but it may be helpful”) in handwriting that Williams acknowledged to us “could be” hers.

<sup>18</sup> Goodling interviewed this employee when she applied to the Department for a job. According to the employee, her résumé had been forwarded to the Department by the Republican National Committee.

In addition, Goodling admitted in her congressional testimony that she accessed [www.tray.com](http://www.tray.com) and other web sites to get information about political contributions made by candidates for temporary details, immigration judges, and other positions.<sup>19</sup>

### **III. Employment Forms**

Typically, people who wanted to be considered for political positions within the Bush administration had to complete a form entitled “PPO Non-Career Appointment Form” (PPO is the acronym for “Presidential Personnel Office”). The form required applicants to identify their political party affiliation, their voting address for 2000 and 2004, their involvement in the Bush/Cheney campaigns of 2000 and 2004, and a point of contact to verify their involvement in the campaigns. The form also stated that each applicant had to submit a “political and personal resume” before “White House clearance” could begin.

As the Department’s White House Liaisons, Goodling and her predecessors used the Non-Career PPO form to gather information about candidates for political positions within the Department. We found that it was a standard practice for Goodling, Williamson, or their secretary to have applicants complete a Non-Career PPO form prior to interviewing them.

However, during the course of our investigation we found many instances in which candidates for career positions such as attorney details, IJ positions, and BIA members were asked to complete PPO forms before they interviewed with Goodling. Several witnesses told us that when they objected to completing the form prior to interviewing for a career position, Goodling responded that they were given the PPO form by mistake. This response shows that Goodling was aware that it was improper for career candidates to complete a political form. However, we describe later in this report the evidence that Goodling used the information on completed PPO forms to reject candidates for career positions.

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<sup>19</sup> Goodling stated during her congressional testimony that she did not believe Attorney General Gonzales knew that she was asking political questions of candidates for career positions. When we interviewed him, Gonzales stated that he was not aware at the time that Goodling used political factors in assessing candidates for career positions, was not aware of the search terms Goodling used in her background research, and was not even aware that Goodling’s portfolio in the OAG included the hiring of immigration judges. When we asked Sampson whether he was aware of Williams and Goodling using the computer search terms detailed above to research candidates, he replied: “Not that I remember.”

#### **IV. Reference Checks**

Goodling admitted in her congressional testimony that there “were times I crossed the line probably in my reference calls” by asking political questions. She did not clarify whether she conducted reference checks of candidates for career positions, and, if so, whether she asked political questions during the checks. Goodling’s files contain few notes from any reference checks she conducted.

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## **CHAPTER FOUR**

### **EVIDENCE AND ANALYSIS: PERMANENT CAREER ATTORNEY HIRING DECISIONS**

In this chapter of the report we discuss our investigation of allegations that Goodling used political or ideological affiliations to screen waiver requests by interim U.S. Attorneys to hire career AUSAs, and to screen candidates for other permanent career positions within the Department.

#### **I. Interim U.S. Attorney Waiver Requests to Hire Career AUSAs**

On March 29, 2007, Chuck Rosenberg, Acting Chief of Staff to the Attorney General, forwarded to us a complaint that Goodling had denied an interim U.S. Attorney's request for a waiver to hire an AUSA because she believed the candidate was too "liberal." In addition, Goodling's written statement to Congress acknowledged that "[i]n a very small number of [waiver] cases, I believe that my decisions may have been influenced in part based on political considerations."

Pursuant to Department policy, interim or acting U.S. Attorneys – that is, U.S. Attorneys who have not been appointed by the President and confirmed by the Senate – do not have the authority to hire new AUSAs without permission from the Department.<sup>20</sup> The same policy applies to U.S. Attorneys who have announced their intent to leave office. This policy is intended to allow permanent, presidentially appointed U.S. Attorneys the ability to hire staff for their offices, rather than having interim or departing U.S. Attorneys make the hiring decisions.

However, in some circumstances an interim or outgoing U.S. Attorney needs to hire new attorneys, such as when there is a lengthy delay in the appointment or confirmation process and the office has a large number of vacancies. In such cases, the interim or outgoing U.S.

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<sup>20</sup> Under the *Vacancy Reform Act*, the First Assistant U.S. Attorney becomes the acting U.S. Attorney by operation of law when the presidentially appointed U.S. Attorney vacates the position. The term of the acting U.S. Attorney is limited by a time period specified in the statute. 5 U.S.C. § 3345. In addition, the Attorney General may fill a vacant position by appointing an individual to serve as the interim U.S. Attorney, also subject to a time limitation specified in the statute. After the expiration of that time period and if the vacancy still exists, the U.S. District Court for the district in which the vacancy occurred may appoint an interim U.S. Attorney to serve until the vacancy is filled. 5 U.S.C. § 546.

Attorney can request from EOUSA a waiver from the policy prohibiting them from hiring an AUSA.

EOUSA does not have a formal process for submitting waiver requests. Typically, interim U.S. Attorneys or their staff send EOUSA an e-mail requesting the waiver, with details about the waiver request such as the number of hires requested. During the period encompassed by our review, when EOUSA received waiver requests they were usually forwarded to EOUSA's administrative staff for processing and analysis. The administrative staff would determine the number of vacancies at the USAO, the current financial status of the office, and whether the office could afford the hire based on its current budget. Once EOUSA administrative personnel performed this analysis, an EOUSA senior manager would decide whether to approve or reject the request.

Michael Battle, who was EOUSA Director for most of Goodling's tenure while she was in both EOUSA and the OAG, told us he did not become involved in decisions on waiver requests. He said he delegated responsibility for the waiver process to his Deputy Directors, one of whom was Goodling from March to November 2005.

We determined that at some point during her EOUSA tenure, Goodling began to decide some waiver requests for EOUSA. For example, on October 7, 2005, Goodling sent Battle an e-mail asking about the status of a waiver request, and telling him that "[n]ormally waiver requests from Actings/Interims come to Steve [Parent] and I and we both vet them from our various sides."

We determined that after Goodling moved to the OAG to become the Department's White House Liaison, she continued to decide EOUSA waiver requests. Battle told us that he did not know that Goodling continued to do this. Neither Susan Richmond nor Jan Williams, Goodling's predecessors as White House Liaison, were involved in deciding such requests for EOUSA while serving in the OAG.

In her written statement to Congress in May 2007, Goodling discussed her role in processing waiver requests while at EOUSA and why she continued that practice when she moved to the OAG:

I reviewed a number of . . . waiver requests during my tenure in EOUSA and the Attorney General's office. While in EOUSA, I referred significant waiver requests to [OAG Chief of Staff] Sampson. When I moved to the Office of the Attorney General, my position in EOUSA was left vacant, so I continued to oversee these waiver requests.

We believe that several of Goodling's assertions in this written statement were inaccurate.

Sampson stated that when Goodling was in EOUSA he did not recall that he discussed specific waiver request candidates with her. We reviewed all of the e-mails between Goodling and Sampson when she worked in EOUSA, and found no evidence that she referred any specific waiver requests to Sampson. Sampson told us that when Goodling was in EOUSA, in connection with waiver requests she would ask him about the status of U.S. Attorney presidential appointments and whether they were relatively imminent. Sampson stated that if the appointment was not imminent, he would suggest that the waiver be granted if the hire was necessary, but he did not discuss specific candidates with her.

Moreover, Goodling's assertion that she continued to review waiver requests while in the OAG because her EOUSA position was vacant is undermined by evidence that she continued to require EOUSA to send her waiver requests even after her position as the EOUSA Schedule C political Deputy Director was filled by John Nowacki in August 2006.<sup>21</sup> On September 29, 2006, shortly after Nowacki assumed his duties in EOUSA, he forwarded Goodling a waiver request from the District of Alaska and commented, "I assume you want to see this sort of thing – if not, let me know . . . I intend to recommend approval." Goodling replied, "When you get a waiver request, the approval comes from me – so I assume your last sentence means you are recommending that I approve . . . ?"

We found numerous instances in which Goodling and Nowacki asked to review the résumés of AUSA candidates who were the subject of waiver requests. EOUSA Associate Counsel Natalie Voris told us that Goodling usually asked to see the résumés of the potential hires for the waiver requests. Voris stated that the purpose of reviewing résumés was to see if the candidates were minimally qualified, and to see if there was personal favoritism occurring by the USAO requesting the waiver. However, the requesting USAO had already assessed and approved of the candidates' qualifications, and it is not clear how EOUSA would have been able to determine whether a candidate was selected based on personal favoritism.

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<sup>21</sup> Nowacki graduated from Evangel College in 1994 and, like Goodling, from Regent University Law School in 1998. Also like Goodling, Nowacki worked in the Department's Office of Public Affairs, from November 2003 to March 2006. He then served a 6-month detail as a Special AUSA in the Eastern District of Virginia. Like Goodling, he transferred to EOUSA in August 2006. Nowacki served as a Schedule C political appointee and an EOUSA Deputy Director. Nowacki is currently on a detail to Iraq.

## **A. Screening Waiver Requests**

To determine the extent to which Goodling improperly considered political or ideological affiliations in making her waiver request decisions, we reviewed EOUSA documents related to waiver requests during Goodling's tenure at EOUSA and the OAG, including information about Goodling's approval or disapproval of such requests. In addition, we reviewed Goodling's e-mails during the time she was in EOUSA and the OAG for documents related to her assessment of waiver requests.

We also sent a written request for information and documents related to waiver requests to all 30 Department attorneys who had served as an interim U.S. Attorney during Goodling's tenure at EOUSA and the OAG. We asked them for information about whether they had made any waiver requests, and if so whether they had any direct or indirect evidence that Goodling used improper or illegal criteria to assess such requests. In our written request to the interim U.S. Attorneys, we cited political affiliation and religion as examples of improper or illegal hiring criteria. In addition, we interviewed current and former EOUSA senior staff and an interim U.S. Attorney who had direct knowledge of Goodling's screening of waiver requests.

Based on our investigation, we determined that both Goodling and Nowacki considered political or ideological affiliations to assess AUSA candidates who were the subject of waiver requests on at least three occasions.

Twenty of the 30 interim U.S. Attorneys we contacted stated that they had submitted waiver requests during Goodling's tenure in EOUSA and the OAG. Two of the 30 interim U.S. Attorneys, Jeffery Taylor and Chuck Rosenberg, said they were aware of evidence that Goodling had used political considerations in assessing a waiver request. Both Taylor and Rosenberg referred to the same incident involving an AUSA candidate in the District of Columbia.

In the next section, we discuss the waiver request identified by Taylor and Rosenberg, as well as two other instances where the evidence indicated that Goodling or Nowacki used political or ideological affiliations to assess AUSA candidates who were the subject of waiver requests.

Aside from these three incidents, we found no other evidence of the use of political or ideological affiliations to assess waiver candidates. With one exception noted below, we found no documents or e-mails evidencing Goodling's use of political or ideological affiliations to screen waiver requests. The documents produced by interim U.S. Attorneys,

EOUSA, and Goodling's e-mail archives reflected Goodling's consideration of factors such as the requesting office's budget situation and the existing number of staff vacancies to assess waiver requests.

Unlike the process she used for assessing candidates for political positions, temporary details, or IJ positions, we found no evidence that Goodling maintained folders containing résumés and other supporting materials for the subjects of waiver requests. This was not surprising because she did not interview these candidates. However, because there were no folders on these candidates (which were the source of much of our information about how Goodling processed other candidates), we do not have evidence whether she conducted Internet research or called AUSA candidate references regarding waiver requests.

### **1. The USAO for the District of Columbia**

In September 2006, Jeffery Taylor became the interim U.S. Attorney for the District of Columbia.<sup>22</sup>

Sometime in November 2006, Taylor asked EOUSA for a waiver to hire an AUSA for the District of Columbia USAO. Taylor had selected a candidate for the slot after interviewing several applicants. Taylor's waiver request was oral, and we found no documents reflecting his waiver request or the exact date of the request.

After making the request, Taylor sent EOUSA the résumé of the candidate he wanted to hire. According to the résumé, the candidate received his undergraduate degree from Cornell University; graduated from Howard University School of Law where he was Director of the Civil Rights Symposium; interned in the Department of Justice's Civil Rights Division; and worked for 7 years in the Civil Rights Office in the Office of the General Counsel for the Environmental Protection Agency.

Taylor told us that after failing to receive a response to his request, he called EOUSA and was informed that Goodling, who was then the Department's White House Liaison, had final authority on waiver requests. Taylor therefore called Goodling to discuss the waiver.

According to Taylor, Goodling told him that the candidate gave her pause because judging from his résumé he appeared to be a "liberal Democrat." Taylor responded by stating that such considerations were

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<sup>22</sup> Prior to his appointment as interim U.S. Attorney, beginning in 2002 Taylor served as Counselor to Attorney General Ashcroft and then Attorney General Gonzales. From 1999 to 2002, he served as Counsel to the U.S. Senate's Committee on the Judiciary. From 1995 to 1999, he was an AUSA in the Southern District of California.

not relevant in career AUSA hiring decisions. Taylor said he also told Goodling that AUSAs' political affiliations are not relevant to how they perform, and that U.S. Attorneys will lose credibility if they are perceived as making politicized hiring decisions. Taylor said that Goodling also mentioned that because Republicans had lost control of Congress after the November 2006 elections, she expected that Republican congressional staff might apply for AUSA positions in Washington. Goodling told Taylor she would get back to him regarding his request.

Taylor said that when Goodling failed to get back to him, he called Kyle Sampson, Chief of Staff to the Attorney General, and asked him to intervene with Goodling.<sup>23</sup>

Sampson told us that Taylor called him to complain that Goodling was slowing down the process of his getting a waiver from EOUSA to hire AUSAs. Sampson said he told Goodling that Taylor should not be subject to the waiver process because Taylor was going to be nominated by the President for the permanent U.S. Attorney position. Sampson said that Goodling then agreed with the waiver request. Sampson told us he did not recall that either Taylor or Goodling had said that the AUSA candidate at issue was a Democrat. Sampson also said he did not think he knew at the time that Goodling had a problem with the candidate's perceived political party affiliation.

We found a November 21, 2006 e-mail from Sampson to Goodling stating that Taylor had been trying to reach Goodling and that Taylor wanted to hire several AUSAs. Sampson stated in the e-mail that because Taylor was going to be the nominee for U.S. Attorney, Sampson was inclined to let Taylor hire at will.

On November 30, 2006, Goodling sent an e-mail to EOUSA staff stating that Taylor could hire AUSAs at will if the U.S. Attorney's Office had sufficient funds. As a result, Taylor hired the candidate.

During Goodling's congressional testimony, she was asked about Taylor's waiver request. Goodling testified that she regretted that she had made a "snap judgment based on the totality of things [she] saw on [the candidate's] resume."

## **2. The USAO for the Western District of Missouri**

On December 19, 2006, Bradley Schlozman, who at the time was the interim U.S. Attorney for the Western District of Missouri, sent an e-

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<sup>23</sup> E-mails indicate this call occurred on approximately November 21, 2006.

mail to EOUSA Director Battle and Nowacki to request a waiver to hire an AUSA.<sup>24</sup> Nowacki asked to see the résumés of potential candidates for the position. On December 22, Schlozman sent Nowacki an e-mail that attached the résumés of three candidates. In his e-mail, Schlozman described the three candidates as “rock-solid Americans” who would be a “hugely positive legacy for this Administration.” Schlozman described each candidate in terms of their conservative political credentials. He wrote that the first applicant’s “involvement with the Bush/Cheney campaign speaks for itself.” Regarding the second candidate, Schlozman noted that he met the applicant during the applicant’s clerkship with a “43-appointee” (referring to a federal appellate judge appointed by President Bush). Schlozman described the third candidate as “a rock star talent in addition to being hard core (in the most positive sense of that phrase) on the issues[.]” Schlozman also described the third applicant as “an obvious conservative of incredible intellect.”<sup>25</sup>

That same day, Nowacki forwarded the three résumés by e-mail to Goodling in the OAG. Later that day, Goodling sent an e-mail to Nowacki saying, “Tell Brad he can hire one more good American.” Shortly thereafter, Nowacki sent an e-mail to Schlozman saying, “You can go ahead and hire one more good American.” Nowacki acknowledged to us that he understood the phrase “good American” to refer to someone with Republican credentials.

Nowacki said he thought that Schlozman’s use of political credentials to describe AUSA candidates was an attempt to get his waiver request approved by Goodling.

In answers to congressional questions, Schlozman addressed his use of political affiliations in advocating for the waiver. He wrote:

As I noted at the hearing, I had heard rumors that Ms. Goodling considered political affiliation in approving hiring decisions for career positions. I also knew that, although the decision to authorize the hiring of AUSAs by interim U.S. Attorneys was technically vested in EOUSA, Ms. Goodling exercised great control in this area. Knowing this, and in order to maximize the chances of obtaining authority to hire an additional AUSA, I recall once noting the likely political

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<sup>24</sup> Prior to his appointment as interim U.S. Attorney, Schlozman had been a Counsel in the ODAG, a Deputy AAG in the Civil Rights Division, and the Acting AAG for the Civil Rights Division.

<sup>25</sup> As noted above, we are conducting a separate investigation regarding Schlozman’s personnel actions in the Civil Rights Division.

leanings of several applicants in response to a query from EOUSA about the candidates being considered for the position. However, none of the individuals I referenced was hired, nor do I believe they were even interviewed. Indeed, I adopted an apolitical hiring process in which I completely turned over the process (i.e., selecting candidates to be interviewed, interviewing candidates, and recommending a candidate to be hired) to a hiring panel consisting of three veteran career prosecutors in my office – the First Assistant U.S. Attorney, the Senior Litigation Counsel, and a Supervisory [AUSA].

We confirmed that none of the three applicants was hired by the Missouri USAO. Career officials in the USAO made the decisions on who to hire, and they did not select any of these three applicants.

### **3. The USAO for the Western District of Washington**

John McKay, the former U.S. Attorney for the Western District of Washington, announced his resignation in late 2006.<sup>26</sup> Before McKay resigned, he made offers to hire four AUSAs for his office. Pursuant to Department policy, EOUSA honors offers made to AUSA candidates by U.S. Attorneys who are leaving office if the offers were made prior to their resignation announcement. After McKay's departure, his USAO sought EOUSA's permission to hire the four AUSA candidates. EOUSA eventually agreed. However, before EOUSA granted approval, one of the four AUSA candidates withdrew his name from consideration.

On March 1, 2007, interim U.S. Attorney Jeffrey Sullivan, who had temporarily replaced McKay, sent an e-mail to EOUSA Director Battle asking that the USAO be allowed to substitute another AUSA candidate for the one who had withdrawn. Sullivan attached the replacement candidate's résumé to his e-mail, and copied the e-mail to his First Assistant U.S. Attorney (FAUSA) Mark Bartlett and to EOUSA Deputy Director Nowacki.

Nowacki sent Goodling an e-mail on March 1 about this waiver request. In the e-mail, Nowacki referenced their "recent conversation" about the candidate and forwarded to Goodling information about the Western District of Washington USAO's financial situation.

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<sup>26</sup> We are investigating the circumstances surrounding McKay's removal as U.S. Attorney as part of our investigation of the removal of several U.S. Attorneys.

Nowacki told us he did not recall speaking with Goodling about the candidate, and we found no other information regarding the substance of their conversation.

On March 6, FAUSA Bartlett sent an e-mail to Nowacki again requesting permission to hire the replacement candidate. Bartlett then spoke to Nowacki, who requested another copy of the candidate's résumé, which Bartlett attached to an e-mail to Nowacki on March 7.

The candidate's résumé did not directly reference any political or ideological affiliation. However, her résumé noted that she clerked for Eighth Circuit Court of Appeals Judge Diana Murphy, who had been appointed by President Clinton.

Bartlett stated that after his March 6 e-mail to Nowacki, he frequently telephoned Nowacki asking for a decision about the candidate. Bartlett told us that he had been aware of allegations that politics had played a role in the selection of AUSAs, but did not recall the source of those allegations. On March 14, Bartlett said he left Nowacki a strongly worded voice mail in which he accused Nowacki of using a political litmus test to assess AUSA candidates. Bartlett said that in his voice mail he also stated that he would not accept a decision based on politics and would appeal any such decision within the Department. Bartlett said that within 10 minutes of leaving this voice mail he received an e-mail from Nowacki approving the candidate's hire.

We interviewed Nowacki twice about this particular waiver candidate. In his first interview, Nowacki stated that he initially had recommended against the waiver request because of budgetary reasons. Nowacki also said he did not recall discussing the candidate with Goodling, even after we showed him his e-mail to her referencing their "recent conversation" about the candidate. Nowacki said that after receiving Bartlett's voice mail, he probably revisited the budgetary issue, and then recommended that the waiver be granted because of new funds the USAO had received. Nowacki denied using political considerations to assess the waiver request and said he probably revisited the issue to try to stop Bartlett from calling so often. Nowacki also stated that he did not recall that he had quickly notified the district of EOUSA's decision to approve the waiver request after receiving Bartlett's voice mail. Nowacki did not mention any role played by former ODAG Chief of Staff Michael Elston in the waiver decision.

We interviewed Elston after our first interview of Nowacki. Elston told us that after Goodling resigned from the Department, Nowacki called

him regarding a waiver request for an AUSA candidate whose name he did not recall.<sup>27</sup> Elston said that Nowacki told him that he usually consulted with Goodling about waiver requests, that he had a résumé from an AUSA candidate for the Western District of Washington, and that “[the résumé] looks okay, although she clerked for a liberal judge.” According to Elston, Nowacki told him that the judge was Diana Murphy from the Eighth Circuit Court of Appeals. Elston told us he knew Judge Murphy well and thought highly of her. Elston said he told Nowacki that his criteria were not appropriate and that he did not want Nowacki to call him again regarding these kinds of issues.

Elston said he believed that although Nowacki was not making a formal recommendation to him, Nowacki thought that the candidate was acceptable despite her clerkship for Judge Murphy. Elston said that he also told Nowacki that AUSA waiver requests should be decided by EOUSA based on traditional, not political, criteria, such as the USAO’s financial status.

After Elston’s interview, we re-interviewed Nowacki, who described his conversation with Elston differently. Like Elston, Nowacki said that after Goodling left the Department he called Elston about a waiver request and probably referred to the candidate’s résumé. Nowacki said that Elston told him that waiver decisions should be made in EOUSA and ended the conversation. Nowacki denied that he had commented to Elston that the candidate worked for “a liberal judge” and that Elston had told him that such comments were not appropriate.

However, we found Elston’s version of the conversation to be more credible for several reasons. First, Elston remembered the conversation clearly. Elston also provided the information without us asking about the specific incident, and his recollection corresponded to the facts of the incident.

In addition, as we discuss below in Chapter Seven, Nowacki admitted in another context to providing inaccurate information to senior Department officials regarding Goodling’s use of politics to screen candidates for details to EOUSA.

In sum, we credited Elston’s testimony and concluded that Nowacki considered political or ideological affiliation – the candidate’s clerkship for a judge appointed by a Democrat – when initially assessing

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<sup>27</sup> Although both Elston and Nowacki stated that the conversation took place after Goodling left the Department, based on the dates of the e-mails discussed above we believe it occurred during her last full week in the Department, which ended March 16, 2007.

the waiver request. However, we also note that, after the conversation with Elston, Nowacki approved the waiver.

## **B. Recent Changes in the Waiver Process**

On July 20, 2007, then Attorney General Gonzales announced to the Department a series of reforms prompted by allegations regarding the politicization of hiring within the Department. One of those reforms involved waiver requests:

I directed the Executive Office of U.S. Attorneys to reaffirm DOJ policy applicable to the vetting process for the hiring of AUSAs by interim or Acting U.S. Attorneys. In conjunction with this, I have instructed EOUSA to ensure that this vetting process remains within EOUSA and not with political appointees in the senior management offices.

Former EOUSA Acting Director Steven Parent, who served as Acting Director after Battle left EOUSA, told us that he disagreed with the practice of EOUSA staff reviewing AUSA candidate résumés in connection with waiver requests. The current EOUSA Director, Kenneth Melson, agreed with this position and has discontinued EOUSA's practice of reviewing résumés of AUSA waiver candidates. Melson told us that "if the practice of reviewing résumés was continued . . . there could be a perception created that EOUSA was applying some sort of political litmus test to the candidates that was not relevant to their qualifications to be an AUSA." As a result, EOUSA no longer reviews the résumés of candidates when deciding waiver requests. Rather, it assesses those requests based on the budgetary status of the USAO, whether the President has nominated a permanent U.S. Attorney, and the status of any such nomination.

## **C. Analysis**

Based on our investigation, we concluded that Goodling and Nowacki improperly used political or ideological affiliations when assessing waiver requests from interim U.S. Attorneys in at least three cases, which violated Department policy and federal law, and also constituted misconduct.

The most troubling case involved a request from Washington, D.C. interim U.S. Attorney Taylor. Goodling did not initially approve the waiver request. When Taylor called Goodling about the pending request, she told him that the candidate gave her pause because, judging from his résumé, he appeared to be a "liberal Democrat." Goodling also mentioned that because Republicans had lost control of Congress after the November 2006 elections, she expected that Republican

congressional staff might apply to the USAO in Washington. Taylor rightfully responded that these were impermissible considerations and that U.S. Attorneys will lose credibility if they are perceived to make politicized hiring decisions.

Yet, even after this discussion, Goodling did not initially approve the waiver request. Only after Taylor complained to OAG Chief of Staff Sampson, who directed Goodling to approve the request, did Goodling send an e-mail approving the waiver.

In the second case, the interim U.S. Attorney in Missouri, Bradley Schlozman, requested a waiver to hire an AUSA. He provided Nowacki with the résumés of three candidates for the position, calling them “rock-solid Americans” who would be a “hugely positive legacy for this Administration.” Schlozman promoted the three candidates in terms of their conservative political credentials. Goodling and Nowacki approved Schlozman’s waiver request and told him he could hire “one more good American.” While none of these three candidates was eventually hired, Schlozman explained his description of the candidates’ political affiliations as an attempt to maximize his chances of having Goodling approve the waiver request.

In the third case, Nowacki approved a waiver request from the Western District of Washington. However, according to former ODAG Chief of Staff Elston, when Nowacki contacted him for approval of the request, Nowacki stated that the candidate’s “[résumé] looks okay, although she clerked for a liberal judge.” Nowacki denied to us that he made such a comment. However, as discussed above, we found Elston’s version of the conversation to be more credible.

We did not find evidence that Goodling considered political or ideological affiliations in other waiver requests from interim U.S. Attorneys. As noted above, we surveyed 30 interim U.S. Attorneys, most of whom were career Department prosecutors. Twenty of the 30 stated that they had made waiver requests. Aside from the incident concerning U.S. Attorney Jeffery Taylor, none said they had any indication or evidence that Goodling used political or ideological affiliations in deciding their waiver requests.

We were concerned, however, that in deciding waiver requests from interim U.S. Attorneys, both Goodling and Nowacki reviewed résumés of AUSA candidates – candidates who had already been interviewed and screened by the USAOs. According to longstanding Department practice, the waiver requests should have been made based on budgetary considerations, information concerning whether the President had nominated a permanent U.S. Attorney, and the status of any such

nomination, not Goodling’s or Nowacki’s assessment of the qualifications of the candidate. The Department’s current practice, which was changed after Goodling left the Department, places the decision in EOUSA, which now does not review résumés when deciding on waiver requests. We believe that the changes in the Department’s practices for considering waiver requests are important reforms that will help ensure that the political and ideological affiliations of AUSA candidates are not considered in future waiver decisions.

## **II. Other Career Attorney Positions**

In the course of our investigation we also found evidence that Goodling considered political or ideological affiliations in recommending candidates for other kinds of career attorney positions in the Department.

As the Department’s White House Liaison, Goodling received résumés and interviewed candidates for a variety of political positions. Sometimes, however, candidates for political positions also expressed an interest in being considered for career positions within the Department. In these cases, we found evidence that Goodling used her position in the OAG to promote these candidates for career positions.

As we described above, the use of political affiliation to assess candidates for career positions violates federal law. The law prohibits, among other things, persons with “authority” from “recommend[ing]” any “personnel action” on the basis of political affiliation.<sup>28</sup> 5 U.S.C. Section 2302(b). We discuss below several examples of Goodling recommending candidates for career AUSA positions because of their political or ideological affiliations, which she noted on their applications.

### **A. The USAO for the District of Columbia**

On December 5, 2006, Goodling received a résumé from a friend which indicated that a candidate who was interested in working in the Department was employed by the Federalist Society. In a December 5, 2006, e-mail responding to the person who had forwarded the résumé to her, Goodling identified several career positions in the Department for which the candidate might be considered: “DC USAO is hiring and Civil

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<sup>28</sup> Goodling could argue that as White House Liaison she did not have the “authority” to “recommend” career attorney applicants. However, on many but not all occasions, Goodling’s recommendations regarding career hires were accepted by those receiving her suggestions.

Rights needs a really young, bright lawyer . . . . OLC is hiring . . . . I'll send her resume over as they generally hire through the career process.”

On December 5, Goodling forwarded the candidate's résumé to Steven Bradbury in OLC. Goodling commented, “Am attaching a resume for a young, conservative female lawyer. Perhaps she is someone you might consider for one of your attorney-advisor slots . . . . I'll likely have her in to chat about political opportunities, but let me know if you'd be interested in her for OLC.” Attorney-advisor positions in OLC are career, not political, positions.

Goodling interviewed this candidate on December 18, 2006. Prior to the interview, the candidate completed a Non-Career PPO form in which she indicated that she was a Republican.

The candidate told us that during the interview Goodling mentioned that there were positions open in the ODAG and in the Criminal Division. According to the candidate, Goodling asked questions about the candidate's voting history, whether she voted for the President, whether she had worked on a political campaign, and what kind of conservative she was. Goodling also mentioned to the candidate that the USAOs in Florida, Minnesota, Colorado, and the Western District of Washington might be hiring (all of these positions would have been career AUSA positions).

The handwritten notes Goodling took during this interview contained the following phrases: “pro-God in public life,” and “pro marriage, anti-civil union.” The candidate told us she had no specific recollection of making such statements during her interview with Goodling, and could not recall whether Goodling had solicited her views on religion in public life.

Soon after interviewing with Goodling, the candidate was interviewed by senior staff in the ODAG and Criminal Division for political positions. Goodling also called the candidate to ask if she was interested in being hired as an AUSA in the District of Columbia, followed by an immediate detail to the ODAG. The candidate said she was interested in such an arrangement, so Goodling forwarded her résumé to Jeffery Taylor, the interim U.S. Attorney for the District of Columbia.

Taylor interviewed the candidate on January 19, 2007. In a departure from the office's usual hiring procedures, which consisted of interviews with multiple USAO officials and other assessment measures,

Taylor was the only person at the USAO to interview the candidate.<sup>29</sup> During the interview, the candidate and Taylor discussed her possible detail to the ODAG.

On January 23, 2007, Goodling sent Taylor an e-mail asking that he contact the candidate before she accepted another employment offer. The candidate thereafter received and accepted offers from both the ODAG and the Washington, D.C. USAO. She was hired as an AUSA in the USAO and then immediately detailed to the ODAG.<sup>30</sup> During her tenure in the ODAG, she applied for and received a career AUSA position in a different USAO.

In this case, we concluded that Goodling used political or ideological affiliations when recommending a candidate for a career position as an AUSA.

## **B. The USAO for the District of Colorado**

In June 2006, Matthew Friedrich, then Chief of Staff to the Criminal Division Assistant Attorney General, sent a résumé to Goodling of a former AUSA who had worked on the Enron task force. Prior to his interview with Goodling, the candidate was given a Non-Career PPO form to complete.<sup>31</sup> In the PPO form, the candidate said he was a Republican, had made financial contributions to the Bush/Cheney campaigns, and had been a Republican office holder in contested elections.

Goodling asked the newly confirmed U.S. Attorney for Colorado to consider the candidate for the First Assistant U.S. Attorney position,

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<sup>29</sup> During this process, Taylor promptly responded to Goodling's requests that the candidate be interviewed and that her application be acted upon quickly. Taylor also sought guidance from Goodling on what salary he should offer the candidate. Taylor told us that he did not hire the candidate because of her political affiliation, but acknowledged he was trying to be responsive to Goodling and the OAG by interviewing and hiring the candidate. However, Taylor said that the candidate was well qualified for an AUSA position, and that his office routinely hires new AUSAs without litigation experience, which she lacked. Taylor provided résumés of other recent AUSA hires in his office, which confirmed that Taylor has hired other AUSAs without prior litigation experience. Taylor also said that he sometimes hires AUSAs without going through the normal multi-step hiring process, but he acknowledged that those AUSAs are usually experienced litigators.

<sup>30</sup> Taylor told us that the USAO did not pay the candidate's salary while she was detailed to the ODAG.

<sup>31</sup> In the candidate's hiring survey response, he said he did not complete the form. However, the documentary evidence we found in Goodling's folder containing the candidate's résumé shows that he did complete the PPO form, which he signed and dated on July 27, 2006.

which is a career position. She stated in an e-mail that the U.S. Attorney “really needs someone to go into the office with him that is **on the team**, has statute [sic], fed pros experience, and white collar trial experience . . . [the candidate] meets all the specs . . . . (emphasis added).” Based on the results of our investigation, and of the other joint investigations we have conducted, we concluded that the phrase “on the team” referred to politically conservative individuals.

On August 23, 2006, the U.S. Attorney announced that he had selected the candidate as his FAUSA. On that date, Goodling sent an e-mail to Kyle Sampson and Michael Elston forwarding the announcement. In the e-mail, Goodling commented that she “had interviewed [the candidate] and recommended him . . . .”

We concluded that Goodling solicited political information from, and then described in ideological terms, a candidate whom she recommended for a career position.

### **C. EOUSA Deputy Director Position**

We also investigated allegations that Goodling discriminated based on political or ideological affiliations against detailees in EOUSA who were candidates for an EOUSA Deputy Director career position.

#### **1. EOUSA Deputy Director Candidate #1**

In August 2004, EOUSA published a vacancy announcement seeking candidates for a permanent career SES Deputy Director. An EOUSA Deputy Director, on detail from her position as an AUSA from the District of Columbia, applied for the position. According to both then-EOUSA Director Mary Beth Buchanan and the AUSA, Buchanan told the AUSA that she had been selected for the position.<sup>32</sup> In a December 23, 2004, e-mail, Buchanan wrote to the AUSA: “You can tell [ODAG Chief of Staff Chuck Rosenberg] that I told you I was recommending that you be hired for the Job. I am the selecting official, but I believe that your selection must be approved by the SES board.”<sup>33</sup>

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<sup>32</sup> Buchanan is the U.S. Attorney for the Western District of Pennsylvania. She also served as the Director of EOUSA from approximately June 2004 to June 2005.

<sup>33</sup> Buchanan was interviewed by congressional investigators on June 15, 2007, in connection with the congressional investigation of the circumstances surrounding the removal of several U.S. Attorneys in 2006. In her congressional testimony, Buchanan was asked why she did not make the AUSA the EOUSA Principal Deputy Director. Buchanan responded by severely criticizing the AUSA and said she would never have offered her that job because of those criticisms. However, Buchanan did not

(Cont'd.)

However, the AUSA was never appointed to the career SES Deputy Director position. The AUSA told us her selection was put on hold during the transition between Attorney General Ashcroft and Attorney General Gonzales.

After Gonzales became the Attorney General in February 2005, the AUSA remained in her detailee position as Deputy Director, and the career SES position remained unfilled. Goodling was appointed in March 2005 by the OAG as the political Deputy Director in EOUSA, and Buchanan continued to serve as Director of EOUSA until June 2005, when she returned to the Western District of Pennsylvania USAO as the full-time U.S. Attorney.

Buchanan told us that the AUSA did not receive the career SES Deputy Director position by the time Buchanan had decided to leave EOUSA and return full time to the USAO. According to Buchanan, then White House Liaison Susan Richmond told her not to select the AUSA because a new EOUSA Director should have the opportunity to select his or her deputies. While Buchanan said she informed the AUSA of Richmond's decision, the AUSA told us that she did not recall Buchanan ever telling her this information.

Richmond recalled these events differently from Buchanan. Richmond said she recalled discussing the possibility of the AUSA becoming the career SES Deputy Director with Buchanan, but she did not recall that Buchanan ever wanted to select her for that position. Richmond said she recalled having the discussion with Buchanan about the AUSA in the context of identifying potential candidates that could be suggested to Buchanan's successor as EOUSA Director.

According to the AUSA, shortly after Battle became EOUSA Director in June 2005, he told her she would not be offered the career SES Deputy Director position and that she had to leave EOUSA.<sup>34</sup> The

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tell the congressional investigators that she had offered the AUSA the career SES Deputy Director position.

When we interviewed her, Buchanan told us that she did not believe her testimony to Congress was inconsistent with the fact that she offered the AUSA the career SES Deputy position because the positions were different. She noted that she was asked by Congress about the Principal Deputy Director, not the career Deputy Director position.

While we concluded that Buchanan's congressional testimony was technically accurate, we believe she should not have omitted the fact that she had told the AUSA she had selected her to be EOUSA's career Deputy Director.

<sup>34</sup> On June 12, 2005, the AUSA sent an e-mail to ODAG Chief of Staff Chuck Rosenberg in which she described her "tortured quest for the SES position." The e-mail

(Cont'd.)

AUSA also said that Battle told her that she had to move out of her current office to an office down the hall, and she could no longer review memoranda regarding substantive issues or attend EOUSA meetings. She said that when she asked Battle about these restrictions, he told her that Goodling, who came to EOUSA in March 2005, had a problem with her and could not work with her. The AUSA said that when she pressed Battle for the reasons why she had to leave, Battle told her that there was a problem because she was a Democrat and therefore Goodling could not trust her.

The AUSA said that Battle also told her that he knew she was a very good trial attorney and so should be happy to return to the USAO. She said she responded to Battle that she wanted to stay at EOUSA as his deputy. She said that Battle then was blunt with her and told her “in no uncertain terms” that she had to leave EOUSA. According to the AUSA, Battle directed her to announce her departure publicly. When she noted that she had not yet found another position, she said Battle still directed her to send out the announcement.

The AUSA sent an e-mail announcement of her departure from EOUSA on July 21, 2005. The next day, Battle sent an announcement to all U.S. Attorneys regarding her departure, as well as the announcement of the arrival of EOUSA’s new Chief of Staff.

Battle provided us with a different account of the circumstances surrounding the AUSA’s departure from EOUSA. Battle stated that he was aware that Buchanan had offered her a career SES position as Deputy Director. Battle said that he understood that by the time he became EOUSA Director the offer had been withdrawn or otherwise was not acted upon. Battle said that the AUSA asked him to “resurrect” the career SES Deputy position.

Battle adamantly denied that he asked the AUSA to leave EOUSA. He said he only asked her to move to a different office in EOUSA. He said the AUSA’s former office was directly across the hall from his and he wanted that office for his secretary so that he could communicate better with her.

Battle also denied telling the AUSA that Goodling did not trust her because she was a Democrat, or that Goodling wanted her to leave EOUSA because she was a Democrat. Battle said that he may have told

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stated that Battle “seemed stunned to hear that my job had been posted, that I had applied for it, and that in December . . . MBB [Buchanan] had actually told me that she had selected me for the job.”

the AUSA she had a “Monica problem” because of the constant tension between the two, but not because of the AUSA’s political affiliation. Battle said that he thought that the AUSA was a Democrat, but thought that the AUSA told him that, not Goodling.<sup>35</sup>

Battle acknowledged that he reassigned some of the AUSA’s duties to Goodling shortly after he arrived in EOUSA. He said he did so because the AUSA had a larger portfolio than Goodling even though both were EOUSA Deputy Directors. Battle said he wanted them to have similar workloads. Battle said the AUSA considered this to be a demotion, but in his view it was not.

Battle said that the AUSA told him that she was thinking about leaving EOUSA, and he asked her to stay. Battle said that the AUSA’s departure was not because Goodling requested or wanted it. He also denied the AUSA’s claim that he demanded that she make a public announcement about her departure before she had secured another position. Battle stated that although he told her to announce her departure to her staff, he believed that she had already obtained another detail when he asked her to do so. Battle said that he told the AUSA to tell her staff she was leaving so that they would know that she was taking another position.

We found only one contemporaneous e-mail concerning the AUSA’s departure from EOUSA. On July 23, 2005, 2 days after the AUSA publicly announced her departure from EOUSA, she sent an e-mail to ODAG Chief of Staff Rosenberg stating that Battle “told me he wanted my resignation on Thursday – before I heard back from [a prospective employer] – I was thrown for a loop.”

Other EOUSA employees had different recollections of the circumstances surrounding the AUSA’s departure from EOUSA. Buchanan said that Battle told her that the AUSA left EOUSA voluntarily after he had reassigned her office and her responsibilities. Similarly, EOUSA Deputy Director and Chief of Staff John Kelly stated that he believed the AUSA left EOUSA voluntarily and that Battle had asked her to stay.

In contrast, Dan Villegas, then Counsel to EOUSA’s Office of Legal Programs and Policy, said he understood that the AUSA was asked to leave EOUSA. He said the AUSA also told him sometime in 2007 that Battle had informed her she had “a Monica problem.” An AUSA who was

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<sup>35</sup> Buchanan also said that Goodling had never told her that the AUSA was a Democrat.

on detail at the time as the EOUSA Deputy Counsel to the Director also told us that the AUSA stated to her that she was asked to leave EOUSA.

When Goodling testified before the House Judiciary Committee on May 23, 2007, she was asked whether she sought to deny the AUSA a promotion because Goodling believed she was a Democrat. Goodling responded:

You know, I don't really remember the discussions back at that time very well. What I remember was that she had been the deputy for a long time by herself, and when I arrived, a lot of the responsibilities that she had were shifted to me. I thought she resented that, and as a result, it made for a tense office environment.

However, Goodling did not answer the question whether she tried to deny the AUSA's promotion for political reasons.

Numerous witnesses, including former EOUSA Director Battle, other EOUSA managers, and EOUSA line personnel, told us that the AUSA and Goodling had an extremely strained relationship that bordered on outright hostility. For example, former EOUSA Chief of Staff Kelly, who served at EOUSA from June 2005 until May 2007, said that the two "despised each other." According to Battle and others, at least part of the reason for the hostility was that Battle had reassigned some of the AUSA's responsibilities to Goodling.

In sum, we believe there was insufficient evidence to conclude that the AUSA was forced to leave EOUSA because of political or ideological affiliations. Battle denied telling the AUSA there was a problem because she was a Democrat and that Goodling could not trust her. In addition, while the AUSA was told she had a "Monica problem," we also found significant evidence that the relationship between Goodling and the AUSA was personally very hostile. We therefore could not conclude, based on the evidence, that the reason the AUSA was not appointed to be the career SES EOUSA Deputy Director, or the reason she left EOUSA, was because of her political affiliation.

## **2. EOUSA Deputy Director Candidate #2**

In 2006, EOUSA again published an announcement seeking a career SES Deputy Director. This was the same position for which the AUSA discussed above had applied, and for which no one had been selected.

The EOUSA Chief of Staff to Battle, who was on detail from an AUSA position in the Western District of New York, applied for the

position. Battle told us that he was prepared to offer the AUSA the job, but Goodling vetoed the selection. By this time, Goodling was working in the OAG as White House Liaison, although, as noted above, she retained responsibility for certain EOUSA hiring issues.

Battle gave us two explanations for why he believed Goodling refused to let him hire the AUSA. First, Battle said that Goodling did not like the AUSA, and second, Goodling told Battle she thought the AUSA was a “political infant” who had not “proved himself” to the Republican Party by being involved enough in political campaigns.<sup>36</sup>

The AUSA told us Battle informed him that Goodling had vetoed his selection and that Goodling thought he was a “political infant” and that he had not “proven” himself “to the [Republican] Party.”

The AUSA also told us that when he first came to EOUSA as a supervisor in 2005, Goodling (who was then the EOUSA political Deputy Director) had told him that she disapproved of his appointment because she believed that his position should have been held by a political appointee, not a career attorney. According to the AUSA, when both he and Goodling worked in EOUSA, Goodling told him that he could not attend meetings with Department component heads and that all contacts with USAOs should go through her.

No one was selected for the position of career SES Deputy Director as a result of the second vacancy announcement. We asked Battle why Goodling, as White House Liaison, had veto power over his selection of career positions in EOUSA. Battle stated that he believed that both the ODAG and OAG had control over the selection of SES positions in EOUSA, whether career or political.

### **III. Conclusions Regarding Candidates for Career Positions**

In sum, we concluded that the evidence showed that Goodling violated both federal law and Department policy, and therefore committed misconduct, when she considered political or ideological affiliations in hiring decisions for candidates for career positions within the Department. In particular, the evidence showed that she considered political or ideological affiliations in deciding several waiver requests from interim U.S. Attorneys, in promoting several candidates for career

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<sup>36</sup> The AUSA told us he was a Democrat in 2004, and made a small financial contribution to the Democratic Party as well. He changed his political affiliation to the Republican Party at some point before applying for the career SES position.

positions, and in disapproving a candidate for an EOUSA career SES position.

## **CHAPTER FIVE EVIDENCE AND ANALYSIS: CANDIDATES FOR TEMPORARY DETAILS**

When she was in the OAG, Goodling was also involved in the selection of career attorney candidates for temporary details to Department offices, including the ODAG, OLP, and EOUSA. During the course of our investigation, we examined the extent to which Goodling made decisions regarding the selection of detailees on the basis of political or ideological affiliations. In addition, we examined whether Susan Richmond and Jan Williams, the Department's former White House Liaisons, considered political or ideological affiliations when evaluating career attorney detailees to Department offices.

### **I. Goodling**

In connection with her May 23, 2007, congressional testimony, Goodling submitted a written statement in which she discussed her role in selecting career attorney detailees for Department offices:

Due to the importance of these positions and the fact that detailees were sometimes considered for promotions into political positions, I generally conducted internet research and reference checks on these candidates, and I may have asked the wrong questions at times. In some cases, I learned and considered political information.

Goodling also asserted in her congressional testimony that senior Department managers were aware that she was using politics to screen career candidates for detail positions: "I think that they had a sense that I was looking for people that were generally Republicans to work on their staffs as detailees, and those were people who currently held career positions."

Goodling's testimony that she used political considerations when assessing potential detailees was confirmed by several witnesses.

For example, Michael Elston, former Chief of Staff to Deputy Attorney General Paul McNulty, stated that when he sought attorneys for details to the ODAG, he would generally look for candidates with the type of experience required by the position, but he also looked for candidates with Republican or conservative credentials in order to get them approved by the OAG. Elston said that Goodling made it clear to him that she did not want Democrats detailed to the ODAG because she had

a “farm system” approach to filling vacancies in the Department, and she wanted to “credential” Republicans so that they could move on to higher political positions.<sup>37</sup> Elston also stated that there were some Republicans that Goodling did not want to hire as detailees because they were not “Republican enough.” In addition, EOUSA senior management, including Director Battle, Deputy Director Nowacki, and Associate Counsel Natalie Voris, all told us that during the time Goodling served in the OAG, she used political or ideological affiliations to assess candidates for EOUSA details.

Because there were a limited number of detailees, Goodling did not screen a large number of detail candidates during her tenure in the OAG. However, the evidence showed that, when she did, she based her decisions in whole or in part on the candidates’ political or ideological affiliations.

We provide in the following section examples of Goodling’s use of political or ideological affiliations in selecting detailees.

#### **A. Candidate #1**

On September 6, 2006, EOUSA notified all USAOs that it was seeking a detailee to work on counterterrorism issues. The notice stated that applicants must have counterterrorism prosecution experience, and that 5 years of criminal prosecution experience was preferred.

On September 19, 2006, an AUSA sent Voris his application for the counterterrorism detail. EOUSA Director Battle’s calendar shows that the AUSA was interviewed by video-conference on September 29, 2006.

The candidate had been an AUSA since 1987. He was an experienced terrorism prosecutor and had successfully prosecuted a high-profile terrorism case for which he received the Attorney General’s Award for Exceptional Service. He had also litigated several other terrorism cases and prosecuted major criminal cases. The candidate also served as chief of the anti-terrorism unit in his USAO, working with two joint terrorism task forces containing multiple agencies and agents, and he had communicated frequently with senior Department leadership with responsibility for terrorism issues.

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<sup>37</sup> Goodling acknowledged in her congressional testimony that she hired people in part because she thought “that it would be good if we could hire some people that could be other U.S. attorneys down the road.” This is consistent with Elston’s testimony that Goodling sought to “credential” candidates.

Battle stated that Voris told him that the candidate was head and shoulders above the other candidates who had applied for the counterterrorism detail. Battle agreed with that assessment, stating that the candidate was the best applicant for the detail. John Kelly, the EOUSA Deputy Director and Chief of Staff, stated that he and Battle wanted to hire the candidate because he was one of the leading terrorism prosecutors in the country and a very talented attorney.

The candidate's wife was a prominent local Democrat elected official and vice-chairman of a local Democratic Party. She also ran several Democratic congressional campaigns. The candidate was at times a registered Independent and at other times a registered Democrat.

Notwithstanding the candidate's outstanding qualifications and EOUSA senior management's desire to hire him, Goodling refused to approve the detail.

Battle, Kelly, and EOUSA Deputy Director Nowacki all told us that Goodling refused to allow the candidate to be detailed to EOUSA solely on the basis of his wife's political party affiliation. Battle said he was very upset that Goodling opposed the detail because of political reasons. Nowacki told us that Goodling informed him that the candidate's wife was a Democrat, and Nowacki believed that Goodling refused to allow the detail because of this fact. Similarly, Kelly told us that Goodling refused to allow EOUSA to hire the candidate because his wife was active in Democratic politics.

Battle said that he and Voris went to Goodling several times to argue that EOUSA should be allowed to hire the candidate, but they were not successful. Battle told us he did not appeal Goodling's refusal to allow the candidate to be detailed to EOUSA because he did not think it would be successful given that Goodling worked in the OAG.

The candidate was never informed that he did not get the counterterrorism detail.

Because EOUSA had been unable to fill the counterterrorism detail after Goodling vetoed this candidate, a current EOUSA detailee was asked to assume EOUSA's counterterrorism portfolio. This replacement detailee had been an AUSA since September 2004, after having served as an assistant district attorney for 3 years. He had been detailed to EOUSA in 2006. He had no counterterrorism experience and had less than the minimum of 5 years of federal criminal prosecution experience required by the EOUSA job announcement. Battle, Nowacki, Kelly, and Voris all said they thought that he was not qualified for the position, since he had no counterterrorism experience. The replacement

candidate was a registered Republican who Goodling had interviewed and approved before he was selected for his EOUSA detail.

In sum, we concluded that Goodling prevented EOUSA from selecting an experienced career AUSA to handle counterterrorism issues because of his and his wife's political affiliation. As a result, a much less experienced, but politically acceptable, attorney was assigned this important responsibility.

## **B. Candidate #2**

In 2006, an AUSA was contacted by Ron Tenpas, then Associate Deputy Attorney General and the AUSA's former supervisor at her USAO, about the possibility of her being detailed to ODAG to work with its criminal litigation team.<sup>38</sup> The candidate said she was interested, and interviewed first with White House Liaison Jan Williams and then with ODAG Chief of Staff Elston. According to Williams's calendar, these interviews occurred on March 16, 2006.

Before these interviews, Tenpas asked the candidate about her political party affiliation. When the candidate said she was a Democrat, Tenpas told her it should not be a problem. The candidate told us that Williams asked her during the interview whether she had any problem supporting President Bush's policies, and she replied that she had no issue with supporting the Department's priorities.

When Elston interviewed the candidate, he asked the candidate if Williams had either questioned her about her party affiliation or indicated whether she knew about it. The candidate replied that she did not think her party affiliation was going to be an issue with Williams. The candidate also told Elston that then Principal Associate Deputy Attorney General (PADAG) William Mercer was aware of her party affiliation, because Tenpas had called her and told her that Mercer wanted to know if she would feel comfortable working in an office comprised of people with a different political affiliation.

Elston sent an e-mail to Williams on March 23, 2006, saying that if Williams was comfortable with the candidate, Elston would set up an interview with Deputy Attorney General McNulty. Williams replied that she was. The candidate was interviewed by McNulty and received and accepted an offer to be detailed to the ODAG. Because the offer was only for a 6-month detail, the candidate was concerned, however, about giving

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<sup>38</sup> The candidate had been an AUSA since 1996, had received several promotions in the USAO, and was made a Branch Chief in 2003.

up her USAO Branch Chief position for such a short detail. When she contacted Elston about this concern, he told her that extending the detail should not be an issue, and she subsequently accepted the detail.

The AUSA said that shortly before her 6-month detail in the ODAG was to expire, she received the impression from Elston that there might be a problem in extending it. At that time Williams had been replaced by Goodling as the Department's White House Liaison, and Goodling had to approve the extension.

In November 2006, the detailee discussed her detail extension with Elston, who told her that Goodling had strong views about putting Republicans in ODAG positions. The detailee said Elston was frustrated with Goodling because she opposed extending her detail. The detailee said that Elston told her repeatedly that he and Deputy Attorney General McNulty wanted her detail extended.

Elston told the detailee that he was going to meet with both Goodling and Sampson about her detail extension. Before the meeting, the detailee sent Elston an e-mail dated November 9, 2006, in which she wrote, "I honestly did not realize that my party affiliation was going to pose such a problem, mostly because no one indicated that it was a stumbling block when I first came on . . . although I am a registered Democrat, the most political thing I do is vote." Elston responded, "the DAG, Ron [Tenpas], and I all want you in ODAG."

Elston confirmed to us that when the detailee's 6-month detail ended, McNulty, Tenpas, and he all thought that it should be extended. Elston said the detailee had been working on the President's Identity Theft Task Force and was doing an outstanding job.

The detailee said that after Elston met with Goodling and Sampson, Elston reported that they would only agree to a 3-month extension of her detail. The detailee said Elston told her he had humiliated himself and got down on his knees to even get this temporary extension.

The detailee said that, at the end of the 3-month extension, the detail was further extended for short periods for several different reasons related to finishing projects on which the detailee was working.

E-mails between Elston and Goodling confirm that this detail extension was a recurring issue between the ODAG and Goodling in 2006 and 2007.

Elston told us he thought he met with Sampson regarding the issue of the detail extension. Elston said he inferred that Sampson

backed Goodling's decision not to extend the detail for another 6 months because otherwise ODAG would have been able to keep the detailee. Sampson told us that he remembered there had been negotiations over extending this particular detail and that Goodling had worked with ODAG on the issue. Sampson said he did not recall that the issue regarding the detail extension was that the detailee was a Democrat. Sampson also said he did not recall meeting with Elston to discuss the detail extension.

McNulty stated that the detailee was outstanding, was a great person to work with, and he wanted to extend her detail. McNulty gave several reasons why Goodling opposed the extension. He said that Goodling's opposition was based both on the detailee's perceived failure to support administration policies and also based on her political party affiliation.<sup>39</sup>

Shortly after Sampson and Goodling left the Department in March 2007, Elston and McNulty told the detailee that she could stay at ODAG. The detailee, however, had already accepted an offer for a supervisory position at her USAO, and she declined the ODAG's offer.

### **C. Candidate #3**

An AUSA had been detailed to EOUSA in 2005, working first in the General Counsel's Office and then in the Office of the Counsel to the Director. During the AUSA's detail, EOUSA Associate Counsel Voris forwarded her résumé to Goodling for consideration of appointing the AUSA as the EOUSA's Project Safe Neighborhoods coordinator.<sup>40</sup> The AUSA was not aware of Voris's recommendation.

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<sup>39</sup> There is also conflicting evidence regarding whether McNulty was contemporaneously aware that Goodling refused to extend this detail because of political affiliation. The detailee said Tenpas told her that McNulty thought that she was leaving ODAG voluntarily and was very upset to learn that Goodling had forced her to leave. According to the detailee, the day after Tenpas told McNulty that she was forced to leave, McNulty went to her office and told her he was very disappointed and did not understand how this could have happened. However, Elston told us he would have kept McNulty informed about these issues, and he would not have gone to a meeting about extending the detail with Sampson and Goodling without consulting with McNulty. Although we asked McNulty whether he was contemporaneously aware that Goodling refused to extend the detailee's detail because she was a Democrat, McNulty said he had no firm recollection of this fact.

<sup>40</sup> Project Safe Neighborhoods is a Department initiative that involves collaborative efforts by federal, state, and local law enforcement agencies, prosecutors, and communities to prevent and deter gun violence.

Voris told us that the AUSA was a “phenomenal attorney.” Voris explained that while the detailee had worked in the EOUSA General Counsel’s office and transferred to the Counsel to the Director’s Office, Voris wanted to expand her portfolio to include the Project Safe Neighborhoods coordinator position.

On August 6, 2006, Goodling sent an e-mail to her secretary to arrange an interview with the AUSA. The interview occurred on August 24, 2006.

The AUSA told us she did not know why Goodling had wanted to interview her. When the AUSA arrived for the interview, Goodling’s secretary gave her a Non-Career PPO form to complete. She asked Goodling’s secretary why she needed to complete the form and was told that she was being considered for a position. On the PPO form the AUSA wrote that she voted Democratic in local elections due to the candidate running, and voted Republican in the general election.

When the AUSA met Goodling to begin the interview, Goodling told her she was not supposed to have been given the PPO form. Goodling told her that she normally interviewed everyone hired in EOUSA, but had not had a chance to talk to her and wanted to get to know her. The AUSA said the interview was cordial and friendly, but that she was upset about being asked to fill out the PPO form requiring disclosure of political information.

Voris stated that Goodling subsequently rejected her recommendation that the AUSA become EOUSA’s Project Safe Neighborhoods coordinator. Voris said that Goodling told her that the AUSA was a Democrat and rejected her for the coordinator position on that basis.

The AUSA was detailed to the ODAG in 2007 after Goodling left the Department.

#### **D. Candidate #4**

On June 29, 2006, an AUSA applied for a 1-year detail to the Office of Counsel to the Director of EOUSA. The candidate had been a federal criminal prosecutor for 8 years, and a state criminal prosecutor for 10 years. Nothing in the candidate’s résumé or cover letter indicated her political party affiliation.

Voris stated that EOUSA Deputy Director Nowacki told her that Goodling rejected the detail because Goodling believed the candidate was a Democrat. Voris also said Nowacki told her that Goodling threw the candidate’s résumé in the trash. Nowacki said he recalled that Goodling

did not like the applicant's résumé and that she threw it in the trash, but said he did not recall why.

The candidate told us that Goodling never interviewed her. The candidate also said she did not know that Goodling was considering her for any position and did not know that Goodling had rejected her detail application.

#### **E. Candidate #5**

A career attorney from the Department's Criminal Division was detailed to the ODAG in July 2005 for a short period to work on the Department's Project Safe Neighborhoods initiative, as well as other issues such as anti-gangs initiatives, violent crime, and firearms.

In an October 2005 e-mail exchange, Sampson told William Mercer, who was the Principal Associate Deputy Attorney General at the time, that he thought highly of the candidate and supported the possibility of extending her detail to the ODAG for a longer period. Mercer replied that "Jan [Williams] says she's a big D." Sampson replied, "I've heard that – even so, she's very strong."

Sampson told us that he wanted this attorney for an ODAG detail and did not care that she was a Democrat. Sampson told us he knew that the candidate supported the Project Safe Neighborhoods initiative, which was her initial assignment in the ODAG, and so her political affiliation did not matter to him. The candidate's detail was extended several times, and she served in the ODAG until July 2007 when she became Counselor to the OLP Assistant Attorney General.

Elston told us, however, that either Williams or Goodling told him that they did not want to extend the detail because she was a Democrat. Elston said that the detailee's supervisor told him that if the detailee left ODAG, he would "throw himself out the window." Elston said he felt the same way about her. According to Elston, for a period of time the OAG would only extend the detail on a month-to-month basis, until Goodling grudgingly extended it for 6 months.

#### **F. Candidate #6**

Goodling also appears to have rejected an EOUSA detailee at least in part on the basis of her alleged political party affiliation, for three positions: a detail to OLP, a detail to the ODAG, and an extension of her EOUSA detail.

The detailee had been an AUSA since 2000. In 2005, she began her EOUSA detail and overlapped with Goodling in EOUSA for several

months. She served in the EOUSA Office of Counsel to the Director for 17 months and then, for reasons described below, transferred to the EOUSA General Counsel's Office for the remainder of her detail. Her responsibilities in her first position included violent crime and white collar criminal matters.

According to the AUSA, in the fall of 2005, she spoke with Richard Hertling, the OLP Principal Deputy Assistant Attorney General, about a detail to OLP. According to the AUSA, the potential detail was to work on violent crime issues for OLP, and her detail was to begin in January 2006 when her EOUSA detail ended. The AUSA said she also recalled negotiations between EOUSA and OLP regarding who would be financially responsible for funding the cost of a replacement for her in the USAO while she was on detail. She said she was told that eventually the issue had been worked out and that she was to start her OLP detail on April 1, 2006.

On December 2, 2005, OLP AAG Rachel Brand sent an e-mail to EOUSA Director Battle saying that "my senior staff raves about [the AUSA] . . . . It sounds like she'd be able to make a significant contribution to our policy development efforts . . . . I'd really appreciate your support in [arranging for her to be detailed to OLP.]" Battle said he subsequently approved the AUSA's detail to OLP.

After some time had passed and she had not heard from OLP, the AUSA called the OLP Chief of Staff who told her that the OLP detail had been given to someone else. She then spoke with Hertling, who told her that Goodling had rejected her detail because she was a Democrat.

Hertling told us that he had been very impressed with the AUSA and wanted her to be detailed to OLP. He said that he discussed the detail with Goodling, but that Goodling had an extremely negative opinion of the AUSA from the time they had worked together in EOUSA. According to Hertling, Goodling told him that the AUSA was "politically unreliable" and Goodling questioned whether she supported the agenda of the President and Attorney General. Hertling said that Goodling also told him that the AUSA talked too much and did not get along with people. Hertling said that he told the AUSA that Goodling questioned her political reliability, but did not tell her about Goodling's other negative remarks.

The AUSA told us she informed Hertling she was not a Democrat, but Hertling replied that since Goodling thought she was, she could not be detailed to OLP. She said that Hertling counseled her to find another position in the Department, and then come back to OLP after Goodling left the Department.

Brand told us that she and Hertling wanted to hire the AUSA, but did not because Goodling said very negative things about her. According to Brand, Goodling said that the AUSA was insubordinate and would not tell her supervisors what she was doing. Brand said she did not recall Goodling telling her that the AUSA was a Democrat. Battle also said Goodling did not like the AUSA because Goodling perceived her to be aligned with an EOUSA Deputy Director whom Goodling disliked.

EOUSA Associate Counsel Voris said she had supported the AUSA's detail to OLP. According to Voris, when Goodling learned that the AUSA was discussing a detail with OLP, Goodling became very agitated and told Voris to prevent the detail. Voris appealed to Elston, but Elston told Voris that he could not influence the decision. Elston told us he did not recall this conversation, but said it was possible that it had occurred.

After Goodling blocked the AUSA's OLP detail, the AUSA learned from Voris that Goodling also refused to extend her EOUSA detail. As a result, she would have had to return to her USAO with only 2 weeks notice. Voris stated that she supported the extension of the AUSA's EOUSA detail and had many conversations with Goodling about her refusal to extend it. Voris said she told Goodling that she was treating the AUSA unfairly. Voris stated that Goodling opposed extending the detail because she held a grudge against the AUSA for siding with two other EOUSA managers. Voris said that Goodling also told her she opposed the AUSA's detail extension because she was a Democrat. EOUSA Deputy Director Nowacki told us Voris also informed him that Goodling denied the detail extension because the AUSA was not a Republican.

The AUSA told us she tried to meet with Goodling to discuss her detail extension, but Goodling ignored her request for a meeting. The AUSA then met with Kyle Sampson on March 15, 2006, to discuss extending her detail. She told him that Goodling wanted to terminate her detail immediately. That same day Sampson sent Goodling an e-mail with the subject line "I know and like [the AUSA]," asking Goodling to tell him what was going on between the AUSA and her. We did not find an e-mail reply from Goodling and the AUSA reported that she never heard back from Sampson after her meeting with him.

Sampson said he recalled meeting with the AUSA and asking Goodling to work something out with her. Sampson said he did not recall that party affiliation was an issue.

Voris told us she understood that the AUSA spoke to Sampson about Goodling's decision, but that Sampson told the AUSA he did not have a say in the matter.

Voris told the AUSA that she could serve out the remainder of her detail in EOUSA's General Counsel's Office, and the AUSA was transferred to that office. The AUSA said she understood that Goodling allowed her to move to the General Counsel's Office because it was not a policy-oriented position. The AUSA related this understanding in an April 28, 2006, e-mail to Sampson in which she told him that she was allowed to stay in Washington "but only if I was not working in a policy position." Voris confirmed that Goodling approved the AUSA's transfer to the General Counsel's Office because that office did not make policy.

The AUSA said that after these two incidents, Elston told her that he wanted to hire her to work in the ODAG but Goodling also refused to allow that detail. The AUSA also recalled that Elston informed her that he and Goodling had disagreed about whether the AUSA was a Republican or a Democrat. The AUSA said that Elston knew she was a Republican because he had asked her.

Elston told us he tried to hire the AUSA several times for the ODAG. Elston said Goodling never gave him the real reason why she did not like the AUSA, and said he did not recall a conversation in which he and Goodling argued about whether the AUSA was a Democrat or Republican. Elston said he did not think her party affiliation was Goodling's real reason for not approving the AUSA's details.

Finally, the AUSA also told us about an occasion during which, in Goodling's presence, she had praised the intelligence of Patrick Fitzgerald, the U.S. Attorney for the Northern District of Illinois. At the time, Fitzgerald was handling the investigation of Lewis "Scooter" Libby. According to the AUSA, Goodling reacted badly to her praise for Fitzgerald and said something to the effect that Fitzgerald was not on the Republican side or was against the party.

#### **G. Candidate #7**

In the fall or winter of 2006, an EOUSA detailee, who had been a career attorney with the Department since 1992 and who was working temporarily with the Office of Legal Policy, expressed an interest in being detailed to OLP. The candidate was interviewed by several of OLP's senior staff. Sometime after those interviews, OLP contacted the candidate and told him he would need to interview with Goodling.

When the candidate went to Goodling's office for his interview, Goodling's secretary gave him a Non-Career PPO form to complete. The

candidate said he declined to complete the form, since he was a career employee seeking a temporary detail.

During his interview, Goodling asked the candidate questions about which Supreme Court Justice, President, legislator, or person in public life he admired most and the reasons for his choices. Goodling also asked for his views on federalism. The candidate told us he perceived those questions as indirect questions about his political affiliation.<sup>41</sup>

The candidate said that Goodling told him that the Attorney General relied on OLP's legal advice and that the Attorney General expected to receive advice consistent with his policies and beliefs. Goodling then asked if he had a problem with providing such advice. The candidate said he was troubled by this question because it seemed to contradict his belief that his legal advice should be based on an objective assessment of the law and that the outcome of his advice should not be predetermined. He told Goodling that one of the reasons he enjoyed working with ODAG and OLP was that those offices listened to the views of career attorneys.

At this time, Rachel Brand was the OLP Assistant Attorney General. Brand told us that even though OLP wanted to hire the candidate, Goodling would not permit OLP to do so because Goodling disliked him. Brand said that although she was very annoyed that Goodling could tell her who could be detailed to OLP, she did not challenge Goodling because Brand said this was not a "fight worth picking."

Several weeks after his interview with Goodling, the candidate called OLP to ask about the status of his detail and was told that Goodling had rejected his application.

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<sup>41</sup> The candidate also told us that in the summer of 2006, he had called Elston to discuss the possibility of being detailed to ODAG. The candidate recalled that during their conversation Elston said something to the effect of, "I'm sorry to have to ask you this . . . but . . . the White House is going to want to know what is your party affiliation and who did you vote for in the last election." The candidate told Elston that he was a Republican who voted for President Bush. The candidate was never formally interviewed for an ODAG position. Elston told us he did not recall asking these questions, but stated that he might have asked them because he knew that Goodling would want to know the answers. Elston said he did not think he would have told the candidate that the White House would want to know his party affiliation, but rather he may have said that the White House Liaison (Goodling) would want that information.

## **H. Candidate #8**

An attorney with 6 years of experience as an AUSA was detailed to the ODAG to work on national security issues.

The AUSA told us that Deputy Attorney General McNulty had invited him to interview for the detailee position in the ODAG. After the interview, McNulty offered him a detail position, which he accepted. McNulty told him that Elston would coordinate his transfer from the USAO to the ODAG.

However, Elston contacted the AUSA and said that even though he had received an offer from the Deputy Attorney General, he still had to interview with Goodling.

Prior to his interview with Goodling, the AUSA was asked to complete a Non-Career PPO form. On the form, he identified himself as a Republican. The AUSA said he believes Goodling probably also asked him about his political financial contributions.

After his interview with Goodling, several weeks passed with no word on the status of his detail. As a result, the AUSA called Elston. According to Elston and the AUSA, Elston told him that the reason for the delay was that Goodling was taking a long time to conduct Internet research on him because his last name was common. Elston told us that he had to ask Goodling several times to approve the detail. Goodling eventually approved it, and in late October 2006 the AUSA began working for the ODAG. McNulty told us that he did not know that Goodling had held up the AUSA's arrival for over 6 weeks.

## **I. Conclusion**

As these examples illustrate, we found that Goodling regularly considered a candidate's political or ideological affiliations when deciding whether to approve details of career attorneys to positions in EOUSA, OLP, and the ODAG, or whether to extend existing details in these offices. In these examples, the candidates were qualified for the details and supported by the leaders of those offices because of their qualifications and ability. However, Goodling's review focused on their political or ideological affiliations and she often rejected candidates based upon these affiliations, or her perception of these affiliations, some of which were inaccurate, without regard to professional qualifications.

Senior officials in these offices sometimes objected to Goodling's decisions, and argued with her about the quality of these candidates. Sometimes their appeals were successful, but more often they were not. Even candidates personally offered positions by the Deputy Attorney

General were required to be interviewed by and receive the approval of Goodling before they could begin their details.

Goodling's decisions were particularly damaging to the Department because they resulted in high-quality candidates being rejected for important positions. For example, in one of the most troubling instances an experienced terrorism prosecutor who had received the Attorney General's Award for Exceptional Service was rejected by Goodling for a detail to EOUSA to work on counterterrorism issues because of his wife's political affiliations. Instead, EOUSA had to select a much more junior attorney who it believed was not qualified for the position. This use of political affiliation prevented an experienced career attorney from assuming important counterterrorism responsibilities, and instead resulted in the assignment of the duties to a less qualified candidate.

## **II. Richmond and Williams**

In addition to Goodling, we examined whether Susan Richmond and Jan Williams, Goodling's predecessors as the Department's White House Liaisons, considered political or ideological affiliations when approving details to Department of Justice offices. We did not find any evidence that Williams did so, and we found evidence (Candidate #2 above) that Williams approved a detailee she knew to be Democrat.

However, we discuss below two cases in which the evidence shows that Richmond used political affiliations to make decisions on detailee candidates to the ODAG, and that Williams participated in those decisions when she worked in the White House Presidential Personnel Office.<sup>42</sup>

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<sup>42</sup> During Richmond's initial interview for this investigation, she stated that ODAG detail candidates' political affiliations were not relevant to her decisions because "I didn't believe that for career officials that that really mattered . . . for them to be a member of a particular political party." After this interview, we found the evidence set forth in this section that Richmond did in fact use political affiliation to screen two ODAG detailee candidates.

We therefore re-interviewed Richmond. In her second interview, Richmond confirmed that she used political affiliation to screen some ODAG detail candidates. However, Richmond said that her prior testimony was accurate, and that when she stated that party affiliation was not a requirement for a detail, she was referring to detail positions that were not inherently political. Richmond said she drew a distinction between career attorneys detailed into non-political positions, and career attorneys detailed into positions that could be filled by political appointees whose portfolios would include significant policy issues. For such detailees, or detailee applicants, Richmond said she believed it was appropriate to consider the applicant's political party affiliation.

## **A. Candidate #9**

In 2004, a career Department attorney was approached by Stuart Levey, then the Principle Associate Deputy Attorney General (PADAG), about a temporary detail to the ODAG to work on immigration issues. The attorney was working in the Office of Immigration Litigation (OIL) in the Civil Division. Levey had previously worked with the attorney and had been impressed with his abilities.

Deputy Attorney General James Comey and others in the ODAG interviewed the attorney regarding the detail. After the interviews, the ODAG offered the attorney a 3-month detail, and he accepted.

On March 24, 2004, an administrative employee in the ODAG sent an e-mail to Department White House Liaison Richmond stating that Comey wanted to have the attorney detailed to the ODAG for 3 months. This e-mail resulted in a series of telephone calls and e-mails within the OAG and between the OAG and ODAG. The e-mails reflect Richmond's annoyance that the detail had not been approved by the OAG.

Richmond asserted in the e-mails that the immigration portfolio that the detailee was to assume was supposed to be assigned to a Schedule C political appointee. Richmond told ODAG Chief of Staff Chuck Rosenberg that the OAG would not approve the attorney's detail.

On March 31, 2004, Comey sent an e-mail to Richmond to inform her that he had authorized the attorney's detail as a temporary measure, even though he knew that Richmond was trying to find a political appointee for the immigration portfolio. However, Richmond was still upset about the decision to have the attorney detailed to ODAG, and she complained by e-mail to both Williams and David Higbee (at that time on detail from the Department) in the White House Presidential Personnel Office.<sup>43</sup> In her reply to Comey, Richmond noted that the OAG had

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<sup>43</sup> The tension between OAG and ODAG on this and other issues later led the OAG, through Goodling, to instruct the Justice Management Division (JMD) to change the Department's regulations by reserving to OAG personnel authority over employees in the ODAG and the Associate Attorney General's offices. Goodling conveyed that direction to JMD in January 2006, and the amendment was incorporated into an existing set of draft regulations that addressed technical issues in unrelated regulations. The change added subsections to 28 C.F.R. §§ 0.15(h) (for the ODAG) and 0.19(d) (for the Associate Attorney General), which reserved to the Attorney General the authority to take final action in matters pertaining to the appointment, employment, pay, separation, and general administration of Schedule C (political appointment) positions and of positions that meet "the same criteria as a Schedule C position." The changes were published on February 7, 2006.

(Cont'd.)

identified a candidate for a political position in the ODAG to handle immigration matters, and said that the candidate could be brought on quickly. Comey responded that he was hiring the detailee even if the detail would last only a few weeks so that someone could handle immigration matters until a permanent candidate was identified.

On April 2, 2004, Richmond forwarded Comey's e-mail to Williams at the White House, who in turn forwarded it to other White House Presidential Personnel Office staff. In Williams's e-mail, she commented, "This is the e-mail I mentioned to you in our meeting. It was sent to Susan after Comey detailed another career democrat into a position that was designated [Schedule C]."

The career attorney began his detail to the ODAG in April 2004. Beginning in June 2004, Richmond sent ODAG Chief of Staff Rosenberg and PADAG Levey numerous e-mails stating that the detailee's 3-month detail was due to expire, that she had several replacement candidates, and that the ODAG should interview and select one of them. In one e-mail, Richmond summarized three candidates' qualifications, and for each noted "loyalty" as an attribute. Richmond told us that term referred to adherence to the President's policies.

On July 1, 2004, Levey sent an e-mail to the detailee stating that he was doing a great job and asking if he wanted to extend his detail. The detailee said that he did.

On July 6, 2004, Richmond sent an e-mail to David Ayres, Chief of Staff to the Attorney General, in which she asked to meet with him about a conversation Ayres had with ODAG Chief of Staff Rosenberg regarding

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Prior to the publication of the amendments, JMD had expressed concern to Goodling that the amendment would place a significant administrative burden on the Attorney General, and asked whether the Attorney General wanted to delegate the authority "within his immediate staff." A week later Goodling responded that the delegation should be from the Attorney General to his Chief of Staff and the White House Liaison. (Goodling was not the White House Liaison at the time.) Accordingly, an internal order was drafted effectuating the delegation to the OAG Chief of Staff and the White House Liaison. The order was signed on March 1, 2006. Attorney General Gonzales's signature is on the order, but Sampson testified that he approved the use of the autopen for that order. Gonzales stated at his interview that he had "no present recollection of any of this," and that he did not recall discussing with Sampson or with Goodling the reservation of authority or the delegation of it to the Chief of Staff and the White House Liaison.

On July 25, 2007, after congressional concerns focused on the conduct of Goodling and others, Gonzales rescinded the amendments that reserved personnel authority to the OAG, and revoked the internal order delegating such authority to the OAG Chief of Staff and White House Liaison.

the detailee. According to the e-mail, Rosenberg had told Richmond that Ayers had approved the detail extension. Richmond noted in the e-mail that the ODAG had selected the detailee “instead of one of the two R. candidates that we had asked them to consider.” Ayres responded that he had in fact approved the detail extension based on Levey’s “personal assurance” about the detailee, but Ayres added that he had told Levey the extension needed to be discussed with Richmond. Richmond replied that “[the detailee] is the Dem. that the WH went berserk over (as did I) when they found out the DAG had detailed him to ODAG w/out approval. . . . The political SES in CIV . . . . [s]ays he has some . . . people in the same branch who are R’s and would be better.”

On July 9, Levey sent an e-mail to Comey and Rosenberg regarding the detailee, stating:

I called Jan Williams to ask her to reconsider the WH decision that [the detailee] had to go. I told her that I thought he was doing a great job, that you were also very happy with him, that I knew he would be loyal to the ‘team’ on the issues he works on, that he just briefed the AG for an hour and did a great job, and that someone ‘reliable’ could oversee him. I also probed whether there is something negative about him that I did not know. Turns out there is: he is a registered Democrat and that Jan thinks that everyone in the leadership offices should have some demonstrated loyalty to the President. She all but said that he should pack his boxes and get out of Dodge by sunset.

On July 16, 2004, the ODAG informed Richmond that it had selected another OIL career attorney to replace the detailee. The replacement was one of the three candidates who previously had been interviewed and approved by Richmond. The replacement was not given a political appointment but was instead detailed to the ODAG as a career Schedule A attorney.

On July 19, the first detailee was informed that his detail would not be extended. According to the detailee, when he asked why he had to leave, Rosenberg told him that the OAG researches candidates for ODAG positions and that if it found that the candidate was a Democrat, the candidate was not viewed as part of the team and could not be hired.

On November 8, 2004, Richmond sent an e-mail to Williams stating that the attorney who had replaced the first detailee wanted to end his detail. On November 15, Rosenberg sent an e-mail to Comey suggesting that they bring back the first detailee to the ODAG, and Comey agreed. On December 8, 2004, Rosenberg sent an e-mail to

Richmond suggesting that the first detailee be asked to return to replace the second detailee. Rosenberg told Richmond that the first detailee “performed extraordinarily well” and that he was “smart, aggressive, and reliable.” Richmond responded by stating that all leadership office hiring or details were on hold until January or February of 2005, which was after the transition from Attorney General Ashcroft to Attorney General Gonzales. As a result, the first detailee did not return to the ODAG.

## **B. Candidate #10**

On March 26, 2004, Rosenberg sent an e-mail to Comey and Levey identifying a detail candidate for a Counsel to the Deputy Attorney General position, with a portfolio relating to the Criminal Division. The candidate was then working for the Homeland Security Counsel (HSC) in the White House, on a detail from her attorney position in the Criminal Division.<sup>44</sup> Levey responded that he thought the detailee candidate was very good. Comey noted that the candidate’s supervisor in the HSC “raved about her,” and agreed that she should be interviewed. The candidate was interviewed in the ODAG on May 4, 2004.

Later that day, Rosenberg sent an e-mail to Richmond asking her whether she and the White House would approve the candidate’s detail to the ODAG. Richmond forwarded Rosenberg’s e-mail to Jan Williams in the White House, asking Williams if she could find out who the candidate was and if she was a “viable option.” Less than a minute later Williams replied, “She is a D.”

After receiving this news from Williams, Richmond forwarded Rosenberg’s e-mail regarding the candidate to OAG Deputy Chief of Staff David Israelite with the comment, “Here we go again. She’s a D.” Richmond also sent an e-mail to Williams saying that she would talk to Rosenberg the next day.

On May 10, 2004, Rosenberg sent an e-mail to Comey and Levey stating that Richmond said she had asked about the detailee candidate and the answer was a “firm no.”

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<sup>44</sup> This detailee candidate had been a trial attorney in the Criminal Division and had been detailed to the White House HSC from 2002 to 2004. She had been invited to apply for the HSC detail and interviewed with several HSC staff. At the end of the HSC interview process, the candidate was told that because she was a Democrat there was a problem finalizing her detail. Eventually, the candidate spoke with someone at the White House Presidential Personnel Office regarding her party affiliation and views on the issues that she would be working on at the HSC. She was thereafter offered the detail position. According to the candidate, during her 2 years at the HSC, she received excellent performance reviews.

The detailee candidate told us that when Rosenberg informed her that she would not be selected for the detail he said that the problem was in the White House and not in the Department. However, Rosenberg told us he did not recall telling her that the problem regarding her detail originated in the White House.

### **III. Recent Changes in the Detailee Selection Process**

As noted above, on July 20, 2007, Attorney General Gonzales announced a series of reforms to address allegations regarding the politicization of hiring within the Department of Justice. One of those reforms involved career attorney details to the Office of the Deputy Attorney General:

[then Acting Deputy Attorney General Craig Morford] and I agree that the Department must continue to recruit the best and brightest lawyers. Therefore, I am in the process of providing the Deputy Attorney General with the authority to detail and hire attorneys that he believes will best fill positions within his division.

With this change in procedure, it appears that the Deputy Attorney General now has the authority to detail attorneys to the ODAG without OAG approval.

### **IV. Analysis**

In this section of the report, we analyze whether Goodling's or Richmond's use of political or ideological affiliations to decide whether to approve details for career attorneys violated Department policy or federal law.

As discussed in Chapter Two of this report, temporary detail assignments are among the "personnel action[s]" that are included within the scope of the prohibited personnel practices enumerated in 5 U.S.C. 2302(b). "Personnel action" means . . . a **detail**, transfer, or reassignment . . ." 5 U.S.C. 2302(a)(2)(A)(iv) (emphasis added). Accordingly, it is a prohibited personnel practice and a violation of federal law to discriminate for or against any candidate for a detail position on the basis of political affiliation, as discussed in Chapter Two (Section V) above.

However, the *Civil Service Reform Act* makes clear that positions which are of a "confidential, policy-determining, policy-making, or policy-advocating character . . ." are not covered by the prohibited personnel

practices set forth in Section 2302(b). 2302(a)(2)(B)(i). Some of the positions occupied or sought by the detailee candidates discussed above could have been filled by political appointees, and some arguably involved sensitive policy-making roles in the Department. Goodling told Congress, and Richmond told us, that the OAG should be able to consider political or ideological affiliations with respect to these positions, regardless of whether the position was filled by a career detailee or a permanent political selection. Thus, according to their argument, the prohibited personnel practices would not apply to a detail position that is sufficiently policy oriented, and political affiliations could be used to screen candidates for the detail without violating the prohibitions contained in 2302(b).<sup>45</sup>

We believe that some of the career attorneys who were or who wanted to be temporarily detailed to the ODAG or OLP may have filled “confidential, policy-determining, policy-making, or policy-advocating” positions, and therefore it may have been permissible to consider the political affiliations of these detailee candidates. However, not all of the positions at issue fit that definition. Therefore the analysis depends on the specific duties of the position.

We found no clear guidance on this issue in either federal law or Department policy. Moreover, the determination of whether a particular ODAG or OLP detail is sufficiently policy-related to be exempt from federal law and Department policy is inherently subjective and depends on an assessment of the circumstances of each position. Therefore, we do not reach a conclusion as to whether Goodling or Richmond violated

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<sup>45</sup> Goodling’s and Richmond’s argument, however, is problematic. As noted above, the CSRA exempts from its scope those employees whose positions are of a “confidential, policy-determining, policy-making, or policy-advocating character . . . .” 2302(a)(2)(B)(i). This language arguably would allow the Department to use political affiliation to screen career candidates for details to positions meeting the criteria of 2302(a)(2)(B)(i). However, courts that have interpreted the scope of 2302(a)(2)(B)(i) have stated that it was intended to cover only political appointees. See, e.g., *O’Brien v. Ofc. of Indep. Counsel*, 74 M.S.P.R. 192, 207 (1997) (suggesting that “the terms of the exception found at 5 U.S.C. § 2302(a)(2)(B)(i) are a shorthand way of describing ‘political appointee’ positions”); *Special Counsel v. Peace Corps*, 31 M.S.P.R. 225, 231 (1986) (“[A]n excessive preoccupation with the meaning of each term in isolation distorts the purpose of the exception found at 5 U.S.C. § 2302(a)(2)(B)(i). These terms are . . . only a shorthand way of describing positions to be filled by so-called ‘political appointees.’”). Career attorneys who are temporarily detailed into Department offices are not “political appointees.” They remain Schedule A career attorneys, and Schedule A positions are “positions which are not of a confidential or policy-determining character,” 5 C.F.R. § 213.3101; 5 C.F.R. § 213.3102(d). Thus, we believe there is uncertainty whether, notwithstanding the 2302(a)(2)(B)(i) exemption from the CSRA, career detailees can be selected on the basis of political affiliation, because they do not fill political positions.

federal law or Department policy with regard to many of the positions at issue.

However, we believe that none of the EOUSA positions described above (Candidates 1, 3, 4, and 6) can be considered “confidential, policy-determining, policy-making, or policy-advocating” positions, and therefore it was improper for Goodling to use political or ideological affiliations in selecting or rejecting detailees to these positions.

Several senior EOUSA staff told us that EOUSA does not make policy. For example, former EOUSA Acting Director Steven Parent stated that EOUSA is a largely administrative office with the exception of its responsibility for screening candidates for U.S. Attorney positions. Similarly, former EOUSA Director Battle stated that EOUSA was essentially an administrative office. In addition, at the time of the events discussed in this report, only 2 EOUSA employees out of approximately 530 were political appointees (the Director and one Deputy Director). Currently, EOUSA has one political appointee, and a second political appointee is on a temporary detail to Iraq. In contrast, both ODAG and OLP are staffed with significant numbers of political appointees.

For these reasons, we believe that Goodling violated federal law and Department policy, and committed misconduct, when she discriminated against EOUSA detailee candidates based on political or ideological affiliations.

We also considered whether use of political affiliations to screen career attorney candidates for details to the other Department offices violated Department policy. As mentioned above, the Department’s employment discrimination policy, 28 C.F.R. § 42.1(a), prohibits political discrimination “in employment within the Department.” That policy does not specifically refer to details.

Moreover, the Department’s recitation of whether its antidiscrimination employment policy applies to details has been inconsistent. Recent detail announcements posted on the Office of Attorney Recruitment and Management (OARM) website or distributed to USAOs sometimes contain antidiscrimination employment provisions and sometimes do not. For example, in 2007 OARM posted an announcement for a detail to OLP. The announcement contained language stating that there will be no discrimination based on, among other things, politics. A 2007 OARM posted announcement for a detail to the Professional Responsibility Advisory Office contained identical language. In contrast, a 2007 EOUSA memorandum sent to all USAOs announcing a detail to EOUSA did not contain any information about the Department’s antidiscrimination employment policy.

We believe that the Department’s employment discrimination policy, 28 C.F.R. § 42.1(a), prohibits use of political affiliations to screen candidates for temporary details to positions that are not of a “confidential, policy-determining, policy-making, or policy-advocating character . . . .”, such as details to EOUSA. However, the Department has no clear rules regarding the use of political affiliations to screen candidates for temporary details to these non-policy-making positions.

Finally, regardless of the coverage of the civil service laws or the Department’s anti-discrimination policy, we were also troubled by cases in which details of career attorneys who were performing in an outstanding fashion were terminated because of their political affiliation. Both Richmond and Goodling objected to extending the details of career attorneys in the ODAG even though the Deputy Attorney General and his staff supported the extensions. In both cases, the Deputy Attorney General and his staff rated the attorneys’ performance as outstanding. In both cases, the Deputy Attorney General asserted that the attorneys fully supported the Administration’s policies that the attorneys were assigned to promote. Yet, in both cases, Richmond and Goodling sought to terminate or prevent the details solely because the attorneys were Democrats.<sup>46</sup>

We recommend that the Department clarify its policies on when political considerations can and cannot be considered when assessing career candidates for details to various Department offices. We believe that the Department would benefit from having clear rules about the criteria that may be used to assess career attorney candidates for various types of details.

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<sup>46</sup> As noted above, in response to the allegations of politicized hiring in the Department, former Attorney General Gonzales gave the Deputy Attorney General authority to select his or her own staff, including detailees. We believe that this change can help prevent the recurrence of such incidents.

## **CHAPTER SIX**

### **EVIDENCE AND ANALYSIS: IMMIGRATION JUDGE AND BOARD OF IMMIGRATION APPEALS MEMBER HIRING DECISIONS**

Goodling also admitted in her testimony to Congress that she “took political considerations into account” in soliciting candidates and reviewing candidate résumés for career positions as Department immigration judges (IJs) and Board of Immigration Appeals (BIA) members. Our investigation also revealed that Kyle Sampson and Jan Williams improperly took political and ideological affiliations into account when they were involved in hiring immigration judges.

In the sections below, we first provide background on IJs and BIA members. We discuss the process by which IJs were hired prior to spring 2004 and the changes Sampson initiated when he became Chief of Staff; Sampson’s, Williams’s and Goodling’s sources for obtaining immigration judge candidates and the political affiliation of those candidates; and the problems for the Department’s Executive Office for Immigration Review created by the changes Sampson made to the hiring process for IJs. We then provide our findings and conclusions regarding whether Sampson, Williams, and Goodling violated federal law and Department policy, and committed misconduct, by considering political or ideological affiliations in selecting immigration judges. Finally, we discuss whether Williams provided inaccurate information to us in this investigation related to her role in the hiring of immigration judges, and whether Goodling provided inaccurate information to Department attorneys defending the United States in civil litigation regarding immigration judge hiring.

#### **I. Immigration Judges and Board of Immigration Appeals Members**

##### **A. The Executive Office for Immigration Review**

The Department’s Executive Office for Immigration Review (EOIR) is responsible for conducting immigration court proceedings and appellate review of such proceedings. EOIR is headed by a Director who reports directly to the Deputy Attorney General. The EOIR Director, working with a Deputy Director, has general supervision over the Office of the Chief Immigration Judge (OCIJ), which is responsible for managing immigration courts throughout the nation. In addition, the OCIJ

supervises the BIA, which conducts appellate review of immigration court decisions.<sup>47</sup> At the time of the events discussed in this report, the Director of EOIR was Kevin Rooney and the Deputy Director was Kevin Ohlson. The Director and Deputy Director are career Senior Executive Service (SES) positions. Both Rooney and Ohlson are career Department attorneys.

The OCIJ establishes and implements operating policies for the immigration courts. It is led by a Chief Immigration Judge (CIJ), who is assisted by 11 Assistant CIJs (ACIJs). The CIJ is a career SES position. The ACIJs are all career, Schedule A positions. By definition, Schedule A positions “are not of a confidential or policy-determining character,” which distinguishes them from Schedule C appointments (commonly referred to as “political” appointments).<sup>48</sup>

### **B. Immigration Judges**

An immigration judge is “an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review.” 8 U.S.C. § 1101(b)(4). The Office of Personnel Management has categorized career attorney positions as Schedule A. 5 C.F.R. § 213.3102. All IJs are career Schedule A appointees. Consequently, the civil service laws set forth at 5 U.S.C. §§ 2301 and 2302 apply to the appointment of IJs.

IJs are the attorneys within the Department who are responsible for conducting quasi-judicial proceedings relating to exclusion, deportation, removal, and asylum cases. More than 200 IJs preside over immigration courts in all 50 states, the District of Columbia, and Puerto Rico. IJs are required to exercise independent judgment, and their decisions are final unless they are formally appealed to the BIA.

### **C. The Board of Immigration Appeals**

The BIA is composed of 15 Board Members, including the Chairman and Vice Chairman. Board Members are “attorneys appointed by the Attorney General.”<sup>49</sup> The BIA Chair is a career SES position. Under the regulations, the Attorney General “may designate one or two Vice Chairmen to assist the Chairman.”<sup>50</sup> Both Vice Chair positions are career positions, not political appointments. The remainder of the BIA

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<sup>47</sup> 8 C.F.R. § 1003.0(a) (2007).

<sup>48</sup> 5 C.F.R. § 213.3101.

<sup>49</sup> 8 C.F.R. § 1003.1(a)(2).

<sup>50</sup> *Id.*

member positions are career Schedule A positions. Thus, the civil service laws set forth at 5 U.S.C. §§ 2301 and 2302, also apply to the appointment of BIA members.

The BIA has jurisdiction to hear appeals from certain decisions rendered by IJs, including decisions in exclusion, deportation, removal, and asylum cases. The decisions of the BIA are binding on IJs unless modified or overruled by the Attorney General. Like IJs, the BIA is directed to exercise its independent judgment in hearing appeals. Certain decisions by the BIA may be appealed to the United States Courts of Appeal.

#### **D. Department of Justice Policy**

As noted above, Department policy and civil service laws prohibit discrimination in hiring for career positions. In advertising IJ positions, the Department specifically stated that “there will be no discrimination because of color, race, religion, national origin, **politics**, marital status, disability, age, sex, [or] sexual orientation . . . (emphasis added).”<sup>51</sup>

## **II. Process for Hiring Immigration Judges**

### **A. The Process Prior to Spring 2004**

The Attorney General has the authority to appoint IJs.<sup>52</sup> See 8 U.S.C. § 1101(b)(4) and 8 C.F.R. § 1.1. However, that authority is normally delegated by the Attorney General to the Deputy Attorney General or to the Associate Attorney General.<sup>53</sup> Since at least the 1980s, the Deputy Attorney General has routinely re-delegated to the Department’s Office of Attorney Recruitment and Management the authority to take final action in matters pertaining to employment for attorneys in pay grades GS-15 and below. The delegations included IJs, who are attorneys compensated at the GS-15 level or below.<sup>54</sup>

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<sup>51</sup> See, e.g., [www.usdoj.gov/oarm/attvacancies.html](http://www.usdoj.gov/oarm/attvacancies.html).

<sup>52</sup> This is different from other types of career attorney positions in the Department, such as AUSAs, where the Attorney General does not have statutory authority to directly appoint AUSAs and other career attorneys.

<sup>53</sup> See 28 C.F.R. §§ 0.15 and 0.19.

<sup>54</sup> In 1996, the IJ pay rates were removed from the General Schedule and now generally exceed the GS-15 level. In practice, final action on IJ hiring (“signing off” on candidates recommended by the EOIR Director) continued to be exercised by ODAG and OARM. In 2006, the regulations were amended to comport with actual practice by authorizing the ODAG to re-delegate authority concerning attorneys with pay grades

(Cont’d.)

Prior to spring 2004 the process for hiring IJs was handled primarily by EOIR. When a position became available, whether through retirement or the creation of new positions, EOIR posted a vacancy announcement identifying the location of the vacancy, the minimum requirements for applicants, and a statement that the Department is an Equal Opportunity Employer that does not discriminate on the basis of, among other things, “politics.” The minimum requirements were that a candidate must be a U.S. citizen, have 7 years of relevant post-bar experience, and have 1 year of experience equivalent to the GS-15 level of federal service.

In addition, the announcements stated that applicants must possess three or more of the following: (1) knowledge of immigration laws and procedures; (2) substantial litigation experience, preferably in a high-volume context; (3) experience handling complex legal issues; (4) experience conducting administrative hearings; and (5) knowledge of judicial practices and procedures.

Within EOIR, the Office of the Chief Immigration Judge had responsibility for the hiring process. Assistant Chief Immigration Judges reviewed the applications and voted on which candidates to interview, and the Chief Immigration Judge reviewed their recommendations and determined who would be interviewed. The interviews were conducted by 3-member panels, including the CIJ, and the CIJ would then choose which candidate to recommend to the EOIR Director. The Director had to approve the recommendation. The evidence we reviewed suggested that prior to Sampson changing the process in 2003, every recommendation was accepted by the Director. EOIR then prepared and sent paperwork to the ODAG and the OARM for “sign-off” on the new hire. The evidence in our investigation also showed that during this same time period the Director’s recommendation was never rejected.

Prior to spring 2004, we found only a few examples of IJs being appointed without having applied in response to vacancy announcements, and sometimes without having been interviewed or processed by EOIR. Such hires were sometimes referred to as having been made pursuant to the Attorney General’s “direct appointment” authority, although we found no evidence that any Attorney General (as opposed to the Attorney General’s staff) was personally involved in selecting the candidates. The evidence indicates that very few “direct

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over GS-15, thus covering all IJs. The hiring of all the IJs whose appointments were approved prior to the amendment was subsequently ratified.

appointments” were made prior to spring 2004. Rather, the vast majority of IJs were hired through the EOIR process detailed above.<sup>55</sup>

No BIA members were hired between October 2001 and April 2007. Consequently, there was no established mechanism for hiring BIA members during the time that Sampson, Williams, and Goodling worked in the OAG. The four most recent BIA members appointed before that time period were “direct” hires, but we found no evidence that the candidates were selected based on political considerations.

## **B. The Office of the Attorney General Considers Changes to the Process**

When Sampson came to the OAG as Counselor to the Attorney General in 2003, he implemented significant changes to the process of hiring IJs.

An internal EOIR e-mail from an ACIJ to the CIJ, dated June 30, 2003, stated that Laura Baxter, a Senior Counsel to the Deputy Attorney General, had recently informed EOIR that “the Dept. is going to take a greater role in IJ hiring.” The e-mail noted further that Baxter “emphasized that she wanted us to know that this is coming from the AG [John Ashcroft].” Both EOIR Director Rooney and Deputy Director Ohlson told us that they were not aware of such an initiative at the time.

In October 2003, an exchange of e-mails between Baxter and Sampson, who had just left the White House Counsel’s Office to become a Counselor to Attorney General Ashcroft, showed that the White House and the OAG had recently taken an interest in IJ hiring. For example, an October 8, 2003, e-mail from Sampson to Baxter stated that “the White House may recommend” two candidates for IJ positions, and that Sampson wanted to send “folks in the White House” a document detailing a proposed new process for hiring IJs. Attached to the e-mail was a draft document, entitled “Appointment of Immigration Judges.” The document stated that, “Many lawyers seeking positions within the Administration, including judgeships, become known to the White House offices of Political Affairs, Presidential Personnel, and Counsel to the President.” The document stated that some lawyers might qualify to be IJs, and that “coordination” was needed to ensure that such lawyers were “informed of the opportunity” to become IJs. The document included a “Proposed Process,” which was substantively identical to the

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<sup>55</sup> We did not find evidence that any “direct appointment” hires prior to 2004 were based on improper political or ideological affiliations.

process that became established under Sampson, Williams, and Goodling, and which is quoted below:

- A. EOIR informs DAG (Baxter) of current or upcoming IJ vacancy.
- B. DAG (Baxter) informs OAG (Sampson) of the vacancy.
- C. OAG (Sampson) informs WH OPA . . . , WH PPO . . . , and WHCO . . . of the vacancy and solicits names of possible applicants.
- D. OAG (Sampson) transmits application package to possible applicants; DAG (Baxter) transmits a list of possible applicants recommended by WH to EOIR.
- E. EOIR recommends candidates for AG appointment.
- F. AG appoints.

We found that the proposed process described above essentially mirrored the process that was implemented in 2004 with the exception that the ODAG was removed from meaningful involvement in IJ hiring. Sampson confirmed to us that the “Proposed Process” document corresponded with “how it [IJ hiring] worked during the period of time that I was at the Justice Department.”

We also found that a prior draft of the “Proposed Process” included a provision for EOIR to “vet applications,” but that provision was deleted from the document attached to Sampson’s e-mail.<sup>56</sup> In a separate e-mail to Baxter on October 8, 2003, Sampson stated that he wanted to review the standard “application package” for immigration judge positions before implementing the new process for hiring IJs.

The first example of a direct appointment in which Sampson referred an IJ candidate to EOIR involved an attorney who served as the campaign treasurer for a Republican Senator from New Hampshire. The campaign treasurer had been nominated to the U.S. Tax Court by President Bush in 2001, and Sampson was the person at the White House who was assigned to “shepherd” the candidate through the nomination process. The nomination was not successful, and the candidate was appointed to a political position in the DOJ Tax Division.

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<sup>56</sup> In our interview of Sampson, we showed him these documents. Sampson stated that he did not remember the documents, and that reviewing them did not refresh his recollection. He added that the red-lined version “looks like something I would have drafted,” but said he did not know who edited it.

In October 2003 the candidate approached an official in the OAG to inquire about IJ positions, and learned that Sampson was in charge of IJ hiring.

Shortly thereafter, the candidate spoke with Sampson by telephone. In January 2004, the candidate learned that he would be interviewed by EOIR for an IJ position. An EOIR official told us that he learned that the candidate had already been offered a position before he came to EOIR for his interview. The subsequent recommendation from EOIR to appoint the candidate as an IJ was sent to Baxter in the ODAG on February 19, 2004. In an internal Department e-mail dated March 18, 2004 to the Justice Management Division, Department White House Liaison Susan Richmond noted that the candidate would soon be appointed and commented: “could you . . . advise [the] Sen. . . . of this? This is the issue he’d been pushing with us.” The candidate was appointed as an IJ on April 4, 2004.

### **C. Last Occasion in Which EOIR Played a Role in Selecting Immigration Judges**

In a memorandum to the ODAG dated April 5, 2004, EOIR requested approval of a plan to create a Headquarters Immigration Court, where hearings could be conducted by teleconference, and to hire four IJs to fill the new positions. The memorandum identified four candidates, each of whom had significant experience in immigration law. The evidence shows that each of these candidates was identified and selected by EOIR, with no involvement from the OAG or the White House. However, in an e-mail to the ODAG dated August 2, 2004, Sampson criticized this set of appointments as a “hiccup” in the process, commenting that the OAG should have been “more involved” in selecting the candidates. In the e-mail, Sampson reminded the ODAG that it was important to “inform the AG and obtain his informal concurrence” before processing immigration judge candidates.<sup>57</sup>

In early April 2004, EOIR Director Rooney and Deputy Director Ohlson met with ODAG staff to discuss routine EOIR matters. Sampson attended the meeting. During the meeting, the fact that EOIR was preparing to post an announcement for IJ positions, including a position in Chicago, was discussed. Ohlson told us that Sampson expressed interest in that position, indicating that he might have a candidate for the position. Sampson also asked numerous questions about how IJs were appointed. Ohlson explained to Sampson the standard process

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<sup>57</sup> Deputy Attorney General Comey approved the hires of these candidates on April 11, 2004, and they were appointed.

through which EOIR posted announcements, screened résumés, interviewed candidates, and selected individuals who were then approved by the ODAG. Ohlson also mentioned the direct appointment avenue for hiring that had been used occasionally in the past.

Ohlson told us that in discussing the Attorney General's direct appointment authority with Sampson, he did not state or suggest to Sampson that direct hires were exempt from civil service laws governing career positions. Both Rooney and Ohlson told us they knew that IJs were career Schedule A positions, that civil service protections covered such positions, and that political affiliation could not be considered in hiring IJs. Sampson told us that he did not recall discussing with Ohlson whether direct appointments were subject to the civil service laws.

At the end of the meeting, Sampson asked to be informed when the ODAG authorized EOIR to advertise for the IJ position in Chicago. Rooney designated Ohlson as the point-of-contact for Sampson for any questions or issues relating to hiring IJs, and Ohlson retained that responsibility throughout the period of time covered by this report. Ohlson said that he kept Rooney apprised of his communications with the OAG.

In an e-mail to Sampson dated April 19, 2004, Ohlson stated that, “[p]er our conversation two weeks ago,” the ODAG had authorized EOIR to advertise for the IJ position in Chicago.<sup>58</sup> The following day, Sampson sent an e-mail to Ohlson stating that an individual from Chicago would be applying for the slot. Sampson also asked to be informed when Ohlson received that candidate's application. (The hiring of this candidate is discussed in Section III.B.1. below.)

On August 31, 2004, EOIR recommended to the ODAG six candidates for IJ positions. The candidates had applied to posted vacancies and been screened and interviewed by EOIR. Five of the candidates were appointed as IJs after the ODAG obtained Sampson's concurrence on the appointments.<sup>59</sup> This represented the last time EOIR selected IJ candidates when the process was controlled by Sampson, Williams, and Goodling.<sup>60</sup> As discussed below, from September 2004

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<sup>58</sup> This dates the prior conversation between Sampson and Ohlson to on or about April 5, 2004, the same date as the EOIR memorandum to the ODAG detailed above.

<sup>59</sup> The remaining candidate was not appointed because issues arose in his background investigation.

<sup>60</sup> Three days after the approval package was sent to the ODAG, Ohlson was required to send a copy of the entire package to Sampson.

until December 2006, when the IJ hiring process was stopped after the Civil Division expressed concerns about the legality of the process, all other IJs hired were selected by the OAG (with input from the White House, Republican Members of Congress, and Republican groups or individuals).

#### **D. The Office of Legal Counsel**

Sampson testified to Congress, and also told us, that from the time he first became involved in IJ hiring until December 2006 when the issue arose in the *Gonzalez v. Gonzales* litigation, he believed that “direct appointments” of IJs were not subject to civil service laws and that it was appropriate to consider “political criteria” in selecting IJs. Sampson said that his understanding was based on his April 2004 meeting with Rooney and Ohlson, at which they discussed the fact that the Attorney General could make direct appointments, combined with advice he said he received from the Office of Legal Counsel.

As noted above, however, Ohlson said he did not tell Sampson that direct appointments of IJs were exempt from civil service laws. Rooney said he did not recall the discussion, but he told us that he knew civil service laws applied to IJ hiring and that he would have corrected Sampson if Sampson had suggested that direct appointment hires were not covered by the civil service laws.<sup>61</sup>

Similarly, as discussed below, the OLC attorneys Sampson identified to us as the potential sources of the OLC advice stated they have no recollection of providing such advice to Sampson. In addition, acting OLC AAG Levin and a senior career attorney at OLC said that OLC’s normal practice would be to memorialize providing such advice. Neither OLC nor we could find any record of anyone in OLC ever providing such advice to Sampson.

Sampson told us that he received the OLC advice either from AAG Jack Goldsmith or Acting AAG Dan Levin when they headed OLC. Goldsmith served as AAG of OLC from October 3, 2003, until July 17, 2004; Levin headed OLC from July 2004 until February 2005.

As discussed in detail in Section V.F. below, plaintiff Guadalupe Gonzalez filed a lawsuit against the Department alleging that she had been discriminated against based on her gender and national origin when she was not selected for an IJ position in El Paso, Texas.

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<sup>61</sup> When we asked Rooney about Sampson’s claim that he did not have to follow civil service laws for Attorney General direct appointments, Rooney responded: “I can’t believe he would say that.”

The Civil Division attorneys handling the *Gonzalez* case interviewed Sampson on December 11, 2006. Sampson explained to them how the direct appointment mechanism for hiring IJs was working, and told them that his sources for candidates were the White House and Members of Congress. He acknowledged to the Civil Division attorneys that the process typically resulted in the selection of Republicans.

In an e-mail from OAG Deputy Chief of Staff Courtney Elwood to Sampson dated December 26, 2006, Elwood attached a request from the Civil Division that IJ hiring be stopped until the Civil Division evaluated whether the “current process used in the selection of immigration judges” violated “Title VII or any other applicable law.” Sampson responded in an e-mail later that day: “Query: Are any political appts subject to disparate impact claims? I think not – if I’m right, how can the AG’s direct appt for IJs be?”

On January 5, 2007, Elwood forwarded to Sampson another e-mail from the Civil Division advising that IJ hiring should be halted until OLC and the Civil Division resolved whether “the current procedures for selecting/appointing . . . IJs comport with merit system principles . . . .” Sampson responded the same day: “I’m disturbed. . . . I got advice from OLC on [the AG’s exercise of the direct appointment authority] back in 2003-2004. I’ve never before thought that the AG’s direct appointment authority was required to comport with merit system principles (as I understand them).”

In an e-mail dated January 11, 2007, Elwood advised Sampson that OLC had no record of providing that advice Sampson thought he had received from OLC, and asked if Sampson could “narrow the time frame” for when he thought he received the OLC advice. Sampson responded in an e-mail: “Best guess: Oct 2003 – June 2004.”

The following morning, an OLC official spoke with Levin on the telephone. In an e-mail dated January 12, 2007, which was forwarded to Sampson, the official related that Levin “has no recollection whatever of being asked about IJ or BIA hiring while he was here.” Sampson responded: “when was Jack [Goldsmith] the AAG? I remember sitting on the AAG’s couch . . . with John Davis of ODAG (he and I had regular meetings with the AAG, as OLC was in each of our portfolios) and discussing it.” After learning the dates of Goldsmith’s tenure at OLC, Sampson wrote another e-mail: “Discussion would have been with Jack in his office.”

The same day, an OLC official sent an e-mail to Goldsmith asking if he recalled “discussing the hiring of Immigration Judges or BIA judges

with Kyle Sampson from the AG's office?" Goldsmith replied the same day: "No recollection whatsoever."

When we contacted Goldsmith as part of this investigation, he reiterated that he had no memory of discussing the hiring of IJs with Sampson. Likewise, Davis told us that he had no recollection of such a discussion.

Levin was again contacted by the Department in May 2007 to see if he had any memory of advising Sampson that civil service laws did not apply to IJ appointments. Again, Levin stated that he had no recollection of providing such advice to Sampson. When we interviewed Levin, he reiterated that he had no recollection of discussing IJ hiring with Sampson. Levin also stressed that the issue whether civil service laws applied to IJ hiring was beyond his own expertise, saying, "I don't have a clue" about the issue. Levin stated that if Sampson had posed such a question, he would not have offered any informal guidance, but rather would have consulted one or both of two senior career attorneys at OLC to get an accurate answer.

Those senior career OLC attorneys confirmed to us that they believed Levin would have come to them with any question about the applicability of civil service laws to IJ hiring, and that the issue was sufficiently arcane so that neither they nor Levin would have offered an informal opinion on the issue. The OLC attorneys added that both Levin and his predecessor, Jack Goldsmith, were very careful in giving legal advice, and that they doubted either would have orally or informally opined on the applicability of civil service laws to IJ hiring without having research conducted on the point.

Levin and the senior career OLC attorneys said they did not recall having been asked to address whether civil service laws applied to IJ hiring. Furthermore, Levin told us that Sampson was very "political" and that Levin's "radar" would have alerted if Sampson had requested such advice on whether civil service laws applied to hiring for career positions.

We also contacted M. Edward Whelan III, who was Acting AAG at OLC during the August 2003 through October 3, 2003 time frame, covering the period from Sampson's arrival at the Department to the day Goldsmith became the AAG. Whelan told us that he had no recollection of advising Sampson that civil service laws did not apply to IJ hiring. He added that he would not have offered an oral opinion on such a complicated issue, but would have referred it to a specific senior OLC attorney (one of the two identified by Levin).

During our investigation, we found a September 3, 2004, e-mail in which Levin asked these two senior OLC attorneys whether the Attorney General had delegated to the ODAG “the authority to appoint immigration judges.” In a follow-up e-mail, Levin also asked whether, if the authority had been delegated, the Attorney General could still exercise the authority “in a particular case or generally.” Levin added in the e-mail: “I assume the delegation does not in any sense divest the AG of the power so he could continue to exercise it without formally undoing any delegation.” In response, one of the OLC attorneys noted that the general delegation in 28 C.F.R. § 0.15 might cover IJs, and observed further: “And yes, the AG retains his authority even though there’s been a delegation.”

However, we found no evidence connecting these September 2004 e-mails to any request from or response to Sampson or anyone else from the OAG. After reviewing the e-mail exchange, neither Levin nor the career OLC attorneys said they could recall who had raised the issue with Levin, or the context of the request. But because the subject matter of Levin’s inquiry addressed the Attorney General’s direct appointment authority, we believe it is possible that Sampson raised the general issue of the Attorney General’s direct appointment authority with Levin in September 2004, and that Levin advised him that the Attorney General had such authority. The e-mails do not, however, address the separate issue of whether the civil service laws applied to the Attorney General’s authority to make direct appointments.

Furthermore, the dates of the e-mails – 11 months after Sampson crafted his process for hiring IJs, and approximately 6 months after the OAG had begun selecting IJ candidates – together with the fact that they do not address whether civil service laws apply to IJ hiring indicate that they are not related to any advice to Sampson that immigration judges were political positions. In addition, as noted above, Sampson thought he received the advice when Goldsmith was still the AAG.

Sampson admitted in his congressional testimony that his recollection about receiving advice from OLC about IJ hiring was “fuzzy,” and that he had no recollection of receiving a written opinion or specific oral advice from OLC. Sampson stated:

I don’t remember OLC’s reaction except I think that I would remember if they had some concern with it. . . . I don’t remember what OLC said back to me. I just remember thinking in my mind, EOIR had said it this way and OLC doesn’t have any problem with that.

In addition, the October 8, 2003, e-mail from Sampson to Baxter and the attached “Appointment of Immigration Judges” document demonstrate that Sampson had already sought to appoint as IJs persons who were seeking political positions in the administration, before he could have received the advice he claimed to have received from OLC. Furthermore, according to the attached document, Sampson saw the direct appointment authority as a vehicle for placing attorneys who had “become known to the White House offices of Political Affairs, Presidential Personnel, and Counsel to the President.” Sampson acknowledged to us that, from his own experience in working at the White House, he understood that the White House would recommend attorneys who were Republicans.

In sum, we found that Sampson equated IJ positions with political positions, and Sampson said he assumed the Attorney General could appoint IJs without being bound by the civil service laws governing the hiring of career Department employees. However, we did not find evidence to support Sampson’s claim that he received such advice from OLC.

Nonetheless, as described below, Sampson implemented a hiring process for IJs that treated the positions as political appointments. As a result, Sampson and others improperly considered political or ideological affiliations in selecting IJ candidates.

#### **E. The Immigration Judge Appointment Process Implemented by Sampson**

Under Sampson’s process, the OAG exercised control over the selection of IJs. The new process mirrored the “Proposed Process” detailed in Sampson’s December 8, 2003, e-mail to Baxter, except that vacancies were to be communicated directly to the OAG rather than through the ODAG. Compared with the prior system in which EOIR selected IJs from applications received pursuant to vacancy announcements, the most significant change was that direct appointment of candidates recommended by the OAG became the exclusive avenue for IJ hiring.

Under the new process, EOIR was required to notify Sampson – rather than posting a vacancy announcement – when an IJ position became available. Sampson then normally solicited names of candidates from the White House, Republican Members of Congress, or Department political appointees. When Sampson accepted such a recommendation, he forwarded it (sometimes without a résumé) to EOIR for processing. In some instances, the candidate was offered a position as an IJ even before

the candidate's name was sent to EOIR. In virtually every instance, Sampson referred just one candidate for each available position.

EOIR Director Rooney, Deputy Director Ohlson, and others at EOIR told us that the candidate selected by the OAG was a "presumptive hire," and they understood that the individual was to be hired unless he had "horns" on his head. Ohlson said that "we really [did not] have any choice in the matter," when the OAG forwarded its candidate.

According to Rooney, Ohlson, and other EOIR staff, if EOIR did not identify reasons why the person should not be hired, it transmitted the paperwork back to the ODAG with a recommendation that the candidate be appointed. The paperwork was routed through Sampson at the OAG to secure his approval prior to the ODAG taking action. We found that the documents showing EOIR's recommendations and the ODAG's approvals had no real significance: the de facto hiring decision was made by Sampson when he initially referred the candidate to EOIR.

In April 2005, Sampson delegated responsibility within the OAG for selecting IJ candidates to the Department's White House Liaison, Jan Williams. That responsibility passed to Monica Goodling in April 2006 when Goodling replaced Williams as White House Liaison. We found that both Williams and Goodling employed the same process that Sampson established: direct appointments remained the exclusive method for hiring IJs, and the identification of candidates by Williams and Goodling remained the functional equivalent of a hiring decision. Sampson continued to have sporadic involvement in IJ selections even after he assigned primary responsibility for this function to the Department's White House Liaison beginning in April 2005.

The evidence indicates that neither Attorney General Ashcroft nor Attorney General Gonzales was involved in selecting individuals to be appointed as IJs. Susan Richmond, the White House Liaison from 2003 until early 2005, also was not involved in IJ hiring.<sup>62</sup> In addition, the evidence indicates that ODAG officials were not involved in selecting individuals to be IJs.

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<sup>62</sup> Richmond told us that she was not involved in the process of selecting and hiring IJs. An e-mail in March 2005 corroborated Richmond's statement. In response to a query concerning an IJ, Richmond responded: "IJ's [sic] are career appointments . . . so I don't handle them." Sampson also told us that he did not recall Richmond having any role in IJ selection.

### **III. Sampson's Recommendations to EOIR**

#### **A. Sources for Immigration Judge Candidates**

As noted above, Sampson told us that he thought IJ positions were “political” positions and that it was appropriate to consider political factors in assessing IJ candidates. Sampson did not personally interview or screen the candidates he referred to EOIR. Sampson solicited or received candidates for IJ positions from three sources: (1) the White House Office of Political Affairs, White House Presidential Personnel Office, and Counsel to the President; (2) Republican Members of Congress; and (3) colleagues within the Department who were political appointees. Sampson stated that he did not “put a political screen on resumes,” but he conceded that the candidates he received from these sources would already have been screened for political affiliation. Sampson also said that from his own experience at the White House, he knew that the IJ candidates “were solicited from . . . White House offices that were involved in political hiring,” and that consequently the only candidates under consideration were “[R]epublican lawyers.” Sampson also noted that “the resumes that they got into [the White House] were people who were [R]epublican job seekers.”<sup>63</sup>

The screening done at the White House, whether at the Office of Political Affairs or the Presidential Personnel Office, involved consideration of political affiliations. As discussed above, typically people who wanted to be considered for political positions within the Bush administration submitted to the White House a form entitled “PPO Non-Career Appointment Form.” The form required applicants to identify their political party affiliation, their voting address for 2000 and 2004, involvement in the Bush/Cheney campaigns of 2000 and 2004, and a point of contact to verify their involvement in the campaigns. The form also stated that each applicant had to submit a “political and personal resume” before White House clearance could begin.

Scott Jennings, who worked at the White House Office of Political Affairs from October 2005 until October 2007, confirmed to us that IJ appointments were “treated like other political appointments.” Jennings said that while he did not know that immigration judges were career positions, he assumed that they were political positions because they were processed through the Attorney General’s direct appointment authority.

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<sup>63</sup> One of the people at the White House Presidential Personnel Office from whom Sampson received names of IJ candidates was Jan Williams, who later became the Department’s White House Liaison. In the OAG, Williams continued to seek names of candidates from her old office at the White House.

Consequently, he said, like candidates for political positions, potential IJ candidates were screened at the White House to establish their “political qualifications.” The political screening process included searching databases to determine whether the candidate had made monetary contributions to political parties.

In addition, the White House contacted private organizations with Republican affiliations to generate candidates for particular positions. Jennings told us that “when we were looking for lawyers we might call [the] Republican [ ] National Lawyers Association . . . or . . . the Federalist Society would send over people.” When asked if he ever contacted any group he believed had ties to the Democratic Party for a candidate for any position, Jennings said he had not.

The evidence also showed that Sampson and the OAG solicited and received candidates for IJ positions from various Republican Members of Congress. EOIR Deputy Director Ohlson also recalled that Sampson, Williams, and Goodling referred candidates who had recommendations from congressmen, and that “all of [the Members] were Republicans.”

Of the more than 40 IJ candidates forwarded by the OAG to EOIR after Sampson changed the hiring process, we did not find any examples of a candidate who had been recommended by a Democratic Member of Congress. In late 2006, a candidate was recommended by a Democratic Senator from Nevada. Sampson referred the candidate to Goodling, and also explained to the Civil Division attorneys handling the *Gonzalez* litigation that it was an easy way to do a political favor that could be called in at a later date. Goodling forwarded the candidate to EOIR, without comment, after several promptings from Sampson. EOIR did not act on the candidate because, as discussed above, the concerns raised by the Civil Division in the *Gonzales* litigation led to a halt in IJ hiring.

Sampson also recommended colleagues who were political appointees within the Department, or other persons who held political appointments in the Bush administration, as IJ candidates to EOIR, and who therefore had been vetted by the White House as described above.

Sampson testified that he did not discuss with Attorney Generals Ashcroft or Gonzales his role in identifying IJ candidates. Attorney General Gonzales told us that he did not have any knowledge of the role OAG played in identifying IJ candidates and was not involved in their selection in any way. Our attempts to schedule an interview with former Attorney General Ashcroft were unsuccessful.

## **B. Candidates Provided to EOIR by Sampson**

The following are examples of IJ candidates selected as part of Sampson's process, which demonstrate the manner in which the OAG's control of the direct appointment process worked in practice and the central role played by the White House in selecting candidates.

### **1. Candidate Supported by Karl Rove**

As discussed above, Sampson first discussed the direct appointment authority with EOIR Director Rooney and Deputy Director Ohlson in the April 2004 meeting, and Sampson had a specific candidate in mind. This candidate had previously been nominated to be a judge at the U.S. Tax Court, and Sampson – while at the White House – was assigned to “shepherd” him through the nomination process, which did not succeed.

Sampson said he knew that Karl Rove was a “supporter” of this candidate.<sup>64</sup> On April 20, 2004, Sampson sent an e-mail to Ohlson stating that the candidate “will be applying for the Chicago [IJ] slot.” In an e-mail dated May 17, 2004, Sampson advised Ohlson that the candidate was “submitting an application” and requested that Ohlson keep Sampson “informed [ ] as his application progresses.” On June 14, 2004, after receiving another inquiry from Sampson, Ohlson sent an e-mail to Sampson stating that although hundreds of persons applied in response to the Chicago IJ announcement, “[n]eedless to say [the candidate] made the cut.”

In an e-mail to Sampson dated July 27, 2004, Ohlson advised that the candidate “was determined to be the top candidate for Chicago.” When we asked Ohlson about that assessment, he explained that EOIR was “fully aware of the fact” that the candidate was Sampson's choice, and that awareness affected EOIR's evaluation: “The finger was on the scale.”

Routine background investigation issues delayed the appointment, and Sampson checked frequently with Ohlson from September 2004 through May 2005 on the candidate's status. On May 27, 2005, the candidate called the White House to complain to Rove that his appointment to be an IJ had stalled. The complaint was routed through Mike Davis, Tim Griffin, and Sara Taylor at the White House Office of Political Affairs. Davis contacted Jan Williams, then the Department's

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<sup>64</sup> The candidate also acknowledged during our interview of him that he had been a friend of Rove's since his youth.

White House Liaison, and learned that the candidate's background investigation had caused the delay. After consulting with Rove, Taylor informed Williams that "we want to push this t[hr]ough." Later that same day, Williams sent an e-mail to Davis stating that "[S]ampson is going to talk to Karl [Rove] [about the candidate] next week."

The background investigation process was eventually completed, and the candidate was appointed as an IJ in October 2005.<sup>65</sup>

## **2. Candidates Provided by the White House**

We found that the majority of candidates provided to EOIR by Sampson were from the White House Office of Political Affairs. For example, in September 2004, the Office of Political Affairs provided Sampson with the résumé of a candidate for an IJ position in El Paso, Texas. Sampson instructed EOIR to "reach out to" the candidate, and the candidate was eventually appointed as an IJ.

Also in September 2004, Sampson instructed Ohlson to contact another candidate whose name (unbeknownst to Ohlson) had been provided by the White House Office of Political Affairs for an IJ position in Lancaster, California. The candidate was the Chief of Staff to a Republican Member of Congress from California. That candidate's résumé reflected his involvement in the Bush/Cheney 2000 campaign. The candidate was formally offered the IJ position, but he did not accept it.

In an e-mail dated March 17, 2005, Sampson sent to EOIR the names and résumés of three candidates for two IJ positions in New York. Sampson had received the three names from the White House Office of Political Affairs.<sup>66</sup> All three were interviewed by EOIR, and on April 25, 2005, EOIR "recommended" the appointment of two of them.<sup>67</sup> On May 4, 2005, Tim Griffin at the White House Office of Political Affairs sent an e-mail to Jan Williams, the Department's White House Liaison, to ask about the status of the IJ appointments. That same day the appointment of both candidates was approved. One candidate

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<sup>65</sup> This is the only evidence we found of Rove playing a role in the appointment of IJs.

<sup>66</sup> An e-mail from Tim Griffin and Annie Mayol in the White House Office of Political Affairs indicates that the candidate names came to them from Governor Pataki of New York. On May 12, 2005, the White House sent a follow-up e-mail to the OAG inquiring about "[the candidate] in particular – Governor Pataki's office just called me."

<sup>67</sup> There is no evidence that EOIR opposed the third candidate; rather, there were only two vacancies. This was one of only two occasions we found in which Sampson provided more than one name for a vacancy.

subsequently withdrew from consideration, and the other was appointed as an IJ.

### **3. Recommendations from Republican Members of Congress**

We also found that IJ candidates were provided by various Republican Members of Congress.

On September 16, 2004, Ohlson received a telephone call from Sampson. According to an e-mail written by Ohlson about the conversation, Sampson said that:

Attorney General Ashcroft spoke to Senator [Orrin] Hatch today and agreed to open an immigration court in Salt Lake City. . . . He said he thinks that Senator Hatch may have a candidate for the new IJ position in SLC.

The candidate was an attorney who had recently worked for Senator Hatch on the Senate Judiciary Committee, and who had previously worked at the Department's Office of Immigration Litigation in the Civil Division.

On October 20, 2004, after receiving a telephone call from Senator Hatch informing him of the IJ position, the candidate sent a letter to EOIR stating his interest in the position. He was interviewed at EOIR on November 10, 2004. On December 7, 2004, EOIR sent the paperwork to the ODAG recommending his appointment and on December 21, 2004, the ODAG signed its approval. However, on January 10, 2005, the candidate sent a letter to EOIR withdrawing himself from consideration citing family reasons. Ohlson relayed the news to Sampson, reminding him that "This was Senator Hatch's candidate." Sampson responded promptly in an e-mail: "Let me see if Sen. Hatch has any other candidates he'd like to recommend. I'll get back to you."

On January 28, 2005, a staff member for Senator Hatch faxed to Sampson the résumé of a federal prosecutor in the United States Attorney's Office for the District of Utah. In an e-mail dated February 4, 2005, Sampson informed Ohlson that "Sen. Hatch has now recommended [the candidate] to serve as an immigration judge in the new Salt Lake City immigration court." Sampson faxed the candidate's résumé to EOIR, and he subsequently was appointed as an IJ.

Another example of a candidate recommended by a Republican Member of Congress occurred when a Republican Senator from Virginia sent a letter to Attorney General Gonzales dated August 5, 2005, recommending a candidate for an IJ position in Arlington, Virginia.

Sampson learned of the letter on August 17, 2005, and immediately sent an e-mail to Ohlson asking whether the candidate was “in the queue.” Ohlson responded that EOIR did not have the candidate’s name. EOIR obtained the candidate’s résumé on August 19, and also received a copy of the Senator’s letter.

The candidate was a career Department of Justice attorney who had served in the Criminal Division since 1991. The candidate was interviewed by EOIR on September 1, 2005. In an e-mail to OAG White House Liaison Jan Williams on September 21, 2005, Ohlson noted that “Kyle Sampson told us to appoint [the candidate] to the open position in Arlington.” The candidate was appointed as an IJ.

#### **4. Candidates Hired Without EOIR Interviews**

We also found several instances in which candidates were offered positions as IJs even before their names had been sent to EOIR. Two are of particular note because they later served as sources of additional IJ candidates when Goodling became the Department’s White House Liaison.<sup>68</sup> The first candidate was Garry Malphrus, who had worked with Sampson on the Senate Judiciary Committee where Malphrus served as a staff member to a Republican Senator from South Carolina. He was working at the White House as an Associate Director of the Domestic Policy Council, and his résumé contains numerous references noting his political party affiliation.<sup>69</sup>

Malphrus contacted Sampson in November 2004, expressed interest in an IJ position, and asked Sampson if he could speak with someone to learn what IJs do. In an e-mail to Ohlson on November 18, 2004, Sampson forwarded the request: “Garry Malphrus works on immigration policy at the White House. He is interested in speaking with someone about an IJ appointment – he’s primarily in info gathering mode.”

Ohlson said that Malphrus came to his office and they spoke for approximately 45 minutes. Ohlson said that it was not an interview; rather, he provided answers to Malphrus’s questions.

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<sup>68</sup> In this report, we generally did not name individual IJs. However, we named three IJs who played a role in recommending IJ candidates to Goodling, which we discuss in Section V.D. below.

<sup>69</sup> In addition to his position in the Bush White House, Malphrus’s résumé included: “Legal Team, Republican National Committee 72-Hour Task Force, 2004”; “Bush-Cheney Florida Recount Team, Miami Legal Group, 2000”; and “Federalist Society.”

In an e-mail to the Chief Immigration Judge dated December 6, 2004, Ohlson stated:

This morning I spoke to Kyle Sampson in the AG's office. They would like us to "recommend" the appointment of Garry Malphrus to be an IJ in NYC. As you may recall, Garry (he has two "Rs" in his first name) worked on the Senate Judiciary Committee and now serves in the White House . . . . As you will also recall, pending this formal "request" from the AG's office . . . you [have] a "greenlight" to hire him in time to attend the February judicial training.

Malphrus did not submit an application to become an IJ and was never formally interviewed by EOIR. On December 21, 2004, EOIR transmitted to the ODAG its "recommendation" that Malphrus be appointed an IJ. Malphrus was appointed in March 2005.

Another person appointed to be an IJ who neither submitted an application nor was interviewed by EOIR was Mark Metcalf. Metcalf had been appointed to a political position in the Department's Civil Rights Division in April 2002. His White House PPO personnel form noted that he had worked on the Bush/Cheney 2000 campaign and that his party affiliation was Republican. After a short time, Metcalf was transferred from the Civil Rights Division to the Criminal Division for a few months, and then spent 5 months at the Department of Defense. In January 2005, he returned to the Department as Counsel to the Civil Rights Division AAG, reporting first to AAG Alex Acosta and then to Acting AAG Bradley Schlozman.

Metcalf's résumé includes a variety of Republican party affiliations.

In an e-mail to Sampson dated August 29, 2005, with the subject line reading "mark metcalf," Department White House Liaison Williams wrote: "immigration judge?" Sampson responded the same day: "ok."<sup>70</sup>

Shortly thereafter, Williams told Metcalf "we'd like you to be an immigration judge," and that there was a position available in Orlando,

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<sup>70</sup> Metcalf told us that Williams had met him in connection with his interest in a political position within the Department. Metcalf stated that he had not previously been interested in an IJ position, although we found evidence contradicting this claim. Susan Richmond, the predecessor to Williams as the Department White House Liaison, told us she recalled that Metcalf approached her to inquire about an IJ position. Documents also show that Metcalf requested assistance from Richmond in May and August of 2004, seeking a new position, although the position is not identified. Sampson also stated that Metcalf was considered for an IJ position because Metcalf had specifically asked for such a position.

Florida if he was interested. Ohlson sent an e-mail to Williams on September 23, 2005, stating:

The Chief Immigration Judge informs me that a gentleman by the name of Mark Metcalf called the Immigration Court in Orlando this morning. Mr. Metcalf told a judge there that he had been offered an IJ position in Orlando, that he needed to decide by December 1st whether he wanted to take the job, and that he wanted the judge to give him a tour of the court. Neither the judge in Orlando nor the Chief Judge nor I had ever heard of this person.

Ohlson added that he assumed that Metcalf was “being considered by you for a direct appointment.”

We determined that even though Metcalf was not interviewed at EOIR, he was appointed as an IJ in February 2006. Metcalf later became a source for recommendations to Monica Goodling for IJ candidates, as discussed in Section V.D. below.

## **5. Other Candidates Selected by Sampson**

In a September 2004 e-mail, Sampson advised Ohlson that he would send EOIR a candidate for an IJ position in Houston. Consequently, EOIR did not post an announcement for the vacancy. On October 12, 2004, Sampson sent Ohlson the résumé of a candidate, stating that “we’d like for you to consider/reach out to” the candidate for the Houston position.<sup>71</sup> The candidate had served as the Republican Party Chairman for a county in Texas from 1992 until 1998, and published political commentary on the county Republican Party website. Sampson’s computer had a copy of the candidate’s résumé dated October 12, 2004 that included sections entitled “Political Training” and “Political Activities and Honors,” both of which evidenced significant activities on behalf of the Republican Party. The candidate was appointed as an IJ.

In September 2004, Sampson identified another candidate for EOIR to contact for an open IJ position in Louisiana. The candidate’s résumé featured 11 entries detailing activities on behalf of the Republican Party, including “Bush/Cheney Florida Recount Task Force” and “Vice-Chairman of Louisiana Republican State Central Committee.” The candidate was appointed to be an IJ in Louisiana.

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<sup>71</sup> At his interview with us, Sampson stated that he might have received this candidate’s name from the White House or from a Senator.

On November 1, 2005, Sampson sent an e-mail to Ohlson stating that he had “a very strong candidate that [I] would like you to consider” for immigration judge positions in either Arlington or Falls Church, Virginia, or Baltimore, Maryland (emphasis in the original). An hour later, Sampson sent Ohlson an e-mail containing the résumé of the candidate and a brief message that the candidate “currently serves as Deputy Associate AG. Please reach out to her directly.”

Approximately 20 minutes before Sampson first contacted Ohlson about this candidate, the candidate had sent an e-mail to Sampson stating: “I would like to be considered for any immigration judge openings.” Sampson responded by asking where she would like to work, and she responded Arlington, Falls Church, or Baltimore. Three minutes after receiving that e-mail Sampson had sent the first e-mail to Ohlson promoting the candidate.

The candidate was a political appointee at the Department and had served as a Deputy Associate Attorney General since November of 2003. She had previously served as counsel to two Republican Senators on various Senate committees. After receiving Sampson’s e-mails, Ohlson conferred with EOIR Director Rooney. Approximately 30 minutes after receiving Sampson’s e-mails, Ohlson sent the following e-mail to Chief Immigration Judge Michael Creppy:

Please see the e-mail below from the AG’s Chief of Staff. I conferred with Rooney and we are going to respond by saying that we don’t have any vacancies in Arlington or Baltimore, but we can create a position in [the Falls Church headquarters]. (We really don’t have any choice in the matter . . . .)

The candidate was interviewed by EOIR, and was appointed as an IJ on January 8, 2006, just over 2 months after the candidate first expressed interest to Sampson in an IJ position.

### **C. Problems Created by the New Hiring Process**

We found that the new process under Sampson for selecting IJs created significant problems because EOIR was not able to fill IJ positions until Sampson provided the candidates. This caused delays in appointing IJs, which increased the burden on the immigration courts that were already experiencing an increased workload. As a result, Ohlson continually requested candidate names from Sampson, and then from Williams and Goodling, to address the growing number of vacancies. Ohlson told us:

I . . . expressed carefully, diplomatically, to Kyle Sampson and later to Jan Williams the fact that I felt as if these immigration judge positions were not being filled on a timely basis, that we needed to do this much more quickly. I thought the process that we had in the past with the [posted vacancy announcements] permitted us to do it on a timely basis. I didn't know for the most part where they were getting these names from. All I knew was, I had mentioned to them where a position would be . . . and it seemed as if it took an awfully long time for them ultimately to supply me with a name.

In several other e-mails to Sampson, Ohlson repeatedly requested candidates to fill vacant IJ positions. In an e-mail to Sampson dated May 23, 2005, Ohlson stated the problem again:

[T]he number of IJ vacancies continues to grow. The fact that so many slots have remained vacant for so long is beginning to have a measurable impact on the Immigration Courts because the pending case backlog is beginning to grow. This unwelcome development is of considerable concern to the Director because of the potential implications for the Department. We would like to be able to fill these IJ slots as quickly as possible.

We found no response to this e-mail.

Ohlson's e-mails did not appear to have any effect in speeding the process for IJ candidates to be selected by OAG. Further, EOIR was not able to fill positions using the "old" method of posting and selecting candidates for vacancies, but rather had to wait for the OAG to select candidates for "direct appointment."

In fact, as we discuss in the next section, the problem became more acute from 2005 to 2006 when Williams and Goodling became the Department's White House liaisons and became involved with IJ hiring.

#### **IV. Williams's Recommendations to EOIR**

In April 2005, Williams became the Department's White House Liaison. Williams, a non-attorney, had worked for the Federalist Society from 1997 to 2001, and then was hired as a staff assistant at the White House Presidential Personnel Office where she worked for Sampson. Williams became a Deputy Associate at that office and held that position until moving to the Department in 2005.

As the Department's White House Liaison, her principal duties were to find and screen candidates for political positions (Schedule C and non-career SES) within the Department, and to handle the logistics of the interviewing process. Williams told us that "except in a handful of cases," the positions she dealt with were all political. She stated further: "I did not have hiring authority. I only developed lists of candidates." During her tenure at the Department she reported to Sampson, who was the OAG Chief of Staff.

Although Sampson continued to have personal involvement in the selection of many IJ candidates, he delegated much of the responsibility – including communications with EOIR – to Williams when she was White House Liaison. We found that Williams followed the selection process Sampson had established, and the IJ candidates she sent to EOIR were still treated as "presumptive hires." When Williams told EOIR to "please consider" candidates, EOIR would recommend the candidates for appointment unless the candidates did something to affirmatively disqualify themselves. During this period, the use of this direct appointment authority continued to be the exclusive avenue for IJ hiring.

Williams stated to us that she did not know that IJ positions were career rather than political positions. She added that she did not discuss with Attorney General Gonzales her role in identifying IJ candidates. Former Attorney General Gonzales told us he did not know how Williams identified IJ candidates.

#### **A. Sources for Immigration Judge Candidates**

Williams stated that when she worked at the White House, Sampson would occasionally call her to get "ideas for immigration judge postings." When she joined the Department, Sampson told her to "contact the White House to get any candidate ideas that they had for immigration judges." She said the Presidential Personnel Office was her principal source for candidates. The documentary evidence also shows that Williams received candidates from the White House Office of Political Affairs.

As noted above, Scott Jennings, who worked at the White House Office of Political Affairs, acknowledged to us that the White House screened candidates for any positions to establish their "political qualifications."

## **B. Candidates Provided to EOIR by Williams**

### **1. The White House Seeks to Place “Priority Candidates”**

On May 17, 2005, Williams received an e-mail from the White House Office of Political Affairs addressed to White House Liaisons in agencies throughout the executive branch. The e-mail urged the White House Liaisons to “get creative” and find positions for more than 100 “priority candidates” who “have loyally served the President.” The White House also sought from each White House Liaison a “pledge of the number of the 108 priority candidates you can place at your agency.” In a follow-up e-mail, the White House reiterated that “we simply want to place as many of our Bush loyalists as possible.” The context of the e-mails made plain that the positions sought were political, non-career slots. On May 19, 2005, Williams responded: “We pledge 7 slots within 40 days and 40 nights. Let the games begin!”

Part of Williams’s efforts to fulfill her pledge involved finding IJ positions for these “priority candidates.” An e-mail chain involving Williams and the White House dated May 26, 2005, show various attempts to find candidates for IJ positions who have been “helpful to the President.”

For example, the White House reached out to a Republican Congressman, and on June 7, 2005, the Congressman’s staff sent an e-mail to the White House recommending a candidate, described as a “great Republican,” for an IJ position in New York. On June 15, 2005, the White House forwarded that e-mail to Williams, adding that the candidate was a “long time donor to the local GOP,” and that local Republican Party officials would vouch for him. Williams forwarded the candidate’s name to EOIR.

EOIR resisted this candidate proposed by the OAG. This was the only time we found that EOIR resisted any OAG candidate. In an e-mail dated December 7, 2005, Ohlson advised Williams that the candidate’s conduct during his EOIR interview “causes us to question whether he possesses the appropriate judicial temperament and demeanor to serve as an immigration judge.” Ohlson related that the candidate used profanity during the interview, acted abrasively, and when asked what his greatest weakness was, responded “Blondes.” Ohlson offered Williams an alternate candidate who was supported by ODAG staff. The OAG did not insist on the White House’s candidate, and the alternative candidate was selected.

## **2. Candidates Solicited from a Civil Division Political Appointee**

Williams continued her efforts in June and July 2005 to fulfill her pledge to find positions for the White House priority candidates. In e-mail exchanges between Williams and the White House Office of Political Affairs dating between June 15 and June 21, 2005, Williams expressed concern about meeting her 40 days/40 nights pledge deadline, and she sought candidates for five IJ positions she identified by specific location. She noted in a separate e-mail that she had already sought candidates from the Federalist Society, but that it had no leads.

On June 21, 2005, Williams sent an e-mail to the White House asking for more IJ candidates: "I am running past my deadline. Please send me names by this Wednesday afternoon. These are great opportunities for good people."

The White House was not able to find candidates for the IJ positions (except the candidate described above who was resisted by EOIR). During the same period, Williams asked a political appointee in the Department's Civil Division, Jonathan Cohn, for recommendations. In an e-mail dated June 15, 2005, Cohn provided seven names. In response, Williams asked one question: "are they like you and me?" Cohn replied that he did not know, but that he knew two of them were "tough on immigration enforcement."<sup>72</sup>

Three weeks later, on July 7, 2005, Williams transmitted to EOIR the names of eight candidates for specific IJ positions. Ohlson responded the same day in an e-mail, noting that one of the named candidates was under investigation by the Department for professional misconduct, and that EOIR could not take any action on another candidate because "we don't know who she is and we don't have any way to contact her." A third candidate was the one EOIR had resisted. That left just five remaining candidates.

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<sup>72</sup> In a May 2004 e-mail exchange, Cohn had discussed with Williams's predecessor, Susan Richmond, the fact that the EOIR General Counsel position was vacant and expressed concern that it would be a problem if the ODAG "were to clear a lib" for that "significant position." Richmond responded that "we should get Kyle Sampson involved" if there were problems in identifying a suitable candidate. Cohn responded that "the presumptive front-runner is a dem." Richmond forwarded the e-mail chain to Sampson. The EOIR General Counsel is a career position, and use of political party affiliation to screen candidates for that position would violate federal law and Department policy. The position was eventually filled with a career EOIR attorney supported by EOIR Director Rooney.

On July 28, 2005, Williams e-mailed to EOIR the name of a sixth candidate for another IJ position. Williams received this name from the White House Liaison at the Department of Homeland Security.

The résumés of three of the remaining six candidates showed that they had held career positions with the Department, and their résumés do not contain any overtly political references. The résumé for the fourth candidate contained a reference to being a “Former Edison Township Republican Committee Person.”

These four candidates were interviewed by EOIR in August 2005. On September 2, 2005, Sampson requested a copy of the EOIR paperwork to review before clearing the candidates for appointment. All four were appointed as IJs. The fifth candidate was also subsequently appointed as an IJ. The sixth indicated he was not interested in becoming an IJ.

### **3. EOIR Requested Immigration Judges**

EOIR’s need for additional IJs to handle the increasing immigration work load continued to grow during Williams’s tenure as the Department’s White House Liaison. During this period, the OAG still controlled the process for selecting IJs, and direct appointments continued to be the exclusive avenue for IJ hiring. However, Williams was not able to select enough candidates to keep pace with the IJ vacancies and newly created positions. Williams told us that “To be frank, the task of finding immigration judge candidates did not get all of my attention.”

We found that, at the time, EOIR reminded her repeatedly that its mission was being compromised by the IJ vacancies. For example, in an e-mail to Williams on July 7, 2005, Ohlson observed that six additional IJ positions would soon be open, and stated: “We really are under tremendous pressure to continue to adjudicate on a timely basis the flood of cases we receive each month, and the only way we can keep up is if we fill immigration judge vacancies in a timely manner.”

On July 22, 2005, Ohlson sent another e-mail to Williams stating:

Jan – I know you’re busy, but I need to touch base with you to determine the status of the search for immigration judge candidates. As you’re aware, DHS enforcement activities are continuing to increase the number of aliens who appear in the immigration courts. The only way that we can adjudicate these cases in a timely manner is if we have a full complement of immigration judges on the bench. However, a number of IJ positions have remained unfilled for many

months, and we expect that a considerable number of additional openings will arise in the relatively near future. I am concerned that at some point people on the Hill or in the media will start to ask why we have not been filling these IJ vacancies as part of the Administration's effort to ensure that illegal aliens who pose a danger to us are deported in an expeditious manner. The fact that EOIR has adequate funding to pay for these immigration judges will merely serve to sharpen the debate.

To address the IJ vacancy problem, Ohlson suggested that "in addition to getting names from the White House," it "may be wise to run a nation-wide advertisement soliciting applications for IJ positions." Ohlson assured Williams that the OAG would still be able to choose from among the candidates generated, and asked that she consider this approach.

Ohlson spoke with Williams on July 26, 2005, and she authorized Ohlson to run the nation-wide advertisement he had suggested. Ohlson sent an e-mail to Williams on July 28 referencing their conversation: "As we discussed, we will submit for your review the list of candidates who apply. Furthermore, any candidates you supply will receive priority treatment." Ohlson told us that he "stressed to [Williams] that this was not undercutting the authority of the [A]ttorney [G]eneral's office and her ability personally to decide who the candidates were going to be. That in fact, this was merely creating a pool of candidates from which she could draw."

After running announcements for IJ candidates, EOIR developed lists of candidates, which it sent to Williams in packets identified by the geographical location of the IJ vacancy. For each location, EOIR forwarded 5 to 10 résumés.

#### **4. Candidates Selected by Williams who had also Applied Through the Vacancy Announcement**

We found that, in practice, résumés sent to Williams by EOIR of candidates who applied in response to the advertisement were ignored unless the candidate enjoyed support from Republican-affiliated sources, and the advertisement did not affect the manner in which the OAG selected IJs.

We found that on one occasion Williams selected a candidate who had submitted a formal application in response to the job posting. However, Williams only selected that candidate for an IJ position after

Garry Malphrus (whose appointment we describe above) sent an e-mail to Williams endorsing the candidate.

This candidate's résumé reflected a prior position as Legal Counsel to a Republican Senator from Montana. Williams forwarded the candidate's résumé to Ohlson with the instruction: "for L.A." The candidate subsequently was appointed to be an IJ in Los Angeles.

On another occasion, Malphrus recommended to Williams another candidate who had applied in response to the advertisement. Sampson approved the candidate's appointment, and he was appointed an IJ.

A third candidate who applied in response to the advertisement was also subsequently selected by Williams. However, Williams considered him not because he had responded to the advertisement, but because she had received his name and résumé from the White House. This candidate's résumé included multiple entries that show his political affiliations, such as "Legal Advisor, Bush Florida Recount Team" in 2000; "Bush Delegate to the Republican National Convention" in 2004; "RNC 72-Hour Task Force, Miami" in 2004; "Treasurer, Republican Party of Louisiana, 2000-2002 term." In an e-mail to Ohlson dated January 24, 2006, Williams wrote that the individual "[i]s my candidate for Miami." EOIR documents indicate that the candidate was not interviewed at EOIR, but was appointed as an IJ.

## **5. Additional White House Candidates Provided to EOIR**

On March 3, 2006, the White House Office of Political Affairs sent an e-mail to Williams recommending another candidate for a position as an IJ. The attached résumé showed that the candidate served as the "Local Counsel for Republican National Committee," as well as the "General Counsel to NJ Senate Republican Committee." The résumé also detailed the candidate's activities on behalf of various Republican candidates.

On March 14, 2006, Williams sent an e-mail to Ohlson forwarding the candidate's name and résumé, stating: "Candidate for NJ seat." Her selection was approved by Sampson, and she was appointed as an IJ.

In March and April 2006 the White House Office of Political Affairs sent to Williams the names of two candidates for IJ positions. One was hired as an IJ in May 2006; the other was offered an IJ position by Williams, but declined the offer.

### **C. The Direct Appointment Process Continued to Affect EOIR**

We found no evidence that the candidates Ohlson sent Williams from the nationwide announcement received any consideration unless the candidate was independently backed by the White House or by political appointees. During this period, Williams selected a handful of candidates, but not nearly enough to fill all the IJ vacancies. Because EOIR was not authorized to process any candidate who had not been approved by the OAG, it was not able to address the shortage of IJs and the increasing immigration caseload. Ohlson continued to bring this problem to Williams's attention, but to no avail.

For example, in an e-mail dated September 21, 2005, Ohlson advised Williams of numerous IJ vacancies. In another e-mail dated November 14, 2005, Ohlson again asked Williams whether she had reviewed any of the candidate packets EOIR had provided, and reminded her that "productivity in the immigration courts is being affected by these vacancies." On January 26, 2006, Ohlson advised Williams that additional vacancies were pending, and that more IJs were needed "to address our ever-increasing caseload." On March 1, 2006, Ohlson sent another e-mail to Williams stating that "we could use your help filling some upcoming IJ vacancies."

When we interviewed Williams, she stated that it was "incredibly hard to find candidates for immigration judge posts." She stated further that she repeatedly asked Ohlson whether he had candidates for IJ positions. However, we found that the evidence demonstrated that Williams did not ask Ohlson whether he had candidates; rather, she asked only if EOIR had vacancies and then she selected the candidates to fill those vacancies. Although she allowed EOIR to post advertisements, she did not consider any of the people whose résumés were forwarded by EOIR unless the candidate's political bona fides were supported by the White House or other political sources. Furthermore, we found that when Ohlson did recommend a specific candidate for an IJ position, Williams did not respond to his suggestion, even after Ohlson reiterated his recommendation in several additional e-mails.

### **D. Search Terms for Screening Candidates**

As described previously, at some point during the year that she served as the Department's White House Liaison, Williams attended a seminar held at the White House Presidential Personnel Office where she received a document entitled "The Thorough Process of Investigation." The document explained how to conduct searches on Nexis, and included an example of a search string that contained political terms (e.g.,

“republican,” “Bush or Cheney,” “Karl Rove,” “Howard Dean,” “democrat!,” “liberal,” “abortion or pro-choice”) as well as generic terms (e.g., “arrest!,” “bankrupt!”).

In her interview with us, Williams claimed: “[I] never used the search [string] while I was at the Department.” However, as described earlier, when she left the Department in April 2006, Williams sent an e-mail to incoming White House Liaison Goodling that contained a search string, and stated: “This is the lexis nexis search string that I use for AG appointments.” The string reads as follows:

[first name of a candidate] and pre/2 [last name of a candidate] w/7 bush or gore or republican! or democrat! or charg! or accus! or criticiz! or blam! or defend! or iran contra or clinton or spotted owl or florida recount or sex! or controvers! or racis! or fraud! or investigat! or bankrupt! or layoff! or downsiz! or PNTR or NAFTA or outsourc! or indict! or enron or kerry or iraq or wmd! or arrest! or intox! or fired or sex! or racis! or intox! or slur! or arrest! or fired or controvers! or abortion! or gay! or homosexual! or gun! or firearm!

When we showed Williams this e-mail and the attached search string, she said she did not recall sending it to Goodling. She also said she did not recognize the search string, and that she did not know where the list of search terms came from. At the end of her interview, we raised the issue again and Williams repeated her assertion that she did not remember using the search string.

The day after her interview, Williams sent us an e-mail stating that she “thought about the research string and have some information that I want to share with you.” She wrote that there had been a political vacancy in the Department’s Environment and Natural Resources Division in December 2005, that a law professor was a candidate, and that Sampson asked her to research the law professor’s writings. Williams stated that she “called the researcher in the White House Office of Presidential Personnel to get some research tips.” Williams said the researcher sent her a “Lexis Nexis research string,” and that she edited the string to remove “words like homosexual” and then used it. Williams claimed that she only used the search string that one time, “never ever used it to reach Immigration Judges,” and that the string she sent to Goodling did not contain “words like ‘homosexual.’”

However, we concluded that Williams’s assertions regarding the search string and her use of the tool were not accurate. The string she sent to Goodling via e-mail in April 2006 did contain the terms

“homosexual!” and “gay!” Furthermore, the evidence showed she used the search string more than once, and the terms were also included in those searches.

We searched both Williams’s e-mails and electronic files saved on her computer, and did not find evidence on her computer that Williams conducted other Internet searches using this search string. However, we obtained information from LexisNexis that Williams used this search string multiple times on 3 days in November and December 2005 and January 2006. Williams used the search string to research 25 people, of whom 23 were candidates for the National Advisory Committee on Violence Against Women. One of the other two candidates was the person Williams referred to in her e-mail to us after we interviewed Williams. We could not determine the identity of the remaining person Williams researched using the search string. None of these people were candidates for IJ or BIA positions. All of the searches Williams conducted contained search terms such as “gay!” and “homosexual!” When we asked Williams about the LexisNexis searches, she stated that she did not recall researching the candidates for the National Advisory Committee on Violence Against Women or using the string search other than the one time discussed above.

## **V. Goodling’s Recommendations to EOIR**

In April 2006, Williams left the Department and Goodling replaced her as the Department’s White House Liaison.

On April 20, 2006, Sampson sent an e-mail to Ohlson introducing Goodling as “our new White House Liaison – handling all manner of personnel and appointments matters.” Sampson stated in the e-mail that Goodling “is the point person in OAG on IJ/BIA appointments,” and Sampson reiterated that the direct appointment authority would continue to be the only channel for hiring: “I also want to be sure that we continue to be notified of IJ/BIA vacancies and expected vacancies so that the AG can have an opportunity to feed into the appointment process.”

Under Goodling, the OAG continued its control over the hiring of IJs, and all candidates for IJ positions were selected by the OAG for direct appointment. Goodling followed the same selection process for IJ candidates as Williams, although Goodling took an even more active role in finding and screening candidates. Goodling interviewed candidates and also researched candidates submitted by the White House using the search string provided by Williams. In addition, Goodling discussed IJ positions with various individuals who she was screening for political

positions. The IJ candidates forwarded to EOIR by Goodling remained “presumptive hires.”

As noted above, Goodling declined to be interviewed by us. In her congressional testimony, however, Goodling stated that she had been told by Sampson shortly after becoming White House Liaison that it was appropriate to take political factors into consideration in hiring IJs because they were “direct appointments by the Attorney General.” According to Goodling’s written statement to Congress, Sampson told her that the Office of Legal Counsel had advised that “Immigration Judge appointments were not subject to the civil service rules applicable to other career positions.”

In Sampson’s congressional testimony, he stated that he did not remember giving such advice to Goodling when she became White House Liaison. However, Sampson told us that such a conversation would have been consistent with his belief that IJ hiring was not subject to civil service laws. It is clear, however, that the process for selecting IJs that was in place when Goodling became the Department’s White House Liaison, and the process used by Goodling, treated IJ positions as if they were political appointments.

Sampson did not tell Goodling that civil service laws did not apply to hiring BIA members. Rather, Goodling testified that she “assumed” that the rules applicable to IJ hiring “applied to BIA positions as well.”

#### **A. Sources for Immigration Judge Candidates**

Under Goodling, the principal source for IJ candidates continued to be the White House, which, as discussed above, conducted its own political screening of candidates before sending them to Goodling. The same day that Sampson sent an e-mail to numerous people in the Department introducing Goodling as the Department’s new White House Liaison, Goodling and Scott Jennings at the White House Office of Political Affairs exchanged e-mails about the White House finding candidates for IJ positions. Another e-mail from Goodling to Jennings on April 24, 2005, asked for candidates for IJ positions in various cities. In an e-mail to Jennings dated August 4, 2006, Goodling asked for IJ candidates for five specific locations. Goodling and Jennings exchanged other similar e-mails about IJs, including one on August 22, 2006, in which Jennings forwarded to Goodling a candidate for an IJ position whose “political credentials” Jennings said had been verified by the White House.

The White House, in turn, solicited candidates for IJ positions from the Republican National Lawyers Association, Republican National

Committeemen, state and local Republican Party officials, the Federalist Society, and prominent Republicans, and provided those candidates to Goodling for consideration.

Goodling considered several candidates recommended by Republican Congressmen. For example, in an April 24, 2006, e-mail to Jennings, Goodling advised that “the Ohio Senators have already put in recommendations” for IJ positions in Cleveland. In addition, Republican Senators from Pennsylvania and Texas provided candidates to Goodling. Republican Members of the House of Representatives also recommended candidates for IJ positions, and the White House forwarded those recommendations to Goodling.<sup>73</sup>

## **B. Political Screening by Goodling**

As described in Chapter Three of this report, Goodling used a variety of techniques for researching the political or ideological affiliations of candidates for political positions. These techniques included using computer websites to research candidates’ political contributions and voter registration records, using variations on the Internet search string that Williams had provided her, and asking questions regarding political affiliation during her interviews and in reference checks. We found that Goodling also used these tools in screening candidates for career IJ positions.

### **1. Candidates Considered for Career and Political Positions**

Goodling acknowledged in her congressional testimony that she asked “political questions” of candidates who were considered for both career and political positions. We found several examples of that occurring with respect to candidates for IJ positions.

One example is the first candidate recommended by Senator Hatch for an IJ position. As detailed above, the candidate withdrew from consideration for that position for family reasons, but in an e-mail to Goodling dated August 23, 2006, Sampson forwarded the candidate’s interest in “a career slot as chief immigration judge in EOIR or as one of any political slots.” When the candidate met with Goodling on September 8, 2006, she asked him to fill out the White House PPO form, where he indicated that he was a Republican and that he voted for President Bush. At the outset of the interview, Goodling told the

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<sup>73</sup> We did not find any evidence of Goodling soliciting or receiving recommendations from Democratic Members of Congress.

candidate that he was not being considered for the CIJ position, but she invited him to apply for an IJ position. Only after the candidate indicated that he was not interested in the locations where IJ positions were available did Goodling raise the issue of a possible political position.

Another example relates to a candidate who was referred to Goodling by a speechwriter for Attorney General Gonzales. The candidate was asked to fill out the White House PPO form online, which he did. According to the candidate, he was interested primarily in non-political positions, such as an IJ position or an AUSA position, but he was also interested in potential political positions. At his interview, Goodling asked the candidate about his political affiliation, his political campaign involvement, who he voted for, to whom he made political contributions, and for the name of a public figure who was “a [candidate’s name] Republican.” After the candidate answered these questions, Goodling told him that filling IJ positions was a “priority for her.” She also indicated that she would talk to certain U.S. Attorneys who were “receptive to her opinions” about obtaining a position for him as an AUSA.<sup>74</sup> The candidate later informed Goodling that he was not interested in an IJ position, and he said Goodling did not follow up on his interest in an AUSA position.

A similar incident occurred with another candidate who filled out a White House PPO form and was interested primarily in political positions. Goodling’s notes indicate that she asked him the questions that were asked of all candidates for a political appointment, such as what kind of conservative he was, his favorite Supreme Court Justice, and his views on the death penalty. The candidate told us that it seemed to him that Goodling was working from a “check list.” He said that they also discussed abortion and the “conservative religiously affiliated school . . . very [R]epublican school” that he had attended. One of Goodling’s notes from the interview reads: “Cons. On ‘god, guns + gays’.”

Goodling told the candidate she was looking for IJs. He conveyed to her that he knew “less than zero about immigration law,” but that he was “more hawkish” than President Bush about policing the country’s borders to keep aliens out. Goodling’s notes contain the entry: “Strong on immigration.” The candidate’s name was not forwarded to EOIR.

## **2. Candidates Provided to EOIR by Goodling**

Goodling stated in her congressional testimony that she “recommended approximately seven people to be interviewed by EOIR for

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<sup>74</sup> Goodling did not find a position for the candidate.

Immigration Judge positions and recommended four individuals to be appointed to the BIA.” She admitted that she “took political considerations into account” in “reviewing resumes and soliciting applications” for those positions.

In an e-mail dated July 31, 2006, Goodling instructed Ohlson to “consider the [five] individuals listed” for specified IJ positions. Ohlson replied in an e-mail dated August 2, 2006, that “the Office of the Chief Immigration Judge called [3 of the candidates] to schedule ‘interviews’ for the week of August 14.” Ohlson added that EOIR had no information on the fourth candidate and thus could not contact him. The fifth candidate was known to EOIR. In the e-mail, Ohlson also identified additional IJ vacancies that needed filling.

When we interviewed Ohlson, he explained why he put the term “interviews” in quotation marks in his e-mail to Goodling:

By the time of August 2006 . . . it had become apparent to me that the interviews were essentially pro forma. And in fact at that point, there were some hires [who were not] interviewed. And so I was trying to signal there that I recognized that fact.<sup>75</sup>

By August 4, 2006, EOIR had been able to locate the fourth candidate and had been instructed by Goodling (in an e-mail of the same date) to contact another candidate for a sixth position. Four of the six candidates referred to EOIR at this time by Goodling had letters of recommendation from Republican Members of Congress, and a fifth was recommended by the White House.

Another example of a candidate recommended by Goodling was a career Department attorney from the Civil Rights Division whose interest in an IJ position was supported by Bradley Schlozman, a political appointee in the Department. Schlozman sent an e-mail dated December 4, 2006, to Goodling endorsing the candidate:

Hey Monica. I had a chance to speak with [the candidate] regarding the IJ position. Let me say at the outset that his views on immigration are virtually identical to my own. And you’d be pleased with my views. . . . [He] is a guy I know

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<sup>75</sup> As discussed above, we also determined that Goodling’s “recommendations” had the practical effect of appointing the candidate, which Goodling knew. For example, in an e-mail to Sampson dated August 24, 2006, she referred to an IJ position in Boston that “I filled.” At the time, EOIR had not even transmitted the paperwork to the ODAG “recommending” the candidate for appointment.

well and ‘saw the light’ about 10 years ago. I will get his resume for you, but don’t be dissuaded by his ACLU work on voting matters from years ago. This is a very different man, and particularly on immigration issues, he is a true member of the team.

Schlozman added that the candidate would be “a great legacy for this Administration/Dept on the IJ court.”

Goodling interviewed the candidate in early December 2006, but her file did not contain any notes from the interview. On December 14, 2006, Goodling sent an e-mail instructing EOIR to “consider” the candidate for an IJ position at EOIR Headquarters, directing further that he should be transferred to the immigration court in Charlotte, North Carolina “when that court is ready.” However, the candidate was not appointed because the hiring of IJs was stopped when the Civil Division in January 2007 expressed its concerns about the legality of the manner in which the direct appointment authority was implemented.

Another candidate, who was a graduate of Regent University School of Law, Goodling’s alma mater, submitted his résumé directly to Goodling in an e-mail dated December 13, 2006. His résumé showed that he had been an intern for the Republican majority on the House Judiciary Committee. The next day, Goodling sent an e-mail instructing EOIR to “consider” him for an IJ position at Tacoma, Washington. The candidate was not appointed because the hiring of IJs was halted in January 2007.

### **C. Increasing Vacancies for Immigration Judges**

The problems for EOIR created by increasing vacancies and an increasing workload continued to worsen during Goodling’s tenure as the Department’s White House Liaison, due in part to the delays caused by the additional screening that she conducted. In an e-mail to EOIR Director Rooney dated July 25, 2006, Deputy Director Ohlson noted that eight vacancies “have been sitting with Monica (and sitting, and sitting, and . . .).” Some of those vacancies were addressed in Goodling’s referrals on July 31, 2006, described above, but many other vacancies went unaddressed, and Ohlson sent an e-mail to Goodling on August 2, 2006, identifying them.

In a response dated August 4, 2006, Goodling told Ohlson that she would “be happy to see what names you have for some of these other openings.” Ohlson immediately forwarded Goodling’s e-mail to several Assistant Chief Immigration Judges, stating: “We have a golden opportunity here. Lets provide her with great candidates for the remaining slots as soon as possible.” When we interviewed Ohlson, he

explained that he saw it as an opportunity to provide Goodling with “outstanding candidates who have immigration [law] backgrounds.”

On August 18, 2006, Ohlson sent an e-mail to Goodling advising her that: “we have compiled a binder that contains [résumés] of about ten of the best candidates who applied for immigration judge positions and specifically asked to be assigned to these designated cities. This binder is being sent to you this afternoon.” The e-mail stressed that Goodling would retain her authority to select the candidates for appointment: “Once you have identified candidates for these positions, we will interview them immediately.”

On September 1, 2006, Ohlson sent another e-mail to Goodling reminding her of vacancies in various cities. Goodling responded the same day that she had been “studying the folks you submitted.” Shortly after this e-mail, Ohlson met with Goodling at her office, and Ohlson said she told him that it took time to select IJ candidates because she was conducting “background research on all these candidates.” Ohlson said Goodling did not describe to him the kind of research she was conducting.

On September 20, 2006, Ohlson sent another e-mail to Goodling attaching a document listing IJ vacancies and noting that résumés for additional candidates would be faxed to Goodling later that day. The evidence indicates that Goodling did not select any of the dozens of candidates submitted to her by EOIR in the binder or in this follow-up, and EOIR was thus unable to hire IJs to help address its increasing workload. In an e-mail to an official in the ODAG dated November 15, 2006, Ohlson wrote:

Please see the attached document which I sent to Monica a couple of months ago. . . . The bottom line is that we have TWENTY-FIVE IJ vacancies that need to be filled. The vast majority of these slots are new positions. However, a couple of the slots . . . have been vacant since the time Jan Williams was in the AG’s office. In September we provided Monica with either specific names for each position, or the resumes of the top five candidates who applied to fill each slot. She has indicated on a couple of occasions that she was on the cusp of naming some people, but . . . .

As noted above, Goodling ultimately selected only two candidates in December 2006.

#### **D. Screening of Candidates by Immigration Judges in Florida**

Goodling also received the names of candidates for IJ positions from IJs Garry Malphrus and Mark Metcalf. As detailed above in Section III.B.4., both Malphrus and Metcalf had been selected and approved by Sampson, and both were appointed IJs without being interviewed by EOIR. Both had strong Republican political affiliations, and both were asked by Goodling to identify candidates for IJ vacancies. Malphrus and Metcalf appear to have coordinated some of their efforts with each other and with another IJ in Florida, Rex Ford.

In an e-mail to Sampson dated April 20, 2006, Malphrus offered “to be of any assistance” to Goodling in identifying IJ candidates for upcoming vacancies. As noted above, Malphrus had performed a similar function for Williams, and he told us that he spoke with Goodling regarding candidates for open positions. In his April 20 e-mail, Malphrus also recommended that IJ Ford be considered for the post of Chief Immigration Judge: “he would be excellent based on his experience, leadership skills, and loyalty.” When we interviewed Malphrus, he told us that “loyalty” meant “loyalty to the Bush Administration.” The Chief Immigration Judge is a career SES position.

The first candidate Metcalf recommended to Goodling was a candidate who Ford had recommended to him. Metcalf obtained the candidate’s résumé from Ford, spoke with the candidate, and then recommended him to Goodling. Goodling, in turn, instructed EOIR to “consider” the candidate, and he was appointed as an IJ.

When we interviewed Malphrus, Metcalf, and Ford, they denied that they considered political affiliations in recommending IJ candidates to Goodling. They also said there was not a concerted effort to identify candidates, although Malphrus admitted that they “had a discussion about it a couple of times.”

In his November 14, 2006, e-mail to Sampson recommending a candidate, Metcalf noted that Malphrus and Ford also supported the candidate. Metcalf added: “our search for solid judges should be ramping up.”

A series of e-mails from Metcalf to Goodling on December 1, 2006, recommended to Goodling six persons for IJ positions. In the first e-mail, Metcalf advised Goodling that all of the candidates “have been vetted here in Miami by Judge Ford.”

The first candidate was a former elected official who was on the Republican Executive Committee of Palm Beach County. Metcalf’s e-mail

stated: “Rex Ford highly recommends him. His credentials look very strong to me.” The e-mail attached a separate e-mail from Ford, which stated: “Let Monica know that she can contact . . . (W’s county Chairman in 2000 and 2004 in Palm Beach County) for any additional information.”

The second candidate was the wife of an IJ who had been assigned to mentor Metcalf. She was an experienced immigration lawyer. Metcalf noted that Judge Ford was familiar with the third candidate. The fourth was a long-time friend of Metcalf’s whose résumé stated that he was a member of the Federalist Society. Metcalf’s e-mail to Goodling stated that: “Judge Ford interviewed him yesterday and endorses his appointment. So do I.” When we asked Metcalf if he interviewed the candidate, Metcalf said “No.” But when asked later what criteria Ford used in reviewing candidates, Metcalf acknowledged that he was present when Ford interviewed the candidate, and stated that “there was never any mention of politics.”

The fifth candidate was a DHS attorney who had only 4 years experience as a lawyer. The public advertisements specified that IJ candidates had to have at least 7 years of legal experience. Metcalf advised that the candidate “has Judge Ford and [a fourth IJ’s] strong support – mine too.” Regarding the sixth candidate, Metcalf stated to Goodling that the candidate was supported by the fourth IJ, who Metcalf represented had been a “former Associate White House Counsel under Reagan.”<sup>76</sup> Goodling’s copy of the résumé contains the handwritten comment: “conservative.”

Metcalf recommended a seventh candidate to Goodling on January 5, 2007, who was vouched for by former Department political appointee.

At his interview with us, Metcalf said he did not recall recommending any other candidates to Goodling. A review of Goodling’s e-mails, however, indicated that Metcalf recommended at least three additional candidates to Goodling in January 2007, one of whom was also endorsed by Ford. Two were sponsored by the Chairman Emeritus of the Republican Party of Orange County (a fact conveyed to Metcalf and relayed to Goodling). In the e-mail chain that reached Goodling via

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<sup>76</sup> This statement by Metcalf was not accurate. The fourth IJ never worked for the White House Counsel’s Office; he had spent his entire career working at EOIR. The fourth IJ told us that he did not support the fifth candidate because he was too inexperienced, and that he said so to Metcalf when Metcalf asked about him. The fourth IJ, who was Metcalf’s mentor, also opined that Metcalf’s recommendation of the IJ’s wife may have been an attempt by Metcalf to curry his favor.

Metcalf, the Chairman Emeritus described the candidates as “good Republicans.”

**E. Candidates Selected by Goodling for Positions on the Board of Immigration Appeals**

Goodling also acknowledged in her congressional testimony that she “took political considerations into account” in connection with recommending four persons to be appointed to career positions on the Board of Immigration Appeals. Goodling testified that she “assumed” that the rules applicable to IJ hiring “applied to BIA positions as well.”

We determined that on August 30, 2006, Goodling asked an attorney at OLC about the legal framework for hiring the Chair and Vice Chair on the BIA. On September 13, 2006, the OLC attorney sent an e-mail to Goodling attaching an “informal” memorandum and advising that OLC would create “a more formal version for future reference that will include the hiring of ordinary IJs and Board members.”<sup>77</sup> The informal memorandum explained that the Chair of the BIA was a career SES position, and that one of the two Vice Chair positions was career SES and the other was a Schedule A career position. The memorandum noted further that the other Board members were Schedule A career positions.

Despite this advice, Goodling subsequently selected candidates for the four vacant BIA positions based on political or ideological considerations. The four candidates she selected for the vacant BIA positions included Garry Malphrus, whose political affiliations are discussed in Section III.B.4. above. A second candidate had support from Department political appointees, one of whom described the candidate in an e-mail to Goodling as “a Republican.”

A third candidate was a career government attorney who contacted Sampson, whom he knew through church contacts, to express his interest in becoming an IJ. After consulting with Goodling, Sampson learned there was an IJ vacancy in one of the locations requested by the candidate (Hartford, Connecticut). Sampson endorsed the candidate as a “very good guy” in an e-mail to Goodling on November 15, 2006. The same day, Goodling forwarded the e-mail chain to Angela Williamson with the brief instruction: “Please vet.” Documents demonstrate that Williamson ran the Nexis search that same day on the candidate.

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<sup>77</sup> The formal OLC memorandum regarding IJ hiring was not completed until March 29, 2007. The formal OLC memorandum on BIA members was not completed until August 8, 2007.

However, in an e-mail to Sampson on November 27, 2006, the candidate advised that he did not want an IJ position in Hartford for family reasons, and asked if there were IJ positions available in Arlington or Baltimore. Sampson consulted with Goodling, and she reported on December 8, 2006, that there were “no vacancies for IJs in those . . . locations, but . . . I’m checking him out for a BIA spot.”

The candidate interviewed with Goodling on December 18, 2006. Prior to the interview, he was asked to fill out the White House PPO form that sought information about political party affiliation and involvement in the 2000 and 2004 Bush/Cheney campaigns. The candidate completed the form, writing “Republican” and “2004 – 72-Hour Project for Bush/Cheney - New Mexico,” and providing information about his voting address and county. The candidate told us that he believed Goodling had the form in front of her during the interview. He said that Goodling asked him who his favorite Supreme Court Justice was. The candidate also said it was his impression that Goodling used the question “to get at my political views.”

A fourth candidate was a career Department attorney in the Civil Division’s Office of Immigration Litigation who had worked at the White House as the Director of Immigration Security from June 2004 to April 2005. In the fall of 2006, this candidate heard that there would be vacancies on the BIA, and he expressed his interest to Jonathan Cohn, the Department political appointee to whom Jan Williams had turned for IJ candidates (see Section IV.B.2. above). The candidate also asked other political appointees in the Department to recommend him, and he gave his résumé to Rachel Brand, the AAG for the Office of Legal Policy, who in turn contacted Goodling. In an e-mail to Goodling dated August 4, 2006, Brand described the candidate as “completely on the team.”

Goodling and Sampson interviewed the candidate on September 28, 2006, although Sampson was only present for a few minutes of the interview. The candidate told us that Goodling did not ask him any questions about his political affiliations, political campaign activities, or about political contributions.

In an e-mail to OAG Deputy Chief of Staff and Counselor to the Attorney General Courtney Elwood and others dated January 5, 2007, Goodling stated that Attorney General Gonzales had “approved” Malphrus and three other candidates “for appointment to the BIA.”<sup>78</sup> The same day, Elwood (and others, including OLC) received an e-mail

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<sup>78</sup> Gonzales told us that he had no recollection of approving the four candidates, and no knowledge of how they were selected.

from the Civil Division advising that after a “series of discussions” there was “general agreement” that “OLC and [the Civil Division] need to confer regarding whether the current procedures for selecting/appointing Board [of Immigration Appeals] members and/or IJs comport with merit system principles (and are otherwise lawful.)” The e-mail continued: “Until that occurs, the Department should hold off on making any such appointments.” As detailed below, this advice stemmed from concerns developed by the Civil Division in the course of defending the lawsuit, *Gonzalez v. Gonzales* filed by an unsuccessful candidate for an IJ position. The Department followed the Civil Division’s advice, and all hiring of IJs and BIA members was halted. Consequently, the four candidates selected by Goodling were not appointed to the BIA. Later, one of the four was appointed to the BIA under the new hiring process described below.

EOIR Deputy Director Ohlson told us when Goodling informed him that her four candidates were becoming BIA members, she made it plain that EOIR was not supposed to interview them. He said, “It was much more explicit than with any immigration judge positions.”<sup>79</sup>

#### **F. The Hiring Freeze**

The hiring freeze resulted from a lawsuit filed on September 30, 2005, by Guadalupe Gonzalez, a career government immigration lawyer and the Chief Counsel for the U.S. Immigration and Customs Enforcement (ICE) in El Paso, Texas. In her suit against the Department, she alleged that she was discriminated against based on her gender and national origin (Hispanic) when she was not selected for an IJ position in November 2004. The two applicants who were hired were ICE attorneys junior to Gonzalez, and one was her direct subordinate. Both persons hired were direct appointments who had been provided to EOIR by Sampson.

The Civil Division attorneys representing the Department in the litigation were in contact with the OAG and ODAG to obtain information about the IJ hiring process. In conducting their factual investigation, the Civil Division attorneys interviewed Sampson on December 11, 2006, to learn about the OAG’s involvement in selecting IJs. Sampson explained

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<sup>79</sup> Finally, we found that in a separate example of political screening, Goodling contacted Associate Deputy Attorney General David Margolis to inquire about Ohlson, who was being considered for the position of EOIR Director, after Rooney had announced his retirement in February 2007. According to Margolis, Goodling asked: “As to your friend Kevin Ohlson, can you tell me whether he’s a D or an R?” Margolis told us that he told Goodling that Ohlson was a career Department attorney, but that he may have been more “politically attuned” to Republicans than to Democrats.

how the OAG was exercising the direct appointment authority, and how that differed from past practice in which EOIR identified and selected the candidates. Sampson stated further that his sources for candidates were the White House and recommendations from Members of Congress. The Civil Division attorneys' notes reflect that Sampson acknowledged that the process typically resulted in selection of Republicans.

On January 5, 2007, one of the Civil Division attorneys representing the Department in the IJ lawsuit interviewed Goodling. Courtney Elwood of the OAG was present by telephone for part of the interview.<sup>80</sup> According to the Civil Division attorney, Goodling stated that she contacted the White House to get IJ candidates, and that she also received candidate résumés from Members of Congress and from individuals recommending specific people. She stated that she and Angela Williamson were responsible for screening candidates before sending them to EOIR for interviews.

In an e-mail memorializing the interview, which was sent to several Civil Division attorneys on January 7, 2007, the Civil Division attorney stated: "Monica made clear that she does not inquire about or consider political affiliation in generating candidates." Elwood, who was not present for the entire interview, told us that she recalled that Goodling "equivocat[ed]" when asked whether she considered political factors. Elwood stated further that Goodling "tried to dodge [the question] and then maybe was pinned down."

However, the Civil Division attorney told us that he had asked Goodling whether political considerations played a role in IJ hiring, and Goodling replied that they did not. The Civil Division attorney added "I did specifically ask her whether political affiliation was taken into account. She told me no."

Numerous memoranda written shortly after the Civil Division interviewed Goodling were circulated among the OAG, OLC, and the Civil Division, and they also reported that Goodling stated that she did not inquire about or consider political affiliation in generating IJ candidates.

As noted above, the day after the Civil Division attorney interviewed Goodling, the Civil Division sent an e-mail to Elwood, OLC, and others expressing concerns that the "current procedures for selecting/appointing Board members and/or IJs" did not comport with "merit system principles."

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<sup>80</sup> The Civil Division attorney memorialized the interview in contemporaneous notes and in an e-mail he drafted 2 days later.

As a result of the Civil Division's and OLC's legal analyses of the manner in which the direct appointment authority had been exercised, in early January 2007 the Department suspended all hiring of BIA members and of IJs.

## **VI. The Current Process for Hiring Immigration Judges and Board of Immigration Appeals Members**

### **A. Immigration Judges**

On April 2, 2007, Attorney General Gonzales approved a new process to fill immigration judge positions. The new process was the result of consultation among the OAG, ODAG, and EOIR, and was reviewed and approved by OLC, the Justice Management Division (JMD), and OARM. The procedures essentially reversed the Sampson-Williams-Goodling process of direct appointments, and returned most of the screening, evaluation, and selection of candidates to EOIR.

Under the new process, EOIR's Office of the Chief Immigration Judge (OCIJ) reviews applications submitted in response to public announcements for vacancies, and rates each candidate. The OCIJ contacts the candidates with the highest ratings to obtain writing samples and references, and three-member EOIR panels interview all top-tier candidates. The panels consist of two Deputy Chief Immigration Judges or Assistant Chief Immigration Judges and a senior EOIR manager. The panels then create packets for each candidate, including the application materials, résumé, interview summaries, reference summaries, and other information. The packets are reviewed by the EOIR Director (or his designee) and the Chief Immigration Judge, who together select at least three candidates for a vacancy to recommend for final consideration.

A second three-member panel, comprised of the EOIR Director (or his designee), a career SES employee designated by the Deputy Attorney General, and a non-career member of the SES designated by the Deputy Attorney General, then interviews as many of the three candidates as they believe appropriate. This panel recommends one candidate for the Deputy Attorney General to recommend to the Attorney General for final approval. Both the Deputy Attorney General and the Attorney General can request additional candidates if they do not approve the candidates forwarded to them.

According to Ohlson, who was appointed as Director of EOIR in September 2007, the new process for hiring immigration judges is now working efficiently. He said that since the new process was initiated 13 IJs have been hired, and candidates have been selected, but not yet

appointed, for 21 of the remaining 27 vacancies. He said the delay in the appointment of these 21 candidates is due to a new requirement that background investigations be completed before the IJs can be appointed. Ohlson stated that he has seen no evidence of politicized hiring in the new process.

### **B. Board of Immigration Appeals Members**

The revised process for hiring BIA members also requires public advertisements for these positions. Applications for candidates who meet the minimum requirements (e.g., law degree, citizenship, 7 years relevant post-bar legal experience) are reviewed by a three-member panel consisting of the EOIR Director (or his designee), a career SES employee designated by the Deputy Attorney General, and a non-career SES employee designated by the Deputy Attorney General. The panel rates each applicant, conducts reference checks, and interviews top-tier candidates. The panel then recommends to the Deputy Attorney General at least one candidate for each vacancy.

The Deputy Attorney General forwards the name of at least one candidate for each vacancy to the Attorney General. Both the Deputy Attorney General and the Attorney General can request additional candidates if they do not approve the candidates forwarded to them.

According to Ohlson, the new process for hiring BIA members is also working efficiently. He said that since the new process was initiated candidates for five of the seven BIA vacancies have been selected, and are undergoing their background investigations. Ohlson stated that he has seen no evidence of politicized hiring in the new process.

## **VII. Analysis**

The evidence detailed above demonstrates that Kyle Sampson, Jan Williams, and Monica Goodling each violated Department of Justice policy and federal law by considering political or ideological affiliations in soliciting and evaluating candidates for IJs, which are Schedule A career positions, not political appointments. Further, the evidence demonstrates that their violations were not isolated instances but were systematic in nature. The evidence demonstrates further that Goodling violated Department policy and federal law by considering political or ideological affiliations in selecting candidates for the BIA.

In an e-mail on October 8, 2003, Sampson outlined a new process for hiring IJs that listed the White House as the sole source for generating candidates. We found that Sampson's process, which treated the appointments like political appointments, was implemented in the

spring of 2004. Sampson acknowledged that “in the sense that names were solicited from the . . . White House offices that were involved in political hiring, [we] were only considering essentially Republican lawyers for appointment.” Scott Jennings, who worked at the White House Office of Political Affairs, confirmed that IJ appointments were “treated like other political appointments,” that the White House’s sources for candidates were all Republican, and that candidates were screened for their “political qualifications.” Consequently, Sampson’s process – used and refined by Williams and then by Goodling – created a pool of candidates who had been selected because of their political or ideological affiliations.

As implemented by Sampson, and followed by Williams and Goodling through the end of 2006, the Attorney General’s Office controlled the process for selecting IJs, soliciting candidates, and informing EOIR who was to be hired for each position. Sampson delegated responsibility for IJ hiring when he did not exercise it himself to the Department’s White House Liaison (Williams and then Goodling), whose principal responsibilities involved the screening and hiring of political appointees.

Although the White House remained the principal source of IJ candidates throughout this time period, Sampson, Williams, and Goodling also turned to alternate sources, which also yielded candidates who had been screened for their political or ideological affiliations.

The fact that EOIR was occasionally allowed to publish vacancy announcements for IJ vacancies did not change the selection process. The evidence showed that applicants who applied to these public announcements were not considered by the OAG – even when endorsed by EOIR – unless they also were supported by politically affiliated sources.

One of the results of this tightly controlled selection process among Sampson, Williams, and Goodling was that it left numerous IJ vacancies unfilled for long periods of time when they could not find enough candidates, even when EOIR pleaded for more judges and told the OAG repeatedly that EOIR’s mission was being compromised by the shortage of IJs. We found that all of the people who applied in response to vacancy announcements for IJs were ignored, even when the OAG could not identify political candidates to fill the open IJ positions.

In the sections that follow, we describe our analysis of the conduct of Sampson, Williams, Goodling, and others who were involved in the selection of IJ and BIA candidates.

## **A. Kyle Sampson**

We concluded that Sampson violated Department policy and federal law, and committed misconduct, by considering political or ideological affiliations when hiring IJs. Sampson knew that, historically, most IJ hiring was handled by career employees at EOIR. However, he moved that authority from EOIR and placed it in the OAG. Sampson told us that he had understood it was appropriate to consider “political criteria” in selecting IJs. He stated that his understanding was based on a conversation he had with Ohlson in April 2004 about the Attorney General’s direct appointment authority for IJs, combined with advice he claimed to have received from OLC that IJ hiring was not subject to civil service requirements.

However, as detailed above, Ohlson said he did not tell Sampson that direct appointments were exempt from federal civil service laws. Ohlson said he merely noted to Sampson that direct appointments had been used occasionally in the past to appoint IJs. Nor does the evidence support Sampson’s claim that OLC advised him that civil service laws did not apply to the career IJ positions. Neither OLC nor we could find any record of OLC ever providing such advice to Sampson, and the two officials he identified as possible sources of the advice – AAGs Goldsmith and Levin – had no recollection of advising Sampson that civil service laws did not apply to IJ hiring. To the contrary, the evidence showed that neither would have offered legal guidance on this point informally. While it is possible that Sampson mistakenly inferred on his own that civil service laws did not apply to direct appointments by the Attorney General, there is no evidence that he was ever so advised by OLC.

Moreover, as described in the document attached to his October 8, 2003, e-mail, Sampson sought to use the Attorney General’s direct appointment authority to appoint candidates as IJs who had been recommended by the White House and screened using political criteria well before those conversations with OLC and Ohlson supposedly occurred. It is clear from Sampson’s October 8 e-mail that he contemplated using political considerations in IJ hiring at least 6 months before his conversation with Ohlson; at least 9 months before Levin (one of the OLC Assistant Attorney Generals he cited as a possible source of OLC’s legal advice) became the head of OLC in July 2004; and before any conversation he had with Goldsmith (the other OLC Assistant Attorney

General cited by Sampson), who did not begin serving in OLC until October 3, 2003, just 5 days before Sampson's e-mail.<sup>81</sup>

In sum, we concluded that the evidence did not support Sampson's claim that he was advised by OLC that IJ positions were exempt from federal law governing career civil service positions.

Because the Attorney General's direct appointment authority to hire IJs is a departure from the usual Department career hiring practices, we considered the possibility that Sampson may have been confused or mistaken about whether civil service laws apply to such hires. Yet, even if Sampson was confused or mistaken in his interpretation of the rules that applied to IJ hiring, we do not believe that would excuse his actions. His actions, which were carried out over a lengthy period of time and were not based on formal advice from anyone, systematically violated federal law and Department policy and constituted misconduct.

## **B. Jan Williams**

Similarly, Jan Williams violated Department policy and federal law by considering political or ideological affiliations in the appointment of IJs. When Williams became the Department's White House Liaison in April 2005, Sampson delegated to her much of the responsibility for identifying and selecting IJ candidates. Most of Williams's duties involved finding candidates for political appointments, whether Schedule C or non-career SES. Williams stated to us that she did not know that IJs were not political positions. She said that Sampson directed her to contact the White House to obtain candidates for IJ positions. She said that "Mr. Sampson is a lawyer and as Chief of Staff to the Attorney General I assumed that if he had asked me to call someone, it was appropriate for me to do so."

Like Sampson, Williams turned to the White House Office of Political Affairs and the White House Presidential Personnel Office to obtain candidates for IJ positions. As with Sampson's candidates, Williams's selections indicated that Republican Party affiliation was critical to the selection process, even more important than experience with immigration law. When the White House was not able to identify candidates, Williams turned to other Department political appointees and to the Federalist Society, while ignoring the candidates supplied by

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<sup>81</sup> As noted earlier, Whelan, the Acting AAG at OLC prior to Goldsmith's appointment, told us that he (like Goldsmith and Levin) had no recollection of advising Sampson that civil service laws did not apply to IJ hiring.

EOIR, which was becoming increasingly desperate to fill vacancies as the immigration case load continued to grow. When one Department political appointee provided names of potential IJ candidates, Williams responded “are they like you and me?”

We found that Williams used political criteria to screen candidates for IJ positions. However, Williams was not an attorney and was following her supervisor’s guidance. Moreover, the politicized system for selecting IJ candidates was already in place when she inherited that responsibility. Under these circumstances, we concluded that she did not commit misconduct in her selection of IJ candidates.

However, we had concerns about the accuracy of Williams’s statements to us. Prior to being questioned by us about IJ hiring, Williams read into the record a prepared statement. In that statement, she made numerous representations concerning her role in the hiring of IJs. Many of those representations were inaccurate. Other statements she made in response to our questions were also inaccurate. After the interview, Williams sent us an e-mail that was not accurate, as the evidence detailed below shows.

In her prepared statement, Williams claimed that she had been “open to candidates from all different sources.” She also claimed that she would “ask [EOIR Deputy Director] Ohlson to brainstorm with me about ideas for openings,” and that she “actively considered” applicants who applied in response to the public announcements. The evidence, however, showed that Williams was only open to candidates recommended by the White House or by fellow political appointees. The evidence also showed that Williams did not “actively consider” individuals who applied in response to the public announcements for IJ vacancies. To the contrary, she ignored the packets of applicant résumés forwarded to her by Ohlson from these announcements. We found no evidence that any of those applicants were considered in any way unless they were independently recommended by a source Williams knew to be Republican. Further, we found no evidence that Williams asked to “brainstorm” with Ohlson for ideas on candidates for vacancies, and Ohlson denied that she did. Williams consulted with the White House Office for Political Affairs, and with the Federalist Society, but not with EOIR. Under the process implemented by the OAG, EOIR and Ohlson’s role were confined to processing the presumptive hires who had been selected by Williams, and to pleading with Williams to consider packets of applicant résumés because EOIR was in need of additional IJs to handle a increasing case load.

During our interview of her, Williams elaborated on her claim that she sought candidates from EOIR: “I remember saying ‘Kevin [Ohlson],

don't you have anyone [for an IJ position]?" and "I remember asking Mr. Ohlson on several occasions, 'don't you have any candidates for this post[?]'” Again, as detailed above, we found the exact opposite was true. Williams asked only for the locations of vacancies and then selected the candidates to fill those vacancies. The evidence showed that Ohlson had to plead with Williams for candidates, that Williams did not consider the packets of applicant résumés that Ohlson offered, and that Williams ignored specific candidates recommended by Ohlson.<sup>82</sup>

Williams's testimony concerning the Nexis search string she provided to Goodling was also inaccurate. As detailed above, at our interview we showed Williams a copy of the e-mail she sent to Goodling on April 10, 2006, in which Williams provided the Internet search string detailed above. In the text accompanying this search string Williams wrote: "This is the lexis nexis search string that I use for AG appointments." After reviewing the e-mail, Williams told us that she did not recognize the search string and did not remember sending it to Goodling. She stated that she did not know what she meant when she wrote "AG appointments," but asserted that it did not include IJs. At the end of the interview, we asked her to review the document again. She reaffirmed that she did not remember ever using the search string on any candidate.

In an e-mail Williams sent the day after the interview, she claimed that she used the search on one candidate for a political position in the Environment and Natural Resources Division (ENRD) and that she deleted from the search "words that I thought were not appropriate . . . taking [out] words like homosexual, religious, and similar social and/or personal 'buzz words.'"

Williams's explanation is not accurate in several respects. Her claim that she deleted "buzz words" from the single search she acknowledged conducting is contradicted by evidence we received from LexisNexis. That evidence shows that Williams conducted 24 additional searches using the search string, and each time the search included terms such as "homosexual" or the other "buzz words" identified by Williams.

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<sup>82</sup> As detailed above, starting in July 2005, Ohlson sent a series of e-mails to Williams stressing the need to fill IJ vacancies because of the "tremendous pressure" of EOIR's growing caseload. In a July 22, 2005, e-mail to Williams, Ohlson repeated this theme, and suggested that Williams authorized a "nation-wide advertisement soliciting applications for IJ positions." He reassured her, however, that the process would only create a pool of applicants, and that Williams would retain her ability to select candidates to be hired. Even so, Williams did not act on the packets of résumé applications Ohlson forwarded to her.

### **C. Monica Goodling**

The evidence demonstrated that Goodling violated Department policy and federal law, and committed misconduct, by considering political or ideological affiliations in the appointment of IJs and BIA members. Goodling admitted in her congressional testimony that she “took political considerations into account” in IJ and BIA hiring. She stated that Sampson had told her that IJ hiring was not subject to civil service laws, and that she “assumed” those laws did not apply to BIA member hiring. The evidence showed that she used political considerations in assessing candidates for both IJ and BIA positions.

As detailed above, our investigation found that she solicited and received résumés for IJ and BIA candidates from the White House, from Republican members of Congress, the Republican National Lawyers Association, the Federalist Society, and from individuals with Republican Party affiliations. We found no evidence that she solicited candidates from any sources she thought had Democratic affiliations.

Goodling also admitted in her congressional testimony that she researched Internet sites to learn whether candidates for IJ positions had made financial contributions to political parties. She admitted further that she conducted computer searches on such candidates. Evidence from our investigation revealed that she used the Nexis search string she had received from Williams to conduct research on IJ candidates. Both Angela Williamson and the OIPL employee who briefly assisted Goodling in late 2006 testified to conducting such searches, and the December 5, 2006 e-mail from Goodling to the OIPL employee contains the entire Williams search string, with a few additional terms added by Goodling. We also found documents that were obtained through the search string, which bore markings showing that the search string had been used. Furthermore, we found that Goodling ran the search string on candidates who had applied in response to the public announcements and whose résumés were forwarded in packets by EOIR.

We also found several instances in which candidates for IJ or BIA positions were asked to fill out the White House PPO form, which sought information about the candidates’ political party affiliation and about their activities to support the Bush/Cheney campaigns.

Goodling asserted that she had been advised by Sampson that it was appropriate to take political factors into account in hiring IJs. Even assuming Goodling received this advice, her conduct showed that she knew that political factors could not be considered in hiring for career IJ positions. First, she told several IJ or BIA candidates that they should not have been asked to complete the White House PPO form that sought

information about political affiliation and voting history. Despite that knowledge, Goodling conducted research on IJ candidates to learn the same kind of information covered by the PPO forms. Second, Goodling's claim that she believed it was appropriate to use political considerations in selecting IJs is inconsistent with the statements she made to the Civil Division attorney handling the *Gonzalez v. Gonzales* litigation. She stated to the Civil Division attorney that she did not use political considerations in selecting IJs, a position she reversed in her immunized testimony before Congress. If Goodling actually believed that political considerations were appropriate in IJ hiring, and if she had been told by Sampson that OLC had so advised, it is reasonable to believe that she would have said so to the Civil Division attorney, rather than making such inaccurate statements.

Goodling also acknowledged that Sampson never told her that the civil service laws did not apply to BIA member hiring. Rather, she testified that she "assumed" that to be the case. Even if that assumption was initially justified, and we believe it was not, we determined that Goodling subsequently asked an OLC attorney for an opinion regarding the legal framework for hiring the Chair and Vice Chair of the BIA. She was advised that all BIA positions were either Schedule A career or SES career positions. Yet, despite having received this advice, she followed the same procedures she used in selecting IJ candidates, and considered political or ideological affiliations in recommending four individuals for BIA positions.<sup>83</sup>

Finally, we concluded that Goodling engaged in misconduct by making misrepresentations to the Civil Division attorneys representing the Department in the *Gonzalez v. Gonzales* litigation. An attorney from the Civil Division interviewed Goodling in January 2007 to learn how the OAG had handled the IJ hiring process. In the interview, Goodling told the attorney that she did not take political considerations into account in IJ hiring. The Civil Division attorney's recollection of this point was specific and was corroborated by the memoranda he wrote contemporaneously and circulated within the Department in connection with deliberations about how to handle the lawsuit.

#### **D. EOIR Director and Deputy Director**

We concluded that neither EOIR Director Rooney nor Deputy Director Ohlson violated Department policy or federal law, or engaged in

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<sup>83</sup> We also note that the political screening Goodling conducted on IJ candidates (even candidates provided by the White House) caused significant delays in filling IJ vacancies and significantly contributed to an increasing number of unfilled IJ positions.

misconduct, with respect to hiring IJs or BIA members.<sup>84</sup> First, we found no evidence that Rooney or Ohlson themselves considered political or ideological affiliations in recommending candidates for IJ positions. Furthermore, we credited their assertions that they did not, in fact, know that the OAG considered political or ideological affiliations in selecting candidates. Rooney and Ohlson also said they did not know that the White House Office of Political Affairs and the White House Presidential Personnel Office were involved in identifying and screening IJ candidates.<sup>85</sup> We also found that Rooney and Ohlson did not know that the OAG was screening immigration judge candidates to seek conservatives or Republicans.

Nonetheless, we believe that Rooney and Ohlson had sufficient evidence for them to have realized that political or ideological affiliations played a role in the selection process, and we believe that they should have brought this issue to the attention of senior leaders at the Department. They noted to us that the fact that the OAG took control of the IJ and BIA hiring processes was not, in itself, evidence of impropriety, because the Attorney General had the statutory and regulatory authority to make direct appointments for those positions. Moreover, they noted that the quality of the candidates whose résumés reflected Republican or conservative ideological affiliations was not so deficient as to necessarily raise their suspicions. But we believe that several factors – including the high number of candidates whose résumés reflected Republican credentials, the sponsorship of candidates by Republican Members of Congress, the knowledge that the Department’s White House Liaison was involved in selecting and conducting research on the candidates, and EOIR’s inability to get the OAG to consider any applicants identified through public announcements – should have put Rooney and Ohlson on notice of concerns that political or ideological affiliation influenced the selection of candidates for positions that both knew were career positions subject to civil service protections. For example, the episode in which a Senator chose the candidate for a specific IJ position and later was allowed to pick a second candidate when the first withdrew should have raised concerns that career IJ

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<sup>84</sup> OPR Counsel H. Marshall Jarrett recused himself from the evaluation of EOIR Director Rooney’s and Deputy Director Ohlson’s conduct.

<sup>85</sup> The evidence showed a few instances in which EOIR was aware that a candidate forwarded by the OAG had been recommended by the White House, but the information provided to EOIR did not indicate that the White House Office of Political Affairs or the White House Presidential Personnel Office had been involved. Both Rooney and Ohlson told us that they thought the candidates supported by the White House had been recommended based on personal connections rather than political affiliations.

positions were being treated like political U.S. Attorney and Article III federal judge positions, and that political affiliation was potentially influencing the appointment of career Department attorneys.

To their credit Rooney and Ohlson made repeated efforts to persuade the OAG to allow them to post advertisements to attract quality candidates for IJ positions, to persuade the OAG to consider candidates who responded to the advertisements, and to urge the OAG to select more IJs to address the growing case load. We also found evidence that on at least one occasion Ohlson brought to the attention of an ODAG official the problems created by the increasing IJ vacancies when he was not able to get timely action on IJ candidates from Goodling. However, although Rooney and Ohlson took some actions to address the increasing number of IJ vacancies, we concluded that they had enough information about issues of concern in the selection process that they should have brought these issues to the attention of other senior Department officials, such as to senior career officials in the ODAG, or to the Office of the Inspector General or the Office of Professional Responsibility.

## **CHAPTER SEVEN OTHER ISSUES**

In this section of the report, we discuss whether EOUSA Deputy Director John Nowacki provided senior department officials with inaccurate information about whether Goodling used political or ideological affiliations to screen candidates for EOUSA detail positions, and whether Goodling discriminated against a detailee candidate on the basis of her alleged sexual orientation.

### **I. John Nowacki**

Nowacki graduated from Evangel College in 1994 and from Regent University Law School in 1998. He worked in the Department's Office of Public Affairs from November 2003 to March 2006, and then served a 6-month detail as a Special AUSA in the Eastern District of Virginia. In August 2006, he transferred to EOUSA as a Schedule C, political appointee as an EOUSA Deputy Director.

Nowacki told us that he was contemporaneously aware that Goodling used political affiliation to screen EOUSA detail candidates. Nowacki cited the applicant for an EOUSA counterterrorism detail (Candidate 1, described above) as an example of how Goodling discriminated against Democrats. Nowacki also stated that EOUSA Associate Counsel Voris told him that Goodling rejected extending an EOUSA detail because the detailee was a Democrat. Nowacki stated "in a number of cases Monica Goodling did take political considerations into account in detailee hiring."

We found that Nowacki concealed from Department officials his knowledge that Goodling used political affiliation when assessing candidates for EOUSA details after the Department received an inquiry from a reporter regarding this issue. On March 29, 2007, Ted Goldman, a reporter for the Washington, D.C. legal weekly publication *Legal Times*, sent an e-mail to Tasia Scolinos and Brian Roehrkasse, then Director and Deputy Director of OPA, and Nowacki seeking comment on an allegation that Goodling had used politics to assess candidates for EOUSA detail positions. Goldman's e-mail read in part:

Several longtime ausa's are telling me that the detailee [sic] program at the eousa has become far more politicized than ever before. here's the quote i'm using. if you'd like to give me a response, i'd very much appreciate it:

“Historically, there are assistants from all over the country, EOUSA picks up their salaries, it’s been going on a long time, it’s a big deal,” says another assistant U.S. Attorney. “She [monica goodling] has taken over the vetting of detailees and did it in a very political way. It’s no longer the recommendation of assistant U.S. Attorneys or merit, but ‘Are you active in politics, which party are you active for,’ it’s very blatant, and not very subtle. If you’re not the right stripe, you’re not coming to Washington.”

Shortly after receiving this e-mail, Nowacki forwarded it to Acting EOUSA Director Steven Parent. In his e-mail, Nowacki commented, “Steve – Let's talk about this tomorrow. It’s crap.” Similarly, Nowacki sent an e-mail to Scolinos and Roehrkasse regarding Goldman’s query and commented, “This is, to the best of my knowledge, largely crap. Let’s discuss tomorrow.” When we asked him about these e-mails, Nowacki first stated that he did not recall what he meant when he described the allegation as “crap.” Nowacki later stated that when he used the word “crap” he was being dismissive of the allegations.

During our interview of Nowacki, however, he acknowledged that the *Legal Times*’ allegations were accurate, because Goodling was taking political affiliation into account in making decisions about detailees.

We found that on March 30, 2007, the day after the reporter’s inquiry, Parent, Nowacki, and Scolinos exchanged drafts of a statement to send Goldman in response to his query. Several senior officials in the OAG were also copied on some of the e-mails containing draft responses. The sequence of e-mails and their recipients showed that at 11:26 a.m. on March 30, Nowacki e-mailed Scolinos a draft reply to Goldman that stated in part:

The process to select candidates has nothing to do with party affiliation. To suggest that those career employees who have been selected to serve details to EOUSA is based on anything but professional experience unfairly detracts from those career employees and is simply wrong.

Nowacki acknowledged in his interview that he drafted this statement, and said he thought it was edited by Parent. Nowacki argued the statement in the draft that “[t]he process to select candidates has nothing to do with party affiliation” was accurate at the time it was made, because Goodling was no longer with the Department and the statement was written in the present tense. Nowacki claimed that he thought he was drafting a description of the current practice. When asked about the last sentence of the document, Nowacki stated that he

thought that sentence also was accurate because he had no evidence that Goodling used political affiliation to select candidates; he only had evidence that Goodling used political affiliation to veto candidates.

Several minutes after sending the first e-mail on March 30, at 11:33 a.m. Nowacki e-mailed Scolinos an alternative draft response to be issued in Parent's name that stated in part:

In my tenure with EOUSA, I am not aware of any attempt to screen candidates on the basis of party affiliation by anyone, including Monica Goodling; that issue simply has never come up in any interviews in which I have participated. To suggest that those career employees who have been selected to serve details to EOUSA is based on anything but professional experience unfairly detracts from those career employees and is simply wrong.

At 12:16 p.m., Scolinos e-mailed Parent a draft response to the *Legal Times*' allegations containing the language quoted above from Nowacki's 11:33 a.m. e-mail. The e-mail was copied to OAG Deputy Chief of Staff Courtney Elwood, Counselor to the Attorney General Matthew Friedrich, Acting OAG Chief of Staff Chuck Rosenberg, Roehrkasse, and Nowacki. Scolinos stated in the e-mail that the quotation would go to the *Legal Times* in Parent's name, and that she wanted "to confirm that you are comfortable with this and that this is accurate."

Nowacki told us he did not tell any of the recipients, including the three senior OAG officials, that he had personal knowledge that Goodling did in fact use political affiliation to assess EOUSA detailee candidates.

Ultimately, the Department did not respond to the *Legal Times* e-mail inquiry that Goodling had politicized the hiring of EOUSA detailees. Scolinos told us that OPA may not have responded because both she and Rosenberg were concerned that they did not know all the facts. Similarly, Parent said he did not want the statement to be attributed to him since he was not sure of the facts.

However, we concluded that Nowacki's actions in suggesting these responses, which he knew to be inaccurate, were improper and constituted misconduct. Nowacki acknowledged in our investigation that he knew at the time he wrote this statement that Goodling had used political affiliation to screen at least some EOUSA detail candidates. He reasoned that the draft statement was true because it would have been attributed to Parent, who did not know that Goodling used political affiliation to evaluate EOUSA detailee candidates. Nowacki did not

disclose his knowledge to EOUSA, OPA, or the OAG. Instead, he told his supervisor and OPA senior managers that the allegations that Goodling had politicized the detailee hiring process were “crap,” and he drafted a response for public release that contained inaccurate statements. Nowacki also failed to inform EOUSA, OPA, and the OAG that they were considering issuing a public statement that was inaccurate.

## **II. Goodling’s Discrimination Against a Detailee on the Basis of Sexual Orientation**

In this section, we examine whether Goodling discriminated against an AUSA detailee on the basis of her alleged sexual orientation.<sup>86</sup>

In October 2005, an AUSA was detailed to EOUSA to work on Native American issues. She had been an AUSA since 2002, and had previously been a Republican elected office holder in her home state. As discussed below, we found evidence that, in part on the basis of this AUSA’s alleged sexual orientation, Goodling prevented an extension of the AUSA’s detail in EOUSA, attempted to prevent her from obtaining a detail to the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) in the Office of Justice Programs (OJP), and attempted to prevent her from obtaining a position with the Office on Violence Against Women (OVW).

### **A. EOUSA Detail**

In the summer of 2006, the AUSA’s supervisor at EOUSA, Dan Villegas, offered her an extension of her EOUSA detail, which she accepted. Later, in October 2006, Villegas and the U.S. Attorney for whom she had worked told the AUSA that her EOUSA detail would not be extended. Villegas told the AUSA that EOUSA Deputy Director Nowacki had been instructed by Goodling not to extend the detail. The AUSA said that Villegas also told her this was a political decision and was not based on her performance. In fact, the AUSA’s 2006 performance appraisal, which covered her detail at EOUSA, rated her performance as “Outstanding” on all performance elements, the highest possible appraisal.

Villegas told us that the AUSA had done a great job and he wanted to extend her detail. He said he asked Deputy Director Nowacki to

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<sup>86</sup> We learned of this allegation during the course of our investigation of Goodling’s actions, and therefore address it in this report. We did not, however, conduct a comprehensive examination of whether Goodling discriminated on the basis of sexual orientation against others.

extend the detail, but Nowacki said he would have to check. Villegas did not specify with whom Nowacki had to consult.

Nowacki told us that he asked Goodling whether the AUSA's detail should be extended, and Goodling said that it should be terminated. Nowacki said that when he raised the issue of the AUSA's detail extension with Goodling, he told Goodling that he did not have a problem extending it because "everyone says she does a great job, she's well regarded." Nowacki said that Goodling told him that EOUSA details should only be for 1 year. Nowacki said that Goodling then brought up the issue of the AUSA's "relationship in progress" with her U.S. Attorney "and made it clear just that she thought that was inappropriate." Nowacki said that Goodling's decision was based, at least in part on the allegations that the detailee and her (female) U.S. Attorney were involved in a sexual relationship. Nowacki said he informed Villegas that the detail would not be extended because of a new EOUSA policy that strictly limited details to 1 year.

Villegas told us he did not believe Nowacki's explanation for the termination of the detail because Villegas was aware of only two people whose details ended after 1 year – this detailee and another detailee from the same USAO.

EOUSA Associate Counsel Voris told us she also supported the extension of the AUSA's detail, but that Goodling opposed it. Voris said that the AUSA was one of two AUSAs in the country with credibility with domestic violence groups, which was a significant issue in the AUSA's work in EOUSA on Native American matters. Voris said she told Goodling and Nowacki that the AUSA was doing a good job. Voris said she told Nowacki that she disagreed with the denial of the detail extension, but Nowacki told her that his hands were tied.

Several witnesses told us that Goodling's opposition to the extension of the detail was based at least in part on the AUSA's alleged sexual orientation. Voris said that when she told Goodling she supported the detail extension, Goodling responded that Voris did not know the AUSA as well as she thought she did. Voris said that Goodling then told her that the detailee had a homosexual relationship with the U.S. Attorney in the AUSA's USAO and that the two took trips together at government expense.

Voris told us she believes that the AUSA's alleged sexual orientation was a factor in Goodling's decision not to extend the detail, but did not know if it was the only reason. Voris said that Goodling's decision may also have been due to an allegation that the AUSA and U.S.

Attorney took government trips together and because the AUSA allegedly received large bonuses.

EOUSA Director Battle also told us that Goodling opposed the detail extension because Goodling had problems with the AUSA's alleged sexual orientation.

EOUSA Deputy Director Nowacki told us that Goodling had told him that the AUSA and her U.S. Attorney were involved in a relationship, and that the staff at the USAO resented the relationship. Nowacki said that Goodling told him this because Nowacki had informed Goodling that the U.S. Attorney was upset with him for refusing to extend the detail. Nowacki stated that he came away from his meeting with Goodling with the sense that her personal views on homosexuality probably played a role in Goodling's decision not to extend the detailee's detail.

John Kelly, the EOUSA Chief of Staff and Deputy Director, told us he heard rumors about the alleged relationship between the AUSA and the U.S. Attorney before the detailee had arrived at EOUSA for her detail. He said he told both Battle and Goodling about the rumors, which included both the sexual relationship and allegations that the U.S. Attorney gave the AUSA large bonuses. According to Kelly, Goodling reacted to this information by putting her head in her hands and asking why no one had told her about this information before the AUSA was detailed to EOUSA.

The AUSA told us that the rumors were false and that she was not involved in a sexual relationship with her U.S. Attorney. Similarly, the U.S. Attorney denied that she and the AUSA were involved in a sexual relationship.

## **B. SMART Detail**

After the AUSA learned in October 2006 that her EOUSA detail would not be extended, she applied for a detail with the Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) Office in OJP.<sup>87</sup> According to the AUSA, on November 1, 2006, she interviewed with OJP Chief of Staff Nick Tzitzon, who offered her the detail position at the end of her interview. However, she said she did not hear from Tzitzon for several months.

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<sup>87</sup> The SMART Office's mission is to prevent convicted sex offenders from repeating their crimes. The SMART Office establishes and maintains the standards for the Sex Offender Registration and Notification Program and also oversees grant programs regarding sex offender registration and notification.

On December 18, 2006, William Mercer, who at the time was the Principal Associate Deputy Attorney General, sent an e-mail to OJP Assistant Attorney General Regina Schofield asking when the AUSA was to assume her duties in the SMART Office.<sup>88</sup> Schofield replied that “Monica called Nick [Tzitzon] and expressed concerns abt the detail but never countered her references or offered alternatives for immediate staffing concerns. After giving her a month, I told Nick to release the paperwork on [the detailee] last week.”

Schofield told us she told Mercer that she wanted to hire the detailee for the SMART Office. According to Schofield, however, Goodling had called Tzitzon and told him that she did not want OJP to hire the detailee, but Goodling did not explain why. Tzitzon confirmed to us that Goodling called him and asked that OJP put the detail on hold and refused to give Tzitzon any reasons for her request, saying that she could not tell him the reasons.

Tzitzon’s account of his conversation with Goodling was confirmed by former OJP Deputy AAG Cybele Daley. Daley told us that she was in Tzitzon’s office either during his telephone conversation with Goodling or shortly thereafter. She stated that Tzitzon told her that Goodling had requested that OJP not accept the AUSA as a detailee, and that she did not provide reasons for that request.

As a result of Goodling’s request, Schofield called several people to try to find out Goodling’s reasons. Schofield told us that she learned from discussions with several people, although she did not recall who, that it was alleged that the AUSA had a homosexual affair with her supervisor, a U.S. Attorney. Schofield told us that allegation was not relevant to her assessment of the AUSA’s qualifications, and she offered the AUSA the detail despite Goodling’s objections. On February 1, 2007, the AUSA was detailed to the SMART Office, despite Goodling’s request that the AUSA not be given the detail.

Schofield said the AUSA was doing a good job at the SMART Office, and would renew her SMART detail. The AUSA told us she was not aware that Goodling had opposed her detail to the SMART Office.

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<sup>88</sup> Mercer told us that he had encountered the AUSA at a social function, and she discussed with him the fact that she had not heard back from OJP regarding the SMART detail. Mercer said that because he knew that the AUSA’s EOUSA detail was ending, and because he wanted her to be detailed to the SMART Office, he sent an e-mail to Schofield asking about the AUSA’s status. In his e-mail response to Schofield, Mercer indicated he was pleased that OJP would offer the AUSA the detail.

### **C. Detail to Office of Violence Against Women**

We also learned that in 2006 Goodling had tried to prevent the AUSA from obtaining a detail to the Office of Violence Against Women (OVW) because of Goodling's belief about the AUSA's sexual orientation. At the time, Mary Beth Buchanan was the Acting Director of OVW in addition to being the U.S. Attorney for the Western District of Pennsylvania. Buchanan stated that in approximately December 2006, when the AUSA's detail at EOUSA was ending, the AUSA's U.S. Attorney asked Buchanan to consider hiring the detailee at the OVW.

Buchanan said she called EOUSA Director Battle to find out why the AUSA's detail was not going to be extended. Battle told her that she should talk to Goodling. Buchanan said that Goodling told her that the AUSA and the U.S. Attorney were involved in a relationship, and that it would not be appropriate for the Department to do anything to further that relationship, such as employing them in the same geographic area. According to Buchanan, at that time the U.S. Attorney was trying to find a position in the Washington, D.C. area. Buchanan said she understood that Goodling was telling her not to select the AUSA because it would look like the Department was sanctioning the homosexual relationship. However, Buchanan said that the AUSA had never actually applied for a detailee position in the OVW.<sup>89</sup>

### **D. Analysis**

We concluded that Goodling refused to extend the AUSA's EOUSA detail, and tried to block her SMART detail and potential detail with OVW, because of Goodling's perception of the AUSA's sexual orientation. The AUSA had done well in the detailee position in EOUSA, and was well qualified for the SMART detail, yet Goodling prevented the extension of her EOUSA detail and sought to prevent her from obtaining other details. Several witnesses provided credible testimony that one of the reasons for Goodling's actions was the alleged sexual orientation of the AUSA.<sup>90</sup>

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<sup>89</sup> Although Buchanan stated that the AUSA never applied for an OVW detail, we found a December 9, 2006, e-mail from the AUSA to Buchanan in which the AUSA told Buchanan that her EOUSA detail was ending, and that she was available to assist Buchanan at the OVW. The AUSA attached her résumé to that e-mail. There is no evidence that Buchanan responded to the AUSA's overture.

<sup>90</sup> As noted above, several witnesses told us that Goodling may have opposed the AUSA's EOUSA detail extension, or her potential details to the SMART Office or to the OVW, in part because of the claim that the AUSA had benefited financially from the alleged relationship with her supervisor, the U.S. Attorney, by allegedly improperly receiving large bonuses and taking trips at government expense with the U.S. Attorney. Even if these allegations were true – and we reached no such conclusion – the other

(Cont'd.)

Both 28 C.F.R. Section 42.1(a) and standard OARM job announcements state that Department policy prohibits discrimination based on sexual orientation. We concluded that Goodling's actions violated Department policy and federal law, and constituted misconduct.<sup>91</sup>

In addition, we believe Battle should have raised concerns about Goodling's actions. In this instance, Battle knew that Goodling had considered sexual orientation as a reason to deny the AUSA an extension of her EOUSA detail. As discussed above, Battle also told us that he knew that Goodling was discriminating against a candidate for a career SES position in part on the basis of his political affiliation (EOUSA Deputy Director Candidate #2), and had discriminated against a candidate for an EOUSA detail (Candidate #1) because of his wife's political affiliation. We believe that Battle, as Director of EOUSA, should have raised concerns about Goodling's actions with Goodling's supervisor, Kyle Sampson, the OIG, or OPR.

Finally, we believe that OJP senior management, which resisted Goodling's request to deny the AUSA a detail to the SMART Office, deserves credit. OJP AAG Schofield found the allegations about the AUSA to be irrelevant, and to her credit, even in the face of opposition by an official in the OAG, offered the detail to the AUSA.

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evidence described above indicates that Goodling's actions were motivated at least in part by the AUSA's alleged sexual orientation. Moreover, even if Goodling's acts were based solely on the financial allegations, her actions would be wholly inappropriate. The allegations regarding the AUSA's financial benefits were never formally investigated or even referred for investigation. Goodling's actions, therefore, were based solely on unproven rumors.

<sup>91</sup> The *Civil Service Reform Act* does not specifically reference sexual orientation. However, it is a prohibited personnel practice to "discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant . . ." 5 U.S.C. 2302(b)(10). The Office of Personnel Management has "interpreted this statute [2302(b)(10)] to prohibit discrimination based upon sexual orientation." See <http://www.opm.gov/er/address2/Guide04.asp>.

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## **CHAPTER EIGHT**

### **CONCLUSIONS AND RECOMMENDATIONS**

This investigation examined allegations that Monica Goodling, who worked in the Office of the Attorney General (OAG) as the Department's White House Liaison, inappropriately considered political and ideological affiliations in the selection and hiring of certain Assistant United States Attorneys (AUSA) and career attorneys in the Department, and in approving details of career attorneys to Department offices. We also investigated allegations that former Chief of Staff to the Attorney General Kyle Sampson, Goodling, and Goodling's predecessor as the Department's White House Liaison, Jan Williams, inappropriately considered political and ideological affiliations in selecting immigration judges (IJs) and members of the Board of Immigration Appeals (BIA), all of which are career positions.

As the Department's White House Liaison, Goodling regularly screened candidates for political positions at the Department, and most of the persons Goodling screened or interviewed had applied for political positions. However, Goodling also approved the hiring of career AUSAs by interim U.S. Attorneys. She also approved the selection of career attorneys applying for details in several Department offices. In addition, she interviewed many candidates who were interested in obtaining any position in the Department, whether career or political, and she sometimes sought to place these individuals in career positions.

It is not improper to consider political or ideological affiliations in making hiring decisions for political positions. However, both Department policy and federal law prohibit discrimination in hiring for career positions on the basis of political affiliations.

Our investigation found that Goodling improperly subjected candidates for certain career positions to the same politically based evaluation she used on candidates for political positions, in violation of federal law and Department policy.

With regard to requests from interim U.S. Attorneys to hire AUSAs, we determined that in two instances Goodling considered the candidate's political or ideological affiliations when she assessed the request. For example, in one instance when the interim U.S. Attorney in the District of Columbia sought approval from Goodling to hire an AUSA for a vacant position, Goodling responded that the candidate gave her pause because judging from his résumé he appeared to be a "liberal Democrat." Goodling also stated that because Republicans had lost control of Congress after the November 2006 elections, she expected that

Republican congressional staff might be interested in applying for AUSA positions in Washington. Eventually, after the interim U.S. Attorney complained to Sampson about Goodling's response to his request, the U.S. Attorney was allowed to hire the AUSA.

The evidence also showed that Goodling considered political or ideological affiliations when recommending and selecting candidates for other permanent career positions, including a career SES position in the Executive Office for U.S. Attorneys (EOUSA) and AUSA positions. These actions violated federal law and Department policy, and also constituted misconduct.

In addition, we determined that Goodling often used political or ideological affiliations to select or reject career attorney candidates for temporary details to Department offices, including positions in EOUSA that had not been filled by political appointees. Goodling's use of political considerations in connection with these details was particularly damaging to the Department because it resulted in high-quality candidates for important details being rejected in favor of less-qualified candidates. For example, an experienced career terrorism prosecutor was rejected by Goodling for a detail to EOUSA to work on counterterrorism issues because of his wife's political affiliations. Instead, EOUSA had to select a much more junior attorney who lacked any experience in counterterrorism issues and who EOUSA officials believed was not qualified for the position.

We also determined that in several instances Goodling and one of her predecessors as the Department's White House Liaison, Susan Richmond, opposed on the basis of political affiliation the extensions of details for career Department attorneys working in the Office of the Deputy Attorney General, even though these candidates had the full support of the Deputy Attorney General and his staff.

While temporary detail assignments are covered by the civil service restriction on considering political affiliations in hiring, there is an exception for positions which are of a "confidential, policy-determining, policy-making, or policy-advocating character." We believe that not all of the detailee positions at issue in this report were covered by this exception. For example, we believe that none of the EOUSA positions for which Goodling considered the detailee's political affiliations were covered by this exemption from the civil service laws. Therefore we believe it was improper, and violated the law and Department policy, for Goodling to use political or ideological affiliations in selecting or rejecting detailees to these positions.

The evidence showed that the most systematic use of political or ideological affiliations in screening candidates for career positions occurred in the selection of IJs, who work in the Department's Executive Office for Immigration Review (EOIR). In the spring of 2004, Sampson created and implemented a new process for the selection of IJs. The new process ensured that all candidates for these positions were selected by the Attorney General's staff. Under this process, staff in the OAG would identify and select candidates for these positions using the Attorney General's direct appointment authority. Sampson implemented the new process and it followed by the Department's White House Liaisons, Williams and then Goodling.

Sampson told us that he implemented the new process because he believed that IJs were political appointees and therefore not subject to civil service rules. Sampson said that his understanding of the nature of these positions was based on a conversation with Kevin Ohlson, the Deputy Director of EOIR, as well as advice Sampson said he received from the Department's Office of Legal Counsel (OLC). However, Ohlson told us he knew IJs were career positions and that he did not state or suggest to Sampson that these positions were exempt from civil service rules. The evidence also indicated that OLC did not advise Sampson that the Attorney General could appoint IJs without regard to the civil service laws governing the hiring of career Department employees.

We determined that, under the process implemented by Sampson and followed by Williams and Goodling, the OAG solicited candidates for IJ positions and informed EOIR who was to be hired for each position. The principal source for such candidates was the White House, although other Republican sources provided politically acceptable candidates to Sampson, Williams, and Goodling. All three of these officials inappropriately considered political or ideological affiliations in evaluating and selecting candidates for IJ positions. For example, we found that Goodling screened the candidates using a variety of techniques for determining their political affiliations, including researching the candidates' political contributions and voter registration records, using an Internet search string with political terms, and asking the candidates questions regarding their political affiliations during interviews.

In sum, the evidence showed that Sampson, Williams, and Goodling violated federal law and Department policy, and Sampson and Goodling committed misconduct, by considering political and ideological affiliations in soliciting and selecting IJs, which are career positions protected by the civil service laws.

Not only did this process violate the law and Department policy, it also caused significant delays in appointing IJs. These delays increased the burden on the immigration courts, which already were experiencing an increased workload and a high vacancy rate. EOIR Deputy Director Ohlson repeatedly requested candidate names to address the growing number of vacancies, with little success. As a result of the delay in providing candidates, the Department was unable to timely fill the large numbers of vacant IJ positions.

We also concluded that Goodling committed misconduct when she provided inaccurate information to a Civil Division attorney who was defending a lawsuit brought by an unsuccessful IJ candidate. Goodling told the attorney that she did not take political factors into consideration in connection with IJ hiring, which was not accurate.

In addition, we concluded that Williams provided inaccurate information to us concerning her Internet research activities.

Because Goodling, Sampson, and Williams have resigned from the Department, they are no longer subject to discipline by the Department for their actions described in this report. Nevertheless, we recommend that the Department consider the findings in this report should they apply in the future for another position with the Department.

In addition, we concluded that EOUSA Deputy Director John Nowacki committed misconduct by drafting a proposed Department response to a media inquiry which he knew was inaccurate. Although Nowacki knew that Goodling had used political and ideological affiliations to assess career attorney candidates for EOUSA detail positions, he drafted a media statement in which the Department would have denied the allegations. Nowacki is still employed by the Department. Therefore, we recommend that the Department consider appropriate discipline for him based upon the evidence in this report.

Finally, as discussed in this report, after the allegations about politicized hiring arose, the Department changed various policies and practices. In 2007, in response to the allegations about Goodling's inappropriate consideration of political affiliations on requests by interim U.S. Attorneys to hire AUSAs, former Attorney General Gonzales directed that such waiver requests be reviewed by EOUSA, not political appointees in senior Department offices. In addition, EOUSA has recently ended the practice of reviewing the résumés of the waiver candidates and instead assesses those requests solely based on the budgetary status of the USAO as well as the status of the new U.S. Attorney's nomination. We believe these changes are appropriate and

can help prevent a recurrence of the improper use of political or ideological affiliations to evaluate waiver requests for career AUSAs.

With regard to immigration judges, as a result of the civil litigation over the unsuccessful candidacy of an immigration judge applicant, in April 2007, former Attorney General Gonzales approved a new process to fill immigration judge positions. The new process returned the responsibility for evaluating and selecting immigration judges to EOIR. According to EOIR officials, the process is working more effectively now and political considerations are not being used in the selection of candidates.

However, we believe the Department should consider additional changes. We recommend that the Department clarify its policies regarding the use of political or ideological affiliations to select career attorney candidates for temporary details within the Department. As discussed in this report, it is unclear which detailee positions are excluded from the scope of civil service law, and the Department's guidance on this issue is inconsistent. We recommend that the Department clarify the circumstances under which political considerations may and may not be considered when assessing career candidates for details to various Department positions.

In addition, in our June 24, 2008, report on the Department's Honors Program and Summer Law Intern Program, we made other recommendations to address allegations of politicized hiring in the Department.<sup>92</sup> Those recommendations included revising the Department of Justice Human Resource Order to emphasize that the process for hiring career attorneys must be merit based and to specify that ideological considerations cannot be used as proxies to discriminate on the basis of political affiliations. We also recommended that the briefing and training materials for Department political appointees should stress that candidates for career positions must be evaluated based on their merits and that ideological affiliations may not be used as a screening device for discriminating on the basis of political affiliations.

When the prior report on Honors Program hiring was issued, Attorney General Mukasey announced that the Department intended to implement all of these recommendations. These recommendations also apply to the improper conduct described in this report.

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<sup>92</sup> See *An Investigation of Allegations of Politicized Hiring in the Department of Justice Honors Program and Summer Law Intern Program* (June 24, 2008).

We believe that implementation of our recommendations can help prevent a recurrence of the violations of federal law and Department policy, and the misconduct, that we describe in this report.

