

# Report Regarding Investigation of Improper Hiring Practices in the Justice Management Division



Office of the Inspector General  
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## **I. INTRODUCTION**

This report summarizes the results of an investigation by the Department of Justice (DOJ) Office of the Inspector General (OIG) into allegations of improper hiring practices involving multiple offices in the Justice Management Division (JMD), including the Facilities and Administrative Services Staff (FASS), the Human Resources Staff (HR), the Finance Staff, and the Budget Staff.\*

### **A. Initiation and Expansion of this Investigation**

This investigation was initiated as a result of information provided by a former DOJ employee to Congressman Frank R. Wolf, which was forwarded to the OIG on September 21, 2010. The allegations described “collusion between Department of Justice’s Office of Personnel and FASS to illegally hire each other’s family.” Among other things, the complaint alleged that HR Assistant Director Pamela Cabell-Edelen and FASS Director Edward A. Hamilton, Sr. engaged in nepotism by hiring each other’s children.

During the course of the OIG investigation, the OIG came to investigate several additional allegations regarding hiring decisions within JMD and reviewed the circumstances surrounding the following events:

- The hiring of FASS Deputy Director Michael Clay’s daughter into JMD by HR Assistant Director Jeanarta McEachron, and related efforts by Clay to find positions for McEachron’s brother.
- The hiring of the son and the niece of Nancy Horkan, the Senior Advisor to Deputy Assistant Attorney General for Human Resources and Administration (DAAG-HRA) Mari Barr Santangelo, on the Finance Staff and HR Staff, respectively.
- The hiring of the nephew and the cousin of HR Director Rodney E. Markham by the DOJ National Security Division (NSD) and the Budget Staff, respectively.

During this investigation, we interviewed 30 current and former DOJ employees: 8 subjects (Markham, Hamilton, Clay, Cabell-Edelen, McEachron, and Horkan, as well as JMD Finance Staff Director Melinda B. Morgan, and HR Operations Chief LaTonya Gamble) and 22 witnesses,

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\* The OIG has identified within the full version of this report information that if released publicly could affect the privacy of certain individuals. To create this public version of the report the OIG redacted (blacked out) these portions of the full report.

including Santangelo. One subject, Cabell-Edelen, declined our request to interview her a second time after her January 2011 retirement from the Department. We also reviewed e-mail and examined staffing documents relating to recruitment, vacancy announcements, and online applications, as well as the rating, ranking, and referral of job candidates.<sup>1</sup>

This is the third OIG investigation of improper hiring practices in JMD. We criticized two prior FASS Directors, in 2004 and again in 2008, for manipulating the competitive hiring process to favor particular candidates. Notably, the 2008 investigation originated with allegations that Hamilton's predecessor as Director of FASS had engaged in nepotism by causing FASS and one of its outside contractors to hire or promote persons believed to be his relatives. Our 2008 report recommended remedial ethics training and the establishment of a zero-tolerance policy for future violations of this type. DAAG-HRA Mari Barr Santangelo oversaw the implementation of these disciplinary and remedial measures.

## **B. Summary of Findings**

We found that the following JMD employees violated applicable statutes and regulations in seeking employment for their relatives within JMD:

- **Cabell-Edelen:** We found that Cabell-Edelen undertook a sustained campaign to secure employment for her daughter. Cabell-Edelen repeatedly improperly advocated for her daughter's appointment to various DOJ positions. As a result, FASS Director Edward Hamilton selected the daughter as his secretary in November 2009. Additionally, earlier in 2009, Cabell-Edelen caused an existing vacancy announcement to be changed for the purpose of improving her daughter's chances for appointment to a position she did not ultimately receive. We concluded that Cabell-Edelen's conduct violated 5 U.S.C. § 3110(b) and 5 U.S.C. § 2302(b)(7), relating to the employment of relatives; 5 U.S.C. § 2302(b)(6), relating to the granting of illegal preferences; and Sections 502 (conflict of interest) and 702 (misuse of position) of the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards of Ethical

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<sup>1</sup> At the time of the conduct in question, Horkan, Clay, Cabell-Edelen, McEachron, and Gamble were at the GS-15 grade, which is the highest level of the general personnel schedule. Santangelo, Morgan, Markham, and Hamilton were members of the Senior Executive Service (SES). Members of the SES serve in key positions below the top presidential appointees but above the GS-15 level of the general personnel schedule.

Conduct).<sup>2</sup> We also concluded that Cabell-Edelen made multiple false statements under oath in a deliberate attempt to deceive the OIG.

- **Hamilton:** We found that shortly after Cabell-Edelen improperly advocated for her daughter's appointment by Hamilton, Hamilton began advocating to Cabell-Edelen and other Department officials for his son's appointment to a position in JMD. Hamilton did this at a time when his son and his son's family were living in Hamilton's home. We determined that Hamilton's conduct violated 5 U.S.C. § 3110(b) and 5 U.S.C. § 2302(b)(7), relating to the employment of relatives, as well as Sections 502 and 702 of the Standards of Ethical Conduct.<sup>3</sup> We also concluded that Hamilton made misleading statements to the OIG in an effort to minimize the extent of his involvement in getting his son a job.
- **Gamble:** We found that Gamble, Cabell-Edelen's subordinate and friend, improperly manipulated the hiring process for the benefit of Cabell-Edelen's daughter. We concluded that Gamble's conduct violated 5 U.S.C. § 2302(b)(6), relating to the granting of illegal preferences, and Section 702 of the Standards of Ethical Conduct. We concluded that Gamble's denial of involvement in this manipulation was not credible and that she made false statements to the OIG.<sup>4</sup>
- **Clay and McEachron:** We found that Clay and McEachron simultaneously attempted to assist each other's relative in

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securing federal employment.<sup>5</sup> We concluded that Clay improperly induced McEachron to hire his daughter, a violation of Sections 502 and 702 of the Standards of Ethical Conduct. We similarly concluded that by assisting Clay's daughter in this way, McEachron improperly induced Clay to attempt to help her brother find a DOJ position. We concluded that McEachron's conduct violated 5 U.S.C. § 3110(b) and 5 U.S.C. § 2302(b)(7), relating to the employment of relatives, as well as Section 702 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.702.

- **Horkan:** We found that Horkan made efforts to secure jobs within the Department for her son and her niece in violation of 5 U.S.C. § 3110(b) and 5 U.S.C. § 2302(b)(7), relating to the employment of relatives, and Sections 502 and 702 of the Standards of Ethical Conduct. We further found that Horkan sought advice from HR Director Rodney Markham in connection with the propriety of her efforts with respect to her son, which to some extent mitigated the severity of her misconduct.
- **Morgan:** We found that Morgan committed misconduct with respect to her appointment of Horkan's son. After Horkan advocated for her son's appointment by Morgan, Morgan caused the title and series of existing Finance Staff positions to be changed for the purpose of improving the son's chances for appointment. We concluded that Morgan's conduct violated 5 U.S.C. § 2302(b)(6), relating to the granting of illegal preferences. However, we further found that Morgan consulted with Ethics Office Director Janice Rodgers about the propriety of hiring Horkan's son, which to some extent mitigated the severity of her misconduct. We also note that, unlike several other JMD employees whose actions we reviewed in this investigation, Morgan did not seek to benefit her own relatives.
- **Markham:** We found that Markham made efforts to secure employment for his cousin and nephew in violation of 5 U.S.C. § 3110(b) and 5 U.S.C. § 2302(b)(7), relating to the employment of relatives, as well as Sections 502 and 702 of the Standards of Ethical Conduct. We also found him negligent in his duty to exercise effective oversight, especially given the two prior OIG investigations of JMD hiring practices. Further, he disregarded Merit System Principles, particularly with respect to his management of certain student employment programs.

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<sup>5</sup> McEachron currently serves as a Deputy Director in the Office of the Chief Human Capital Officer at the Department of Homeland Security (DHS). We have referred our findings relating to McEachron to the DHS OIG.

We found that DAAG-HRA Mari Barr Santangelo did not violate any specific laws or regulations related to improper hiring practices. However, we found that she failed to adequately respond to the indicators she received concerning hiring by her subordinates that may have violated federal anti-nepotism prohibitions. We consider this to be a management failure, especially given her awareness of prior instances of nepotism in JMD and her stated understanding of the scope of federal nepotism prohibitions.

Lastly, our investigation revealed that the practice of hiring friends and relatives of JMD employees into paid summer clerkships and other internships was not uncommon. For example, during the second quarter of 2010, relatives of JMD employees occupied 6 of 11 paid HR internships. Notably, in addition to providing General Schedule (GS) grade salaries (typically, \$27,000 to \$40,000 per year), such internships provided for the possibility of noncompetitive conversion to career appointments.

### **C. Organization of this Report**

Part II of this report provides background information, including descriptions of the functions and organization of FASS and HR, the procedures for hiring employees in these offices, prior OIG investigations of JMD hiring practices, and the statutes and regulations that are relevant in this case.

We have divided our discussion of the subjects of this investigation into three groups, matching each group with the corresponding relevant facts. Thus, Part III of this report addresses the alleged misconduct of Cabell-Edelen, Hamilton, and Gamble in connection with the appointment of Hamilton's son and Cabell-Edelen's daughter to positions in JMD. Part IV addresses allegations relating to the hiring of Clay's daughter into JMD by McEachron, and the related efforts of Clay to find positions for McEachron's brother. Part V addresses the appointments of Nancy Horkan's son and niece by Morgan and an HR Assistant Director, respectively. Part VI addresses the hiring of relatives of Markham and other JMD employees. Part VII addresses the level of supervision by DAAG Santangelo with respect to all of the incidents of hiring employees' relatives in JMD. Part VIII provides additional observations and recommendations for remediation.

### **D. Timeline of Known Hires of Relatives of JMD Employees**

May 2008	JMD Departmental Executive Secretariat Director hired the daughter of a JMD FASS Visual Information Specialist as a Departmental Executive Secretariat Clerk.
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August 2008	OIG Report regarding nepotism by then-FASS Director was released.
January 2009	JMD Finance Staff Director Melinda B. Morgan hired the son of Nancy Horkan, Senior Advisor to DAAG Santangelo, as a GS-5 Financial Management Specialist, after Horkan recommended her son to Morgan.
April 2009	JMD Budget Director hired the cousin of JMD HR Director Rodney Markham as a Clerk, after Markham recommended his cousin.
May 2009	JMD offered a summer clerkship to the daughter of a SEPS Assistant Director, after he recommended her. The daughter declined the offer.
June 2009	JMD FASS hired a granddaughter of JMD HR Assistant Director Pamela Cabell-Edelen as an intern.
June 2009	JMD HR Assistant Director Jeanarta McEachron hired the daughter of HR Operations Chief LaTonya Gamble as a student intern.
June 2009	DOJ National Security Division hired the nephew of HR Director Rodney Markham as a summer intern after Markham recommended his nephew.
October 2009	JMD HR Assistant Director hired the niece of Nancy Horkan, Senior Advisor to DAAG Santangelo, as a Program Specialist in HR's Programs and External Relations Section, after Horkan recommended her niece to the HR Assistant Director.
November 2009	JMD FASS Director Edward Hamilton hired the daughter of JMD HR Assistant Director Pamela Cabell-Edelen to be his secretary, at the urging of Cabell-Edelen.
November 2009	JMD HR Assistant Director Jeanarta McEachron hired the daughter of JMD FASS Deputy Director Michael Clay in HR Policy & Advisory Services as a part-time GS-5/13 HR Specialist, after Clay made inquiries on his daughter's behalf and instructed a subordinate to attempt to find a job for McEachron's brother.
January 2010	JMD HR Assistant Director Pamela Cabell-Edelen hired the son of JMD FASS Director Edward A. Hamilton as a

- GS-5 Payroll Specialist, after Hamilton requested Cabell-Edelen's help in finding a job for his son.
- May 2010 JMD HR hired a second granddaughter of HR Assistant Director Pamela Cabell-Edelen as an intern.
- June 2010 JMD HR hired the son of a JMD Deputy Director after the Deputy Director informed HR Director Rodney Markham that her son had not been selected for an internship.
- September 2010 JMD FASS hired the daughter of a FASS Woodcrafter as a GS-5 Program Analyst.
- November 2010 OIG informed JMD about the initiation of this investigation.

## **II. BACKGROUND**

### **A. The Justice Management Division**

The Justice Management Division (JMD) serves as the management and operations arm of the Department of Justice (DOJ). The Assistant Attorney General (AAG) for Administration Lee J. Lofthus, heads JMD and oversees four Deputy Assistant Attorneys General: the Department's Controller, the Chief Information Officer, the Deputy Assistant Attorney General for Policy, Management and Planning, and the Deputy Assistant Attorney General for Human Resources and Administration (DAAG-HRA), Mari Barr Santangelo. Santangelo oversees seven offices in JMD, including the Facilities and Administrative Services Staff (FASS) and the Human Resources Staff (HR). In total, she oversees approximately 600 employees, including contractors. She is assisted in these responsibilities by her Senior Advisor, Nancy Horkan.

#### **1. FASS**

FASS provides various services to DOJ components, such as operations and management of DOJ property, motor pool operations, multimedia services, mail management, warehouse operations, publications and printing, contract administration, and other administrative activities. The FASS Director reports directly to DAAG-HRA Santangelo.

Edward Hamilton has served as the Director of FASS since March 2009. FASS is also supervised by two Deputy Directors, one of whom is Michael Clay, and several Assistant Directors with responsibility for multiple offices, including: (1) Real Property Management Services, (2) Justice Building Services, (3) Logistics Management Services, (4) Multimedia and



Printing Services, (5) Environmental and Sustainability Services, and (6) Fiscal Management, Rent Management, Personnel Programs Management, and Purchasing and Contracts Management. FASS has over 100 full time employees, not including contractors.

## **2. Human Resources**

The Human Resources Staff (HR) handles most of JMD's staffing needs, including recruiting, maintaining, and developing JMD's human capital. HR also provides human resources services for several other DOJ components, including the National Security Division, and possesses a particular expertise regarding the analysis and implementation of personnel rules and regulations. HR has approximately 65 full time employees, not including contractors.

Rodney E. Markham joined JMD in March 2006 as Deputy Director of HR and became the Director in 2008. He left the Department in September 2011. As Director of HR, Markham reported directly to Mari Barr Santangelo. Markham, his Deputy Director, and multiple Assistant Directors oversaw the following HR offices: (1) Learning and Workforce Development; (2) Human Capital Information Technology and Accountability; (3) DOJ Labor and Employment Law; (4) HR Policy and Advisory Services; (5) Programs and External Relations; and (6) Justice Management Division, Offices, Boards, and Divisions Human Resources Services (JMD/OBD HR Services).

Pamela Cabell-Edelen was an Assistant Director and the Human Resources Officer and managed JMD/OBD HR Services until her retirement in January 2011. JMD/OBD HR Services is responsible for recruitment, staffing, and related personnel action processing for DOJ Offices and Boards, the National Drug Intelligence Center, JMD, and the National Security Division. JMD/OBD HR Services also provides management consultation, advisory services, and payroll processing. LaTonya Gamble was the Chief of HR Operations in JMD/OBD HR Services and Cabell-Edelen's subordinate, until transferring to HR Policy and Advisory Services in May 2011.

Jeanarta McEachron was an Assistant Director in HR Policy and Advisory Services until transferring to the Department of Homeland Security (DHS) in November 2009.

### **B. Hiring Procedures in JMD**

There are two classes of appointments in the federal government: competitive service and excepted service. In general, career or career-

conditional positions in JMD are competitive service appointments filled by a competitive hiring process.<sup>6</sup> Positions outside of the competitive service are filled pursuant to an excepted appointing authority and are subject to different civil service laws and regulations. Positions in the excepted service include Schedule A appointments, such as attorneys and certain intelligence personnel, Schedule B appointments, such as individuals in the Federal Career Intern Program (FCIP) and certain student employment programs, and Schedule C appointments, such as political appointees at the sub-cabinet level.

As described below, most of the positions at issue in this investigation were paid intern appointments in the excepted service (Schedule B). Many of these intern positions could be converted to permanent career positions without any further competition. These programs are described in more detail below. In JMD, the hiring process for both competitive service positions and Schedule B appointments is administered by JMD/OBD HR Services.

## **1. Competitive Service Appointments**

When a new position in the competitive service is created or a vacancy occurs in FASS or HR, the hiring official develops a Position Description and specific rating criteria that are used to identify the most highly qualified candidates. The official will also identify an appropriate “Area of Consideration,” which specifies the individuals from whom the office will accept applications for the position. The Area of Consideration may be broad (such as open to all U.S. citizens – “all sources”) or limited to a narrower group of individuals, such as current, civilian, federal employees. Individuals outside the Area of Consideration, who are not otherwise eligible through a noncompetitive or special hiring authority, may not apply.

The hiring official transmits the desired parameters to the JMD/OBD HR Services hiring specialist (HR Specialist) responsible for servicing that office. The HR Specialist prepares a draft vacancy announcement, which is finalized in consultation with the hiring official and posted on USAJOBS.gov. In the past, the announcement was uploaded to an outside contractor’s website as well.

During the period relevant to this report, in addition to advertising on USAJOBS.gov, the DOJ published vacancy announcements through Avue Technologies Corporation (Avue), whose automated system provided a

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<sup>6</sup> Most permanent employees enter the federal government pursuant to a “career-conditional” appointment. After completing three years of substantially continuous service, a career-conditional employee becomes a full, “career” employee.

platform for receiving and processing applications. Completed applications were sent from Avue to the HR Specialist, who screened the applicants to exclude those who failed to meet the minimum qualifications for the position. Following this, the HR Specialist transmitted a list of qualified candidates, known as a “certificate of eligibles” or a “cert. list,” to the hiring official, who either selected interviewees from that list or from an approved alternate source, or declined to make any selection. Hiring officials were also able directly to download the candidates’ résumés. If interested in any candidates, the office conducted interviews and checked references. Once a selection was made, the HR staff made a tentative offer, initiated a security check, performed a drug test, and extended a final offer.

The procedure for making a final hiring selection varies from case to case and among different parts of JMD. Clay and Hamilton told us that within FASS, a panel of at least three individuals interviews the final candidates. After the panel reviews the applications and conducts interviews, it makes a selection recommendation to the FASS Director. All hiring decisions in FASS are subject to the Director’s approval. Clay said that only positions at the GS-14 level and above required approval by DAAG Santangelo. The lower-graded FASS positions at issue in this report therefore did not require approval from Santangelo. The hiring procedures for positions in HR closely resemble those in FASS. According to Markham, however, not all HR applicants are interviewed by panels. The lower-graded HR positions at issue in this report also did not require approval from Santangelo, but Markham told us that, in addition to approving all appointments at or above the GS-14 level, Santangelo “has weighed in on hires and movements of staff at all levels.”

## **2. Excepted Service Appointments**

As stated above, vacancies outside of the competitive service are filled pursuant to one of several excepted appointing authorities. Unlike those in the competitive service, the procedures for filling excepted service vacancies do not include a public notice requirement.<sup>7</sup> Other than the different advertising requirements, the excepted service hiring procedures closely parallel those in the competitive service.

With one exception, the appointments examined in this report were made pursuant to Schedule B appointing authorities, including those for the Student Temporary Employment Program (STEP), the Student Career Experience Program (SCEP), and the Federal Career Intern Program (FCIP). Although the processes for filling excepted service vacancies, unlike those in

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<sup>7</sup> Public notice is a statutory requirement under 5 U.S.C. §§ 3327 and 3330 only when filling positions through the competitive examining process.

the competitive service, need not include notice to the public, open competition, or competitive examining procedures, agencies filling Schedule B appointments are required to follow Merit System Principles and avoid Prohibited Personnel Practices.<sup>8</sup> As detailed below, SCEP and FCIP appointments may be noncompetitively converted to career or career-conditional appointments.

**a. The Student Temporary Employment Program, the Student Career Experience Program, and Summer Hires**

The Student Temporary Employment Program (STEP) and Student Career Experience Program (SCEP) provide paid, federal positions to students enrolled in high school, college, or graduate school. Both programs provide a path to noncompetitive conversion to career or career-conditional appointments. The central difference between the two programs is that SCEP appointments, unlike those under STEP, may be directly noncompetitively converted to competitive service positions, whereas STEP positions must be noncompetitively converted to SCEP positions prior to any noncompetitive conversions to career appointments. Both programs permit year-round employment and flexible work schedules, and we found that STEP and SCEP students who worked over school vacation periods were generally welcome to return to their DOJ positions during subsequent summer vacations and winter breaks.

During the period we investigated, JMD employed “summer hires.” Practically speaking, a summer hire in JMD was the same as a STEP appointment. An HR Specialist told us that JMD uses the same appointing authority for summer hires as for STEP hires, and that the only difference between the appointments is the term of employment.

**b. The Federal Career Intern Program**

Established in July 2000 and terminated in March 2011, the Federal Career Intern Program (FCIP) sought “to recruit the highest caliber people,” to place them in GS-5 through GS-9 entry-level positions, and to “develop their professional abilities, and retain them in federal departments and agencies.”<sup>9</sup> After successful completion of the 2-year, paid internship, FCIP

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<sup>8</sup> Sections 2301 and 2302 of Title 5 of the United States Code provide that federal personnel management in Executive agencies be implemented in a manner consistent with 9 Merit System Principles and 12 Prohibited Personnel Practices, respectively, which essentially seek fair competition for all applicants. These principles and prohibitions are discussed in detail in Part II.C of this report.

<sup>9</sup> Executive Order 13162, dated July 6, 2000.

appointments became eligible for noncompetitive conversion to a career or career-conditional position in the competitive service.

The Executive Order establishing the FCIP did not exempt agencies from complying with the procedures identified in 5 C.F.R. § 302, “Employment in the Excepted Service.” Moreover, the Executive Order specified that OPM “shall develop appropriate merit-based procedures for the recruitment, screening, placement, and continuing career development of Career Interns.” The subsequently established DOJ guidance for the use and implementation of the FCIP similarly provided that “Components must follow Component merit promotion plans and merit system principles when announcing and filling vacancies under this Program” and that “Heads of Components are delegated the responsibility for . . . ensuring that programs are developed and implemented in accordance with the merit system principles.”

### **C. Applicable Statutes and Regulations**

Several statutes and regulations are potentially applicable to the allegations raised in this case.

#### **1. Merit System Principles and Prohibited Personnel Practices**

The Merit System Principles listed in 5 U.S.C. § 2301 represent the fundamental undergirding of the entire Federal Human Resources Management system. The statute sets forth nine principles and directs the president to issue “all rules, regulations, or directives . . . necessary to ensure that personnel management is based on and embodies” such principles. Among the laws implementing the Merit System Principles are the 12 “Prohibited Personnel Practices” enumerated in 5 U.S.C. § 2302 and referenced, in part, below. Sections 2301 and 2302 were therefore intended to work in tandem.

##### **a. 5 U.S.C. § 2301(b)(1)**

Section 2301(b)(1) of Title 5 of the United States Code requires that employee recruitment, selection, and advancement be based on merit, after fair and open competition. 5 U.S.C. § 2301(b)(1) states:

Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and 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.

As the Merit Systems Protection Board has stated:

Hiring even the best qualified person for the job must be accomplished through competitive means consistent with law and merit system principles. Thus, an agency may not grant a preference even to the best qualified person, unless it is authorized "by law, rule, or regulation."<sup>10</sup>

**b. 5 U.S.C. § 2302(b)(6)**

Section 2302(b)(6) of Title 5 of the United States Code prohibits the granting of unauthorized preferences or advantages to job applicants. It provides that:

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority . . . grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

An employee with hiring authority may give only those preferences authorized by law, rule, or regulation. For example, preferences in recruitment and selection are given by Congress to veterans, Indians in the Bureau of Indian Affairs, persons with reemployment rights, and handicapped individuals.<sup>11</sup> Section 2302(b)(6) is directed at purposeful discrimination to help or hinder particular individuals in obtaining employment without regard to their merit.<sup>12</sup> Among the actions that have been held to constitute Prohibited Personnel Practices in violation of Section 2302(b)(6) are defining the scope and manner of competition to facilitate selection of a particular candidate, causing the title and series of a position to be changed for the purpose of improving a particular candidate's chances for appointment, and creating an unnecessary position for the sole purpose of benefiting a particular applicant.

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<sup>10</sup> *Special Counsel v. Byrd*, 59 M.S.P.R. 561 at 571 n.9 (1993).

<sup>11</sup> *See Special Counsel v. Byrd*, 59 M.S.P.R. 561 at 570 (1993).

<sup>12</sup> *See Department of Treasury v. Federal Labor Relations Authority*, 837 F.2d 1163, 1170 (D.C. Cir. 1988).

**c. 5 U.S.C. § 2302(b)(7)**

Neptotism is a Prohibited Personnel Practice. Section 2302(b)(7) of Title 5 of the United States Code provides that:

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority . . . appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official.

As described below, nepotism is also addressed in 5 U.S.C. § 3110.

**2. Federal Nepotism Statute – 5 U.S.C. § 3110(b)**

The federal nepotism statute, 5 U.S.C. § 3110(b), provides that:

A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

The statute defines a “relative” as a “father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.” 5 U.S.C. § 3110(a)(3).

The statute defines a “public official,” in part, as an employee “in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency.” 5 U.S.C. § 3110(a)(2).

A government official improperly “advocates” for the hiring of a relative by speaking in favor of, recommending, commending, or endorsing that relative to another official. *See Alexander v. Department of Navy*, 24 MSPR 621, 625 (1984).

### **3. Conflict of Interest – 5 C.F.R. § 2635.502**

Conflicts of interest for federal employees are addressed in the Standards of Ethical Conduct, 5 C.F.R. § 2635.502, codified at 5 C.F.R. Part 2635. Section 502 of the Standards of Ethical Conduct, relating to “Personal and business relationships,” provides:

Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

5 C.F.R. § 2635.502(a).

The regulation further states:

Unless the employee is authorized to participate in the matter under paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties when he or the agency designee has concluded, in accordance with paragraph (a) or (c) of this section, that the financial interest of a member of the employee’s household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality. 5 C.F.R. § 2635.502(e)

The regulation states that “covered relationships” include persons with whom the employee has a financial relationship, persons who are members of the employee’s household, and persons who are relatives with whom the employee has a “close personal relationship.” 5 C.F.R. § 2635.502(b).



The “agency designee” for all employees within their components is the component head.<sup>13</sup> In JMD, employees seeking authorization from the agency designee in accordance with Section 502 must first consult the Department Ethics Office, headed by Janice Rodgers, whose staff prepares and submits such requests directly to JMD’s agency designee, Assistant Attorney General Lee Lofthus.

#### **4. Use of Public Office for Private Gain – 5 C.F.R. § 2635.702**

Section 702 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.702, states, in part: “An employee shall not use his public office . . . for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.” In addition to the general prohibition set forth above, Section 702 sets forth four “specific prohibitions” that “are not intended to be exclusive or to limit the application of this section,” including 702(a), which states:

An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

#### **D. Prior OIG Investigations of Hiring in JMD**

This is the third OIG investigation in recent years involving improper hiring practices within JMD. Three different FASS Directors have been subjects in these investigations. As described below, we criticized certain JMD personnel in 2004 and again in 2008 for manipulating the competitive hiring process to favor particular candidates.

#### **1. 2004 OIG Report**

In 2004 the OIG completed an investigation into allegations of misconduct and mismanagement relating to the director of FASS, and we provided a non-public misconduct report to JMD on December 16, 2004 (2004 Report). Among other things, the OIG report found that the Director and the Assistant Director of FASS engaged in Prohibited Personnel Practices and other inappropriate hiring practices by “targeting” certain individuals for FASS positions – usually employees of a DOJ contractor –

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<sup>13</sup> DOJ Order 1200.1, Chapter 11-1, Procedures for Complying with Ethics Requirements (September 12, 2003.)

and then manipulating the competitive selection process to ensure that these individuals were hired.

We also found that one FASS employee violated the Standards of Ethical Conduct by assisting a personal acquaintance from college to obtain employment in FASS. In that report, in addition to highlighting this inappropriate conduct and making recommendations involving individual misconduct, we recommended that the FASS Administrative Management Specialist attend training relating to the regulations and restrictions which government personnel must follow in the selection and hiring of employees.

## **2. 2008 OIG Report**

Fresh allegations of improper JMD hiring practices came to light in 2008, this time focusing on the next FASS Director, who assumed the position in January 2004. Similar to the current investigation, the principal allegations in the 2008 investigation were that the FASS Director had engaged in nepotism by causing FASS and one of its outside contractors to hire or promote his relatives. The OIG's investigation determined that the Director had hired his stepdaughter's husband as a Mail Management Specialist in FASS, and later promoted him to GS-11, at a time when the stepdaughter's husband was living in the Director's home. We also found that the FASS Director had hired a family friend, who was a real estate client of his wife, as Fleet Manager in FASS. In addition, he had arranged for his sister-in-law, who was also living in his home, to be hired by Pitney Bowes, Inc., under a FASS contract.

In an August 15, 2008, OIG misconduct report (2008 Report), which was not issued publicly, we concluded that the FASS Director's conduct violated multiple laws and regulations relating to merit selection procedures, conflicts of interest, and Standards of Ethical Conduct. Notably, we also concluded that two FASS employees had made false or misleading statements to the OIG while under oath.

At the close of the 2008 Report we stated:

[T]his report is the second occasion in recent years in which the OIG has found questionable hiring practices in FASS. We are troubled that JMD has not ensured that problems relating to compliance with proper hiring procedures and applicable ethical standards did not recur in FASS. Existing ethics training programs do not seem to be adequate to instill within FASS a culture of compliance with the rules and principles of merit selection and the Standards of Ethical Conduct. We therefore recommend remedial ethics training specifically designed for FASS that addresses these rules and standards in the hiring and promotion context. We also believe that

JMD should establish a zero-tolerance policy for future violations of this type in FASS.

### **3. Post-2008 Report Guidance and Training**

Mari Barr Santangelo, who has served as DAAG-HRA since 2005, described to us JMD's responses to the 2008 Report's recommendations. According to Santangelo, JMD leadership hosted an October 2008 Senior Staff meeting focusing on ethics and an "absolute adherence to Merit System Principles and Prohibited Personnel Practices." Santangelo told us that Assistant Attorney General for Administration Lee Lofthus "made a verbal statement about zero tolerance of any violations" during this meeting. She stated that additional training sessions on these subjects took place in October and November 2008, targeting JMD's Assistant Directors and Deputy Assistant Directors.

Santangelo also shared with the OIG some of the written guidance provided to new JMD employees, including "fact sheets" and "wallet cards" listing the 9 Merit System Principles and 12 Prohibited Personnel Practices, and directed us to additional materials available at the Department of Justice website. The OIG's analysis of these materials appears in Part VIII.A of this report.

Most of the JMD employees whose actions we reviewed in the current OIG investigation expressed a familiarity with the previous OIG reports. Santangelo, Horkan, and Markham said they read the OIG's 2008 Report. Santangelo, with some assistance from Horkan and Markham, implemented its recommendations. Horkan and Morgan stated that they had attended the post-2008 training sessions and expressed to us a familiarity with Merit System Principles and Prohibited Personnel Practices. Cabell-Edelen and McEachron also indicated a familiarity with the OIG's 2008 investigation and report. Gamble demonstrated to us knowledge of merit principles and the rules and regulations governing recruitment and staffing. Santangelo, Horkan, Morgan, Markham, Cabell-Edelen, McEachron, and Gamble all had the same positions and titles in August 2008 that they had during the events of this report. None of them was implicated in the misconduct described in the OIG's 2008 report.

Hamilton and Clay had not yet joined JMD when the 2008 training sessions were held. Clay told us that he was aware of the history of nepotism-related abuses in FASS when he transferred to JMD from ATF in July 2009. He told us that around the time that Hamilton hired him, the two discussed nepotism and the misconduct of Hamilton's two predecessors, stating, "That was - that is - one of [Hamilton's] high priorities, to make sure that we had a fair and equitable way of hiring people." Clay also told us that he read the 2008 Report. Although he was

not yet with JMD and therefore did not participate in the 2008 training, he was with the Department during that period and has received ethics training about nepotism, conflicts of interest, and other hiring abuses.

Hamilton did not join JMD until 2009 and therefore did not attend the 2008 training sessions either, but told us he had extensive pre-DOJ experience with “both military personnel management and civilian personnel management rules.” He stated that he read both the 2004 and 2008 OIG Reports when he joined JMD in 2009. He told us he was fully aware that his predecessor was found to have committed misconduct in connection with the hiring of friends and relatives, stating, “I’m very familiar with those reports and their issues.” According to Santangelo, shortly after Hamilton’s start date, the two met to discuss the 2008 Report and “the prohibited practices noted in [the] report,” so that Hamilton would “understand [JMD’s] absolute adherence to [Merit System Principles and Prohibited Personnel Practices].”

Hamilton also received more formal training about nepotism and other hiring abuses. In March 2009, Hamilton received an individualized, one-on-one ethics training session with Ethics Office Director Janice Rodgers. Rodgers told the OIG that in that session, Hamilton said he had read the 2008 Report and Rodgers told him he needed to be “really sensitive” to the issues highlighted in that report. She told us the 2008 Report “was a specific part of the briefing because, of course, it was highly relevant to him coming [to JMD].”

Rodgers also told the OIG that she provided Hamilton at that time with a “comprehensive outline of all the ethics rules” and also likely gave him “the slides from the specific hiring training that [JMD] did” in response to the 2008 Report. These materials stated, “An employee may not participate in a particular matter involving specific parties affecting the financial interests of a member of his household.” The materials also expressly forbade the use of one’s public office for “his own private gain, and that of friends [or] relatives . . . .”

### **III. Facts and Analysis Pertaining to Cabell-Edelen, Hamilton, and Gamble**

In this Part of the report we set forth the facts relating to the alleged misconduct of HR Assistant Director Pamela Cabell-Edelen, FASS Director Edward Hamilton, and HR Operations Chief LaTonya Gamble. The allegations relating to these JMD employees arose out of three incidents: the effort to assist Cabell-Edelen’s daughter to be hired as a FASS Administrative Management Specialist (the “FASS Liaison” position), the

hiring of Cabell-Edelen's daughter by Hamilton, and the hiring of Hamilton's son by Cabell-Edelen.

**A. Factual Findings**

**1. The Hiring of HR Assistant Director Pamela Cabell-Edelen's Daughter**

Edward Hamilton selected Pamela Cabell-Edelen's daughter to be his secretary in November 2009.<sup>14</sup> Prior to this, she worked as a secretary in the private sector, and before that - in a civilian capacity - as a secretary in the U.S. Coast Guard, the U.S. Army Corps of Engineers, and the Department of the Navy. This investigation was triggered in part by allegations that this hiring resulted from the improper influence of her mother, Pamela Cabell-Edelen, who was at the time an HR Assistant Director.

Cabell-Edelen told us that she played no role of any kind in her daughter's attempts to be hired in FASS. She said that she had no interest in (or even, often, awareness of) where or when her daughter submitted employment applications. When asked how her daughter came to be hired as Hamilton's secretary, Cabell-Edelen stated that her daughter applied for the position through Avue, made the certificate of eligibles, and was selected. "It just happened that Mr. Hamilton and his team hired her," Cabell-Edelen told us.

Contrary to these claims, the accounts of other witnesses, contemporaneous e-mails, and Avue documents show that Cabell-Edelen had a significant role in her daughter's attempts to secure a position in DOJ.<sup>15</sup> Our investigation revealed a coordinated campaign involving Cabell-Edelen and Chief of HR Operations LaTonya Gamble to tilt the hiring process in Cabell-Edelen's daughter's favor.

Although our investigation of Cabell-Edelen's daughter's FASS appointment focused on 2009 (the year Hamilton selected her as his secretary) e-mails dating back to 2006 show that contrary to Cabell-Edelen's

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<sup>14</sup> We did not review the underlying merits of all of the hiring decisions involving relatives brought to our attention, and did not do so with this particular one. However, we recommend in Part VIII.B of this report that JMD consider conducting this inquiry and, if deemed necessary by JMD leadership, take appropriate action if it finds that a hiring official granted an improper preference to a JMD relative in a hiring decision.

<sup>15</sup> Cabell-Edelen retired in January 2011, after the OIG opened its investigation. We asked her to return for a second interview in order, among other things, to permit her to review and comment on the many e-mails that plainly contradicted her account of having had no involvement in her daughter's appointment. She declined.

claim that she had no involvement in her daughter's efforts to obtain employment, Cabell-Edelen frequently communicated with her daughter and others in the Department about this matter. E-mails show Cabell-Edelen communicated with her daughter about a position in the Office of Community Oriented Policing Services (COPS) and encouraged her daughter to apply to positions in the National Security Division (NSD) and the U.S. National Central Bureau of the International Criminal Police Organization (INTERPOL), all of which are DOJ offices for which HR provided human resources services. E-mails also show that Cabell-Edelen sent her daughter's résumé unsolicited to three individuals: (1) an Administrative Officer in the Community Relations Service (another office for which JMD provided human resources services); (2) JMD HR Director Rodney Markham; and (3) an HR Specialist who was Cabell-Edelen's subordinate.

The OIG's investigation revealed the following sequence of events leading to the appointment of Cabell-Edelen's daughter in 2009:

In January, FASS identified a need for a new FASS Liaison, a job involving, among other things, coordinating FASS staffing and recruitment needs with HR.

An HR Specialist assisted FASS in this particular job search. The HR Specialist told us she could "distinctly remember" having a conversation with the incumbent FASS Liaison about "the Area of Consideration FASS wanted and what audience of candidates were they looking for." The HR Specialist stated that FASS wanted to restrict the Area of Consideration to current federal employees "because they wanted someone currently in the government that could hit the ground running." She told us that she posted the vacancy announcement, FASS-09-115-MPP, according to the parameters FASS requested. She said she was then "called into [Cabell-Edelen's] office and told to take Announcement 115 down and re-advertise it using reinstatement eligibles" as part of the Area of Consideration. This change would open the vacancy to reinstatement eligible former federal employees as well as current employees. At the time, Cabell-Edelen's daughter was a reinstatement eligible former federal employee.<sup>16</sup> The HR Specialist, who told us she did not know anything about Cabell-Edelen's daughter at this point, said that Cabell-Edelen's insistence that the announcement be open to reinstatement eligible candidates seemed "odd" to her.

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<sup>16</sup> "Reinstatement eligibility" refers to the ability of those individuals who previously held career or career-conditional federal appointments to apply for jobs in the competitive federal service. Cabell-Edelen's daughter had acquired such "career tenure" or "career status" by completing 3 years of service at a previous federal post and was therefore eligible to be noncompetitively reinstated at a position at or below her previously held GS level.

LaTonya Gamble was at that time the Chief of HR Operations, Services Branch, and reported to Cabell-Edelen. In an e-mail dated January 13, 2009, Gamble told the HR Specialist to “please include Reinstatement Eligibles under the WHO MAY APPLY section” in the vacancy announcement for the FASS Liaison position. The HR Specialist did as she was instructed, and the announcement - originally intended to be open from January 9 through January 22 - was closed down and replaced with FASS-09-131-MPP, which was open to “former federal employees with reinstatement eligibility.” Twenty-four minutes after Gamble e-mailed the HR Specialist instructing her to change the vacancy announcement, Cabell-Edelen e-mailed her daughter, stating, “The vacancy announcement has been changed to include reinstatement candidates. Avue is not working well today so you may want to try later or tomorrow.”

Avue records we reviewed confirmed that Cabell-Edelen’s daughter, a reinstatement candidate, applied to vacancy announcement 131 shortly thereafter. When asked about these facts, Cabell-Edelen’s daughter stated that she was not aware that the FASS Liaison position had been posted twice, that she never communicated with her mother about how broadly or narrowly the announcement had been (or would soon be) posted, and that she never communicated with her mother or anyone else about an announcement being changed to include reinstatement eligible candidates like herself. When we showed the daughter a copy of Cabell-Edelen’s January 13 e-mail to her describing this change, she stated that she did not recall receiving it.

The HR Specialist described to us what happened after she reviewed the applications for the position. Still unaware that Cabell-Edelen’s daughter, who had a different surname, was an applicant, she rated the daughter’s application “not qualified” for the FASS Liaison position based on the daughter’s lack of relevant experience, and excluded her from the certificate of eligibles. The HR Specialist told us that she excluded the applicant because she “had little to no experience in classification, staffing, [or] advising management on HR matters.” Cabell-Edelen’s daughter herself also stated to the OIG that she had virtually no HR experience at that time. The HR Specialist said that after she rated the candidates and prepared the certificate of eligibles, Gamble called her into her office and instructed her to change the daughter’s rating to “qualified” and to put out an amended certificate of eligibles, this time with the daughter’s name on it.

The HR Specialist said that this was the only time in her career that she had been overruled like this. The act made her suspicious, she said, so she re-read the applicant’s résumé “and saw she had previously worked for the Army Corp of Engineers.” The HR Specialist told us that she figured the applicant was a friend of Gamble and Cabell-Edelen with whom they used to

work. The HR Specialist stated that she was at this point “mad” and confronted Gamble, telling her she “didn’t appreciate being treated like [she] was stupid yesterday and being ordered to put [the applicant] on the list . . . when in all actuality either her or Pam knew this person from working at the [Army] Corps.” The HR Specialist told us that Gamble responded to her by insisting that she and the applicant (Cabell-Edelen’s daughter) had never worked together and did not know each other.<sup>17</sup>

Gamble denied this account of the events. She stated that she was not involved in any way in Cabell-Edelen’s daughter’s application process or attempt to be hired as FASS. Moreover, she told us that she never had any exchanges with Cabell-Edelen or her daughter regarding the daughter’s application process, her attempt to be hired as FASS Liaison, or how broadly or narrowly to advertise for a FASS Liaison position. She stated that she had no knowledge of the original request, the breadth of the first announcement’s Area of Consideration, or the subsequent effort to widen it to include reinstatement eligible candidates.

When we asked Gamble to explain the expansion of this announcement’s Area of Consideration, Gamble stated to the OIG, “I can’t, because I wasn’t involved, so I don’t know why.” She did, however, suggest that it could have been modified to include reinstatement eligible candidates in order to correct “a glitch in Avue’s system” that caused an error in how the Area of Consideration for “status eligibles” was posted. Gamble identified the “program manager” in JMD’s Office of Human Capital Information Technology and Accountability who she said assisted HR in resolving this problem. The OIG interviewed the JMD employee that Gamble identified, as well as Avue representatives and the HR Specialist responsible for the FASS Liaison position announcement. None of these witnesses had any recollection or record of a “glitch” or problem with Avue requiring an expansion of the announcement’s Area of Consideration.

Gamble told us that she has never instructed anyone to change a candidate’s qualification rating or to place someone’s name on a certificate of eligibles. When asked if it was *possible* that she had involved herself in Cabell-Edelen’s daughter’s application process in this manner, she stated, “Not that I had any conversations with anyone to say, ‘Change her [qualifications] because of this.’ I will definitely tell you that is a ‘no.’” Gamble told us that, because she has personal access to Avue, she “would be the one who went into the system.” She stated, “I’m changing the

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<sup>17</sup> Gamble told us that she did know Cabell-Edelen’s daughter at the Army Corps of Engineers. She also told us that she had had no opportunity to observe the daughter’s skills or abilities when both were employed there and had had no post-Army contact with the daughter until the daughter began working in FASS in 2010.



[qualifications], and I would have signed it, but I would never have said, "You go change the [qualifications] and put 'per me.'" That doesn't happen."

However, our review of contemporaneous Avue records corroborated the HR Specialist's account. We found that the HR Specialist made two entries in Avue at the time of the events in question: one on February 10, 2009, stating that Cabell-Edelen's daughter "[d]oes not meet the one year specialized experience at the next lower level as required by [the Office of Personnel Management]"; and a second entry, nine days later, stating, "Basic [qualifications] overridden for [the daughter] (Reason: Requested by LaTonya Gamble to change this rating to qualified.)" Based on the HR Specialist's statements to us, as well as contemporaneous e-mail and Avue records, we found that Gamble instructed the HR Specialist first, to broaden the vacancy announcement's Area of Consideration to include reinstatement eligible candidates, and later to change Cabell-Edelen's daughter's rating to "qualified" and to put her name on an amended certificate of eligibles. We concluded that Gamble's statements to the contrary were false.

A 3-person panel in FASS subsequently interviewed Cabell-Edelen's daughter for the FASS Liaison position, but an internal HR candidate was ultimately selected.<sup>18</sup> On April 12, 2009, the selectee transferred from HR to her new post as FASS Liaison, where she was supervised by FASS Director Edward Hamilton.

E-mails reveal that by August of 2009, Hamilton had grown dissatisfied with the selectee's performance in the FASS Liaison position. Upon hearing of Hamilton's desire to replace her, Cabell-Edelen e-mailed Hamilton, stating, "Looks like we need to talk upon my return next week." On September 13, 2009, the selectee transferred back to HR. On October 15, 2009, Cabell-Edelen e-mailed her daughter's résumé to Hamilton, stating, "This is the young lady we discussed to fill the position [recently vacated by the prior selectee] that you had previously interviewed. Hire her or get [the prior selectee] back (Big Big Smile). (Just kidding)."

On October 29, 2009, Hamilton responded to this e-mail, stating, "Per our discussion I am preparing a 52 for a by name for the Executive Secretary position GS-9. Who should it go to?" The Executive Secretary position was a different position than the FASS Liaison position that Cabell-

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<sup>18</sup> Hamilton told the OIG that Cabell-Edelen's daughter was not selected for the FASS Liaison position because she was "not familiar with our system . . . [whereas the candidate FASS selected was] internal to DOJ." Cabell-Edelen's daughter also told the OIG that she "didn't get the job because she was told she didn't know the system . . . in terms of being on the inside, hiring people." These facts further corroborate the HR Specialist's statement that FASS "wanted someone *currently in the government* that could hit the ground running."

Edelen had initially urged Hamilton to hire her daughter for. In response to Hamilton's question, Cabell-Edelen told him to send her daughter's name request to a specified HR Specialist, and Hamilton complied. That HR Specialist explained to us that a "by-name" request signaled to HR, "This is the person I'm interested in hiring."

The vacancy announcement for the FASS Executive Secretary position, FASS-10-041-MPP, was posted on November 10, 2009 and closed at 11:59 p.m. on November 16. On the morning *prior* to the announcement's closing, Cabell-Edelen e-mailed Gamble and the HR Specialist, stating in part, "I received a call from Mr. H. today . . . He has selected [the daughter] for the secretary position[.]"<sup>19</sup> The above e-mails reveal (and refer to) multiple conversations Cabell-Edelen and Hamilton shared regarding her daughter's appointment, first considering her to replace a prior selectee as FASS Liaison but ultimately deciding to award her the "Executive Secretary position."

When asked how he came to consider Cabell-Edelen's daughter for the secretary position, Hamilton told us that Cabell-Edelen recommended her to him, without revealing the family relationship, "comment[ing] on the young lady's work ethic, her merits, her job knowledge, *et cetera*." He stated that "[she] and some other candidates were on that cert" (referring to the certificate of eligibles). When asked if he requested the daughter via a "by-name" request, he said that he did not. We showed him his "by-name" request e-mail, and asked why he singled the daughter out for special treatment. He replied, "The guidance I got from Pam was: do a 'by-name' if you want to get [the daughter] back in, into the queue to be reviewed." He told us that he did not learn that this applicant was Cabell-Edelen's daughter until months after she began working for him.

As explained in the next Part of this report, two months after Hamilton hired Cabell-Edelen's daughter for a position he supervised, Cabell-Edelen hired Hamilton's son for a position she supervised.

## **2. The Hiring of FASS Director Edward Hamilton's Son**

Pamela Cabell-Edelen hired the son of FASS Director Edward A. Hamilton in January 2010 as a GS-5 Payroll Specialist under the Federal Career Intern Program (FCIP). Prior to his appointment in HR, Hamilton's son worked as a security guard and, prior to that, as an airport passenger screener. He currently works on JMD's Asset Forfeiture Management Staff.

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<sup>19</sup> As a reinstatement-eligible candidate, Cabell-Edelen's daughter was not required to (and did not) apply to this posting. The vacancy announcement's status log indicates, "Selection made through alternate source (name request)."

Hamilton's and Cabell-Edelen's careers briefly overlapped at the Army Corps of Engineers, but their relationship was at all times professional and not personal. Cabell-Edelen told the OIG, "I never serviced him in any shape, form, or fashion [at the Army Corps of Engineers]. The only thing I do know: he came in, he was processed in, and that was the end of [it], until he came back to JMD." Cabell-Edelen told the OIG that she and Hamilton had not communicated over the years following their time in the Army Corps of Engineers and that she saw Hamilton only as a "customer." Hamilton likewise told us he had no social relationship with Cabell-Edelen.

As described below, Hamilton and Cabell-Edelen gave contradictory accounts of how Hamilton's son came to be hired in JMD. Both of their accounts significantly understated the nature and extent of Hamilton's participation in the hiring process.

During her OIG interview, Cabell-Edelen denied that Hamilton had any involvement in his son's hiring. She stated that sometime around December 2009 she "put out a vacancy announcement for a trainee position because nobody was applying for the junior job in my payroll office." She told us that Hamilton's son applied for this position via Avue, the on-line job application system, and that his name appeared on the certificate of eligibles. Cabell-Edelen stated that she never had a conversation with Hamilton regarding either his son's general interest in a DOJ job or the specific possibility of his son being hired in HR. Cabell-Edelen stated that she had no idea that Hamilton even had a son until she saw the son's name on the certificate of eligibles. According to Cabell-Edelen, even after discovering the kinship, she did not discuss the son with the father until after her supervisor, Rod Markham, had approved the son's appointment.

Hamilton contradicted Cabell-Edelen's version of events during his OIG interview. Hamilton stated that he brought his son to Cabell-Edelen's attention. Hamilton stated that he asked Cabell-Edelen about FCIP opportunities for his son sometime in late 2009. He told us that she advised him that his son needed "to put a package together" and submit an application. Hamilton stated that he then sent Cabell-Edelen his son's résumé "as a start." Hamilton told us that "from that point, the communication from [Hamilton's son] to her began" and that, other than sending "a couple e-mails" seeking updates, Hamilton remained uninvolved.

Hamilton described to us a hiring process worked out almost exclusively between Cabell-Edelen and his son. First, he told us, his son "put [the application] in [and] made contact with Pam Cabell." He stated that she reviewed his résumé "and that's when she mentioned to him and he mentioned to me there was [an Office of the Chief Information Officer (OCIO)] junior help desk position" available. Hamilton told us that he

learned that this position did not ultimately pan out from “the e-mail traffic [that] came back to [Hamilton’s son].”

Hamilton said that after the OCIO prospect fell through, Cabell-Edelen called his son to suggest to him an FCIP position in HR. Hamilton stated that Cabell-Edelen informed him, too, that she had an FCIP position she wanted to offer to his son and that Hamilton stated to her, “Ok. If you and he work that out, fine.” Hamilton told us that HR Director Rod Markham subsequently informed him of his son’s appointment and told him, “I saw the cert., I saw the evaluation - we are going to bring [Hamilton’s son] on board. . . . We dotted all the i’s, crossed all the t’s. It was done appropriately: interview process, et cetera. Ranking, scoring, all of that happened. I’m going to let Mari [Santangelo] know. You might want to let her know that, too.” Hamilton stated that he subsequently spoke to Santangelo, telling her, “Mari, Rod just informed me my son is being hired in HR.” According to Hamilton, Santangelo asked if proper procedures had been followed, and he informed her of Markham’s conclusion that “we went by the book. It’s legal. It’s legit.” According to Santangelo, Hamilton was “very clear” in telling her that he had “nothing to do with” his son getting a job in JMD.

Hamilton insisted to us that his son “applied,” that he “made the cert.,” and that he obtained the HR position “on his own merits.” When asked if he and Cabell-Edelen ever had a conversation about the propriety of his asking her to help his son get a job, he stated, “She informed me, ‘Hey look, you need to step away from this. Don’t even ask me how it’s going. You really don’t need to be near this.’” Asked why she said this, he stated that she was a “professional” and that she was sensitive to the “legacy, if you will, that my predecessors had been involved in,” that he “did not need to have any shadow or perception around this. . . . And I was sensitive to that as well.” He concluded that “[t]his situation was not in violation; [Hamilton’s son] wasn’t in my supervisory chain. I had no interaction with him and HR and their role . . . or influence over there.”

Hamilton stated that it was, in fact, “never a desire” of his that his son be hired in the DOJ. Moreover, he stated that the appointment of his son to a position in JMD “would [have been his] last preference” but “that’s how the cards were dealt.”

The accounts of other witnesses, contemporaneous e-mails, and documents provided to the OIG by Avue contradict the account that Cabell-Edelen provided to the OIG.<sup>20</sup> They also reveal that Hamilton

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<sup>20</sup> We sought to re-interview Cabell-Edelen regarding the inconsistencies between her account and other evidence we gathered. As noted above, however, Cabell-Edelen had  
(Cont’d.)

mischaracterized to the OIG his efforts to obtain employment for his son in JMD; he had a greater role in his son's selection than he acknowledged. Our investigation showed that the following sequence of events occurred, beginning in late 2009.

Contemporaneous e-mails show, and Hamilton confirmed, that on or before December 4, 2009, Hamilton and Cabell-Edelen had a conversation about job opportunities in JMD for Hamilton's son. Hamilton followed up this conversation with an e-mail to Cabell-Edelen on December 4, which stated: "*As we discussed* please see attached my son's résumé. Really appreciate any help you can provide he is currently a GS-5, Step 3." (Emphasis added.) In response, Cabell-Edelen wrote, "I will give it my all." Hamilton wrote her back, "I love having the grandkids around but time for the parents to go. I need to find the brother something (IT, admin, supply)."

Over the following weekend, Hamilton received from his son another version of his résumé, which he sent to Cabell-Edelen on December 7, 2009, accompanied by the same message seeking "any help [she] can provide." Immediately following this e-mail to Cabell-Edelen, Hamilton e-mailed his son's résumé to one of her subordinates, stating: "*As we discussed* please see attached my son's résumé. Really appreciate any help you can provide he is currently a GS-5, step 3." (Emphasis added.)

Contemporaneous e-mails show that following Hamilton's request for help, Cabell-Edelen began making efforts to find a position for Hamilton's son, and that she gave Hamilton frequent updates about her progress. These e-mails suggest that contrary to what Hamilton told us, it was Cabell-Edelen and Hamilton himself - rather than she and Hamilton's son - who continued to collaborate closely throughout the son's job search. Specifically, Cabell-Edelen began forwarding Hamilton's son's résumé to current and former colleagues, including Jeanarta McEachron at the DHS, as well as to the U.S. Army Corps of Engineers, and the OCIO, recommending him to each for "placement." Cabell-Edelen sent to Hamilton copies of her initial e-mail inquiries to McEachron and the OCIO, and Hamilton in turn forwarded these e-mails to his wife and son. On December 8, 2009, Cabell-Edelen forwarded to Hamilton an e-mail showing that the OCIO was interested in his son's résumé, stating, "I may have a possible job for [your son]. I will keep you posted." Hamilton replied to her, expressing his gratitude and offering, unsolicited, his son's "most recent [Standard Form] 50." Cabell-Edelen responded, in part, "If I had an FTE I would hire

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retired from DOJ by the start of this investigation. Although Cabell-Edelen agreed to our initial request, she declined our request for a follow-up interview.

him on my staff.”<sup>21</sup> Hamilton thanked her and forwarded her e-mail to his wife and son.

Hamilton soon expanded his effort to include finding JMD employment for a second son. On December 14, 2009, Hamilton sent an e-mail to Cabell-Edelen with his second son’s résumé attached, asking, “Can you do anything with this one?”<sup>22</sup> He also sent his second son’s résumé to the Directors of the Departmental Executive Secretariat and the Consolidated Executive Office, stating, “Hey guys anything in a career ladder that might fit[?] Trying to keep my son from moving back home.” Later that morning, Hamilton sent his first son’s résumé to JMD’s Security & Emergency Planning Staff (SEPS) Director, along with the following message: “My son (attached) is in federal service currently as a unarmed [Special Police Officer] . . . he is a GS-5, has a bachelor in IT and working on his MBA. Anything in your area that might fit him with career ladder opportunity? Thanks, Ed.” Later that day, Hamilton sent his second son’s résumé to an HR Specialist. We found no evidence that these individuals identified any specific opportunities for Hamilton’s second son, and he is not a DOJ employee.

Meanwhile, Cabell-Edelen sent the OCIO reminder e-mails, assuring them of Hamilton’s son’s interest and availability for an interview, suggesting ideas regarding how they might effect the appointment (such as using the FCIP appointing authority), and offering her assistance with “the specific[s].” On December 15, 2009, she sent to Hamilton the e-mail chain illustrating the efforts she was making on Hamilton’s son’s behalf with the OCIO. Hamilton forwarded this e-mail to his wife and son, stating, “Pls see below,” and then responded to Cabell-Edelen, “Thanks Pam, I will keep my fingers crossed.”

On December 22, 2009, Hamilton e-mailed Cabell-Edelen seeking an “update from CIO.” On or before January 5, 2010, Hamilton and LaTonya Gamble apparently had a conversation about his son’s effort to obtain the OCIO position. On January 5, Hamilton forwarded without comment the above-mentioned OCIO e-mail chain to Gamble, who forwarded it to Cabell-Edelen, stating that Hamilton sought an update on Cabell-Edelen’s progress. Cabell-Edelen, who at this point had been out of the office for 17 days, responded to Gamble that she had heard nothing regarding the OCIO prospect and that she would follow up personally with Hamilton when she returned to the office. Gamble relayed this message to Hamilton.

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<sup>21</sup> An FTE is a “full-time equivalent,” meaning an available position.

<sup>22</sup> For purposes of this report, we refer to the son who was ultimately hired as “Hamilton’s son” and to the other son as “Hamilton’s second son.”

A week later, on January 11, 2010, Cabell-Edelen forwarded a new e-mail chain to Hamilton, this one showing that the OCIO prospect did not pan out. Hamilton thanked Cabell-Edelen for her help and forwarded her news to his wife and son, stating, “I will keep looking. Sorry . . .” (Emphasis added.) In a subsequent e-mail, Cabell-Edelen assured Hamilton she was “still working on both and [would] keep [him] posted.” Hamilton thanked her again and forwarded this e-mail to his wife and son as well.

Within a few weeks Cabell-Edelen selected Hamilton’s son for a position in HR as a GS-5 Payroll Specialist under FCIP. As noted above, use of this hiring authority enabled Cabell-Edelen to make this selection without notice to the public, open competition, or any competitive examination procedures. On January 26, 2010, Cabell-Edelen sent Hamilton an e-mail stating, “I Am Going To . . . Beat You Up! Stay out of the issue we discussed this morn!” Five minutes later, Hamilton e-mailed his son, stating, “Justice Personnel is trying to call you on your cell.” Later that day, one of Cabell-Edelen’s HR specialists e-mailed Hamilton the message: “Shhhhhhhhh - It is a done deal : ).” Hamilton thanked her and forwarded her e-mail to his wife and son.

The following day, January 27, 2010, Cabell-Edelen e-mailed her supervisor, HR Director Rodney Markham, stating, “I have selected [Hamilton’s son]” as GS-5 Payroll Specialist with promotion to GS-9. Markham responded, “Come again. . . ,” to which Cabell-Edelen replied, “Yeap!” Markham wrote back, “Sigh. . . . Mari will flip out.”

When asked about the appointment of Hamilton’s son, Markham told us, “Nobody ever asked me, ‘Rod, is it okay if we hire Ed’s son?’ I would have said, ‘No, not in my organization. It’s FASS! You know?’” Markham stated, “I told Pam, ‘You guys can’t do this. You know? We need to know. This is just unacceptable.’” When asked why this appointment immediately struck Markham as problematic, Markham stated, “Because I feel we should tell Mari [Santangelo] these things. When [my nephew] was working in NSD, I told her. When [my cousin] was working in Budget, I told her . . . . We don’t want to catch our senior leaders off guard. . . . I want to know about these things.”

Markham told us that he could have prevented the appointment of Hamilton’s son, but was reluctant to “penalize” the son. “I should have put the brakes on that one and got him outside of JMD,” Markham told us. When asked what steps he did take after learning of the selection of Hamilton’s son, Markham described questioning Cabell-Edelen and LaTonya Gamble regarding a proposed training plan for him, in order to ensure that “he [would be able to] convert” to a career or career-conditional position in the competitive service at the conclusion of his internship. He stated that

his concern was that the appointment not result in an unstructured, “bring him on board and stick him in a cube because it’s Ed’s son” experience.

Our interviews of Markham showed that he did not seriously scrutinize how Cabell-Edelen came to select Hamilton’s son. Specifically, he did not sufficiently investigate whether any JMD personnel had engaged in Prohibited Personnel Practices, particularly advocating for a relative’s appointment or granting an applicant an authorized preference or advantage.

We questioned Hamilton about his financial relationship with his son. He stated that his son, his son’s wife, and their children had lived “for a couple of years” with Hamilton in his home. Hamilton’s son’s family grew from two children to four children during the time he was living with his parents. This period included the time that Hamilton was asking for help in getting his son a job in JMD. He stated that his son had been the victim of a bad economy (“an economic casualty”). When asked whether Hamilton’s son provided him rent during this period, Hamilton stated, “Over a period of two years I may have gotten maybe \$200.” Hamilton told us that, eventually, his son “got his feet on the ground and was able to get a loan and get a mortgage,” and move out. He stated that his son had recently purchased a house without any further financial assistance from Hamilton.

We also asked Hamilton’s son about his financial relationship with his father during this time. He confirmed that he paid no rent, cable, utilities, or related expenses while living in his parents’ home but stated that he did “help[] out with groceries from time to time.” He told us that he sporadically provided up to \$300 in cash to his parents. He stated:

It was hit or miss. When [my parents] were like, “Look, you got to contribute *something*,” yeah, I anted up. But I wasn’t able to contribute 300 every month. . . . There were some months that I couldn’t, and there were some months that I made up for it other ways, whether that be hanging out with them or washing the car or something.

Hamilton’s son explained that these occasional cash payments did not fully cover his family’s expenses and that his parents provided financial support. He told the OIG, “They would have had to have helped. I don’t know anybody that can survive a family of [my family’s size at the time] on 300 bucks a month. No way. No. No way.” We asked him, “While you were living at [your father’s] house, he was paying some of the expenses of supporting your family?” He stated, “Naturally, yeah. Mom, too.”

Hamilton’s son began working in HR on March 15, 2010, at a salary equal to the salary of his prior position, \$37,481. Confirming his father’s



account, he told the OIG that he subsequently acquired a loan, purchased a house, and moved his family out of his father's residence in late 2010. On January 30, 2011, he was transferred to JMD's Asset Forfeiture Management Staff and promoted to GS-7/11 Administrative Specialist, a position providing an initial salary of \$42,209 with a promotion potential to \$81,204.<sup>23</sup>

Hamilton and Cabell-Edelen hired each other's children during the same 10-week period. As noted, Pamela Cabell-Edelen sent her daughter's résumé to Hamilton on October 15, 2009, and Hamilton selected the daughter on November 16. On or before December 4, 2009, Hamilton asked Cabell-Edelen about opportunities for his son, and ten days later about opportunities for a second son. In January 2010, Cabell-Edelen hired Hamilton's son. However, both Hamilton and Cabell-Edelen denied a connection between the hiring of their respective children. Hamilton told us that he did not learn that the person he selected was Cabell-Edelen's daughter until several months after these events. Cabell-Edelen denied that she knew that Hamilton even had a son until after his name appeared on the certificate of eligibles – although both Hamilton's testimony and contemporaneous e-mails clearly showed this statement to be false.

## **B. Analysis of the Conduct of Pamela Cabell-Edelen**

We concluded that HR Assistant Director (GS-15) Pamela Cabell-Edelen violated several statutes and regulations by attempting to obtain employment in JMD for her daughter, and that she made false or misleading statements under oath to the OIG.

### **1. Nepotism - 5 U.S.C. §§ 3110(b) and 2302 (b)(7)**

We found that Cabell-Edelen violated the federal nepotism statute, 5 U.S.C. § 3110(b), in connection with the appointment of her daughter. The nepotism statute prohibits a "public official" from employing or advocating for the employment of his "relative" to a civilian position in the official's agency. Such conduct is also a Prohibited Personnel Practice under 5 U.S.C. § 2302 (b)(7).

Cabell-Edelen, an HR Assistant Director with authority to make or affect employment decisions, qualified as a "public official" during the period in question. Moreover, the beneficiary of Cabell-Edelen's acts was her own daughter, a relation within the statutory definition of "relative." See 5

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<sup>23</sup> Pursuant to Executive Order 13562 (December 30, 2010), President Obama revoked E.O. 13162, terminating the FCIP effective March 1, 2011. As a result, Hamilton's son, like most FCIP employees, was converted to a permanent competitive service position prior to the expiration of his initial, 2-year appointment.

U.S.C. § 3110(a)(3). Our investigation further revealed that Cabell-Edelen “advocated” for her daughter’s appointment to a civilian position in her agency.

As previously described in detail, Cabell-Edelen had e-mail as well as in-person conversations with Hamilton during which she spoke in favor of, recommended, or otherwise endorsed her daughter’s appointment to a position in FASS. For example, in one e-mail, dated October 15, 2009, Cabell-Edelen sent her daughter’s résumé to Hamilton, stating, “This is the young lady *we discussed* to fill the position [recently vacated by the prior selectee] that you had previously interviewed. Hire her or get [a prior employee] back (Big Big Smile). (Just kidding).” (Emphasis added.) Having a conversation with the FASS Director about her daughter’s suitability for a FASS position and subsequently sending him her daughter’s résumé along with the words “Hire her” clearly represents improper advocacy. In addition, Hamilton told us that Cabell-Edelen recommended her daughter to him and that she “commented on the young lady’s work ethic, her merits, her job knowledge, et cetera.”

It does not matter that Cabell-Edelen’s daughter was hired to a position outside of Cabell-Edelen’s chain of command. The federal nepotism statute prohibits “advocacy” in connection with employment for any position within one’s agency. It is not limited to advocacy for positions within the official’s chain of command.

We therefore concluded that Cabell-Edelen violated the nepotism statute and committed a Prohibited Personnel Practice when she recommended her daughter to Hamilton.

**2. Unauthorized Preferences or Advantages - 5 U.S.C. § 2302(b)(6)**

As noted above, 5 U.S.C. § 2302(b)(6) prohibits an official from granting:

any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

The initial posting for the FASS Liaison position was open, pursuant to FASS’s specific request, to “current federal employees.” A reinstatement candidate, Cabell-Edelen’s daughter was not eligible to apply to the initial posting. Cabell-Edelen, however, instructed an HR Specialist to cancel the initial posting and replace it with a new vacancy announcement - one open

specifically to reinstatement eligible candidates. Then, immediately after the second announcement was posted, Cabell-Edelen sent an e-mail to her daughter stating that the announcement's Area of Consideration had been sufficiently broadened to permit her daughter to apply.

Based on these facts, we concluded that Cabell-Edelen violated 5 U.S.C. § 2302(b)(6) by defining the scope and manner of competition to facilitate her daughter's appointment.

**3. Use of Public Office for Private Gain - 5 C.F.R. § 2635.702**

The facts surrounding Cabell-Edelen's January 2009 manipulation of the FASS Liaison hiring process show that Cabell-Edelen violated Section 702 of the Standards of Ethical Conduct, "Use of public office for private gain." 5 C.F.R. § 2635.702. Section 702 states that "[a]n employee shall not use his public office . . . for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity . . . ." Section 702 also sets forth, by way of illustration, a non-exclusive list of four "specific prohibitions" covered by Section 702, the first of which states:

An employee shall not use or permit the use of his Government position or title . . . in a manner intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

The evidence shows that Cabell-Edelen used her public office for her daughter's private gain in January 2009. As discussed above, Cabell-Edelen instructed one of her subordinates, an HR Specialist, to modify the FASS Liaison announcement parameters specifically to enable her reinstatement-eligible daughter to apply. This was an abuse of Cabell-Edelen's position.

**4. Participation in a Matter Affecting the Financial Interest of a Person in a Covered Relationship - 5 C.F.R. § 2635.502**

We also concluded that Cabell-Edelen disregarded the guidelines set forth in Section 502 of the Standards of Ethical Conduct in connection with both her January 2009 manipulation of the FASS Liaison hiring process as well as her late 2009 recommendations to Hamilton that he hire her daughter in FASS. Section 502 applies to the participation in a "particular matter" (such as a hiring decision for a federal position) by an employee who

knows that such a matter “is likely to have a direct and predictable effect on the financial interest of someone in a “covered relationship.” Section 502 further states that, “[w]here the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter,” the employee should obtain authorization from an agency designee before participating in the matter. Covered relationships include persons with whom the employee has a financial relationship, persons who are members of the employee’s household, and persons who are relatives with whom the employee has a close personal relationship.

Cabell-Edelen improperly involved herself in her daughter’s applications for employment on at least two occasions in 2009 - each a “particular matter” likely to have a direct and predictable effect on her daughter’s financial interest. Specifically, Cabell-Edelen manipulated the hiring process for the FASS Liaison position in January by changing the announcement so that it was possible for her daughter to apply and on other occasions improperly advocated for her daughter’s appointment to multiple DOJ positions. Moreover, Cabell-Edelen had a “covered relationship” with her daughter: their familial relationship is beyond dispute, and her daughter confirmed that the two are close. Such circumstances would cause any reasonable person with knowledge of the relevant facts to question Cabell-Edelen’s impartiality toward her daughter.

Section 502 therefore clearly obligated Cabell-Edelen to secure agency designee authorization prior to participating in either of these matters. The OIG confirmed that Cabell-Edelen neither sought nor received such authorization.<sup>24</sup>

## **5. False or Misleading Statements to the OIG**

We concluded that Pamela Cabell-Edelen made multiple false statements under oath regarding the appointments of her daughter and Hamilton’s son. We also concluded that Cabell-Edelen, who had already retired from the Department when we interviewed her in May 2011, made these false statements in a deliberate attempt to obstruct our investigation.

When we asked Cabell-Edelen how her daughter came to be hired in JMD, she said that her daughter applied for the job in Avue and that Hamilton received her name on the certificate of eligibles. She stated, “I do

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<sup>24</sup> [REDACTED]

not get involved in my daughter's employment or press anybody to hire her. . . . It just happened that Mr. Hamilton and his team hired her." She told us that her daughter got the job "all on her own," stating, "I had nothing to do with any of it."

However, as described above, the contemporaneous evidence clearly shows that Cabell-Edelen involved herself extensively in her daughter's effort to be hired in JMD, including by manipulating the FASS Liaison hiring process and advocating on her daughter's behalf to a variety of DOJ officials. In one e-mail, Cabell-Edelen clearly urged Hamilton to "[h]ire her," (referring to her daughter), and she subsequently discussed her daughter's candidacy with Hamilton and agreed on "a by name [request] for the Executive Secretary position." Although the OIG interviewed Cabell-Edelen 18 months after the events, it is extremely unlikely that Cabell-Edelen forgot about her role in her daughter's effort to be hired in JMD. Indeed, when interviewed, she did not say anything about not recalling what she had done. She was simply insistent that she had "nothing to do with" her daughter being hired. We concluded that she intentionally attempted to conceal her assistance from the OIG.

Cabell-Edelen likewise attempted to conceal her participation in the effort to find a JMD job for Hamilton's son. When we first asked Cabell-Edelen how Hamilton's son came to be hired in JMD, she stated that, sometime in December 2009, she "put out a vacancy announcement for a trainee position, because nobody was applying for the junior job in my payroll office." She stated that Hamilton's son applied for this position through Avue, and that his name appeared on the certificate of eligibles. She told us that before this, she had no conversations with Hamilton about his son applying. She told the OIG, "I would not have probably talked to [Hamilton] until I got the clearance that I got from my boss [Markham] that I was going to hire him." Moreover, she stated, she was not aware that Hamilton even had a son until she noticed the familiar name on the certificate of eligibles.

Once again, contemporaneous evidence, including e-mails and Avue archives, contradicted Cabell-Edelen's account. Cabell-Edelen's statement to us that she put out a vacancy announcement for a trainee position because nobody was applying for the junior job in her payroll office was contradicted by her own e-mail, sent to Hamilton in December 2009, stating, "If I had an FTE I would hire him on my staff." Moreover, Avue records we reviewed and executives we interviewed confirmed that Cabell-Edelen's office advertised no junior or trainee payroll job at any time after March 2009 and that Hamilton's son's name never appeared on any referral list that Avue ever generated for any position. Moreover, the e-mails and witness accounts described above amply demonstrate Cabell-Edelen's extensive involvement in Hamilton's son's job search, beginning with

conversations she and Hamilton had in early December 2009 and ending in late January 2010 when she selected Hamilton's son for a position in HR.

Because Cabell-Edelen declined our request to interview her a second time after her retirement, we were unable to confront her with the evidence contradicting her statements regarding the appointment of her daughter and Hamilton's son. Nonetheless, the evidence strongly supports the conclusion that Cabell-Edelen made false statements in a deliberate attempt to obstruct the OIG's investigation.<sup>25</sup>

## **6. Conclusions Regarding Cabell-Edelen**

We concluded that Pamela Cabell-Edelen violated the nepotism statute, committed Prohibited Personnel Practices, and violated the Standards of Ethical Conduct in connection with her campaign to obtain employment in JMD for her daughter. Cabell-Edelen also made false or misleading statements under oath to the OIG in an effort to conceal from the OIG her involvement in the hiring of both her own daughter and Edward Hamilton's son.

Cabell-Edelen has retired from DOJ and is no longer subject to discipline. Nevertheless, we recommend the Department consider the findings in this report should Cabell-Edelen apply in the future for another position with the Department, and that the Department share these findings with the Office of Personnel Management for consideration in the event that Cabell-Edelen applies for a position in a different federal agency.

### **C. Analysis of the Conduct of Edward Hamilton, Sr.**

We concluded that FASS Director (SES) Edward A. Hamilton's involvement in his son's effort to successfully obtain a position in JMD violated multiple statutes and regulations.

#### **1. Nepotism - 5 U.S.C. §§ 3110(b) and 2302(b)(7)**

We concluded that Hamilton violated the federal nepotism statute, 5 U.S.C. § 3110(b), in connection with the appointment of Hamilton's son. The nepotism statute prohibits a public official with hiring authority from employing or advocating for the employment of his "relative" to a civilian position in the official's agency. Such conduct is also a Prohibited Personnel Practice under 5 U.S.C. § 2302(b)(7). During the period in

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<sup>25</sup> [REDACTED]

question, as FASS Director, Hamilton clearly qualified as a public official with hiring authority, and Hamilton's son met the statutory definition of a "relative."

We concluded that Hamilton's campaign to find employment for his son in DOJ constituted "advocacy" prohibited under the nepotism statute. The JMD officials to whom he e-mailed his son's résumé included HR Assistant Director Pamela Cabell-Edelen, the Director of SEPS, and an HR Specialist. Hamilton recommended his son to these individuals and described how important it was to find a job for him. In separate e-mails to Cabell-Edelen and the HR Specialist he wrote, "*As we discussed* please see attached my son's résumé. Really appreciate any help you can provide he is currently a GS-5, Step 3." (Emphasis added.) When Cabell-Edelen promised to "give it [her] all," Hamilton reiterated to her his desire to see his son placed, stating, "I love having the grandkids around but time for the parents to go. I need to find the brother something (IT, admin, supply)."

He specifically requested a "career ladder opportunity" for his son; he described his son's work experience and education; and he registered his approval of the efforts expended on his and his son's behalf with multiple expressions of gratitude. Hamilton had additional, in-person conversations about his son's JMD job search with Cabell-Edelen and the HR Specialist and made a point of reminding them how much he would "appreciate [their] help." He initiated contact with Cabell-Edelen, asked her about opportunities for his son, sent her at least two versions of his son's résumé, e-mailed her his son's Standard Form 50, sought updates from her on numerous occasions, and thanked her for her assistance. His personal involvement was so insistent, in fact, that it continued through the formal extension of an offer to Hamilton's son. As described above, in the moments before HR telephoned Hamilton's son with an official offer of employment, Cabell-Edelen sent Hamilton an e-mail stating, "I Am Going To . . . Beat You Up! Stay out of the issue we discussed this morn!" (Ellipsis in original.) Five minutes later, Hamilton e-mailed his son, stating, "Justice Personnel is trying to call you on your cell."

In sum, we concluded that Hamilton's campaign to obtain employment for his son in JMD constituted "advocacy" in violation of the nepotism statute.

Hamilton stated that he committed no violation due, in part, to the fact that HR lay outside his own supervisory chain. As previously noted, however, the prohibitions on nepotism are not limited to advocacy to persons within the public official's own chain of command. Hamilton violated the nepotism statute and committed a Prohibited Personnel Practice when he recommended his son to a variety of JMD officials, most notably to Cabell-Edelen.

## **2. Use of Public Office for Private Gain - 5 C.F.R. § 2635.702**

We concluded that Hamilton violated Section 702 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.702, which specifically bars an employee from using his public office for his friends' or relatives' private gain. The evidence shows that Hamilton misused his public office when he recommended his son (and for that matter his second son) to a variety of JMD officials.<sup>26</sup>

As described above, Hamilton had multiple discussions with Cabell-Edelen regarding his son's need for a job, assuring her (and an HR Specialist) how much he would "appreciate any help," submitting to her his son's résumés and other paperwork, and repeatedly thanking her as the hiring process unfolded. He similarly urged the Director of SEPS to assist his son in finding a job, describing his son's education and work experience and specifically requesting a "career ladder opportunity." The e-mails show that he continued to press for updates regarding his son's progress, contacting not only Cabell-Edelen, but LaTonya Gamble and another HR Specialist as well. An e-mail dated January 26, 2010, shows that Cabell-Edelen ultimately told him to "stay out of the issue." He similarly urged Cabell-Edelen and two other JMD Directors to assist in finding work for his second son.

Hamilton's persistent efforts with other JMD officials on behalf of his sons provided them with a "private gain" unavailable generally to applicants for DOJ positions. He was well-positioned as the FASS Director to request favors from three JMD Directors, the HR Officer, and an HR Specialist. In particular, his relationship with Cabell-Edelen was professional. Cabell-Edelen told us that although she knew of Hamilton when they both worked at the Army Corps of Engineers, they had had no communication in the years since. She described him as a "customer." In short, the only reason Cabell-Edelen would have had to respond so vigorously to Hamilton's request for help was that Hamilton held an influential position in JMD.<sup>27</sup> In contacting Cabell-Edelen and others about his son, Hamilton was "using his public office," not any friendship with them, as the basis for his request.

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<sup>26</sup> December 2009 e-mails show that, in addition to the efforts made on his son's behalf, Hamilton sent his second son's résumé to at least four JMD officials, seeking for him "anything in a career ladder that might fit."

<sup>27</sup> We believe that the analysis of misuse of position under Section 702 is a fact-specific inquiry that depends on the context. The finding that Hamilton misused his position was evident in view of Hamilton's position as FASS Director and the prior hiring abuses by his predecessors.



This provided Hamilton's son with an improper "private gain" and was an abuse of Hamilton's position.

We also found that Hamilton's conduct, in addition to violating Section 702's general prohibition, fell squarely under one of the four "specific prohibitions" listed in Section 702. Section 702(a) prohibits the use of one's public office "in a manner intended to coerce or induce another person . . . to provide any benefit, financial or otherwise" to himself or to a relative. As described in previous sections of this report, Hamilton intentionally "induce[d]" Cabell-Edelen to provide a "benefit" to his son by sending his résumé, requesting her assistance, explaining why it was important to Hamilton that his son get a new job, and providing supporting documentation and multiple expressions of gratitude.

### **3. Participation in a Matter Affecting the Financial Interest of a Person in a Covered Relationship - 5 C.F.R. § 2635.502**

We similarly concluded, based on his recommending his son to his JMD colleagues, that Hamilton failed to follow the guidelines set forth in Section 502 of the Standards of Ethical Conduct. As noted above, Section 502 relates to the participation in a "particular matter" (such as a hiring decision for a federal position) by an employee who knows that such matter is likely to have a "direct and predictable effect" on the financial interest of someone in a "covered relationship," and "[w]here the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter."

Hamilton clearly had a "covered relationship" with his son; not only were they father and son, they also shared a household. Moreover, the matter (the decision whether to hire Hamilton's son) obviously had a direct and predictable effect on Hamilton's son's financial interest. Indeed, that impact was foremost in Hamilton's mind as he sought a path for his son to move his family out of Hamilton's house.

The evidence described above clearly shows that Hamilton "participated" in this matter. In fact, Hamilton participated "personally and substantially" in the matter, as defined in the Code of Federal Regulations, which state, in part:

To participate personally means to participate directly. . . . To participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. . . . A finding of substantiality should be based not only on the effort devoted to a matter, but also on the

importance of the effort. . . . [T]he single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, **recommendation**, investigation or the **rendering of advice** in the particular matter.

5 C.F.R. § 2635.402(B)(4). (Emphasis added.)

As described above, Hamilton played a pivotal - if not a public or prolonged - role in his son's attempt to secure a DOJ appointment. As Director of FASS, Hamilton possessed power and influence within JMD. E-mail and witness accounts show Hamilton campaigned on his son's behalf by submitting his son's résumé to multiple JMD colleagues, including the SEPS Director, the HR Officer, and an HR Specialist, and urging his JMD colleagues to consider his son for placement in a variety of roles (*e.g.*, information technology, administration, supply, security). He provided positive comments about his son's background and qualifications, and stated that he preferred that his son receive a "career ladder opportunity." Particularly with regard to Cabell-Edelen's role in the hiring process, Hamilton's participation was unquestionably "personal and substantial." He initiated contact with Cabell-Edelen, asked her about opportunities for his son, sent her at least two versions of his son's résumé, e-mailed her his son's Standard Form 50, repeatedly sought updates from her, and thanked her for her assistance. His personal involvement was so "substantial," in fact, that it eventually drew a rebuke from Cabell-Edelen, who admonished him to reduce his level of involvement.

We do not believe that Hamilton escapes the requirements of Section 502 because he was not the formal decision maker in the hiring decision. Senior government employees very commonly share opinions and recommendations regarding hiring and promotion decisions. We believe that when they do so they are acting within their "official duties" under the Standards of Ethical Conduct, even if the particular matter in question relates to a decision that is not the formal "responsibility" of the senior official. Specifically, an employee who receives a recommendation from a senior official about agency business, such as a hiring decision, may justifiably conclude that the senior official is acting in his official capacity, and it would be unreasonable for a senior official to expect that an employee would construe his recommendation otherwise.<sup>28</sup>

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<sup>28</sup> The OIG's Section 502 analyses in this investigation are fact-specific and were further informed by the issues raised in our 2004 and 2008 Reports. Hamilton and other senior officials discussed herein were aware of prior misconduct within JMD and had received training on legal and ethical issues associated with involvement in the hiring of relatives.

(Cont'd.)

In sum, Hamilton's involvement was "of significance to the matter"; it was "substantial even though it [was] not determinative of the outcome." Based on these facts, we concluded that Hamilton "participated in a critical step" of his son's application process or otherwise made a "recommendation" or "rendered advice" on his candidacy.

These circumstances would cause any reasonable person to question Hamilton's impartiality toward his son. In fact, Hamilton himself recognized the appearance problem. Asked to explain why Cabell-Edelen cautioned him to, in Hamilton's words, "step away from" the matter of his son's appointment, Hamilton stated, "She was concerned about the legacy, if you will, that my predecessors had been involved in and that you don't need to have any shadow or perception around this. . . . And I was sensitive to that as well."

Under Section 502, Hamilton therefore should have obtained authorization from the agency designee before participating in the matter. The OIG confirmed that Hamilton neither sought nor received authorization. His failure to do so was egregious in light of the knowledge Hamilton had of the problems encountered by his predecessor in connection with hiring family friends and relatives.<sup>29</sup>

#### **4. Misleading Statements to the OIG**

We considered whether Hamilton's statements to the OIG were misleading. The gist of Hamilton's account was that he merely asked Cabell-Edelen about the FCIP and then, other than sending her his son's résumé and occasionally asking for updates, he stayed out of the process,

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In addition, under the circumstances of the misconduct discussed in this report, the OIG need not decide whether an official would run afoul of Section 502's proscriptions if there were a non-official basis for a senior official to offer hiring advice or recommendation relating to a relative because there is no evidence in this case of any such outside relationships. However, as stated in Section 501, we believe senior officials should be mindful of the "appearance of loss of impartiality," and that it would be prudent to consider that even in the case of a long-standing personal friendship between a senior official and a hiring official, there may be a strong presumption that a senior official is acting in an official capacity for purposes of Section 502 when recommending a relative for employment.

<sup>29</sup>



which he portrayed as consisting of communications occurring directly and almost exclusively between Cabell-Edelen and his son.

We found no evidence, however, of any such collaboration between Cabell-Edelen and Hamilton's son. Instead, contemporaneous e-mails suggest that Hamilton and Cabell-Edelen effected the son's entire job search and ultimate hiring entirely on their own. We found many e-mails between Hamilton and Cabell-Edelen regarding a job for the son, but none between the son and Cabell-Edelen. For example, it was through Cabell-Edelen - not, as Hamilton told the OIG, from his son or from "the e-mail traffic [that] came back to [his son]" - that Hamilton first learned of the OCIO job prospect and later learned that it fell through, and it was through Cabell-Edelen and her staff - not Markham or Hamilton's son - that Hamilton ultimately learned of his son's appointment in HR. If Cabell-Edelen were working directly with the son, as Hamilton asserted, she would have had little reason repeatedly to update the father on the progress of the job search, and Hamilton would have had no reason to forward Cabell-Edelen's updates and e-mail chains to his son. If not demonstrably false, Hamilton's statements were certainly misleading. Thus, we concluded that Hamilton significantly understated his own involvement in obtaining employment for his son. Moreover, given that Hamilton's involvement was so insistent that Cabell-Edelen had to warn Hamilton to "[s]tay out of the issue we discussed this morn!," we found it difficult to accept Hamilton's claim that it "was never a desire of mine" that his son be hired in JMD. In short, we found that Hamilton's statements lacked candor.

Moreover, we note that Hamilton may not have been honest with his own boss, Santangelo. According to Santangelo, Hamilton was "very clear" in telling her that he had "nothing to do with" his son's getting a job in JMD. As described above, Hamilton had a great deal to do with his son's appointment.

We therefore concluded that Hamilton made misleading statements to the OIG.<sup>30</sup>

## **5. Conclusions Regarding Hamilton**

We concluded that FASS Director Edward Hamilton violated the nepotism statute, committed a Prohibited Personnel Practice, and violated the Standards of Ethical Conduct in connection with his campaign to obtain employment in JMD for his son. Hamilton also made misleading statements

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<sup>30</sup> [REDACTED]

in an effort to minimize his involvement in securing his son's appointment to a position with JMD HR.

We are not aware of mitigating circumstances for Hamilton's conduct. Hamilton was well aware of the facts and circumstances surrounding his predecessor's violation of laws and regulations relating to merit selection procedures, conflicts of interest, and Standards of Ethical Conduct. We reviewed the written materials Rodgers provided to Hamilton during their March 2009 meeting (described above), as well as those used in the annual ethics training that Hamilton attended the following year, and found that this training included ample discussion of conflict of interest laws [REDACTED] and provisions governing the misuse of one's office (5 C.F.R. § 702). Notably, the Rodgers training - delivered to Hamilton only months before he began his effort to obtain a job for his live-in son - plainly stated, "An employee may not participate in a particular matter involving specific parties affecting the financial interests of a member of his household." The materials also expressly forbade the use of one's public office for "his own private gain, and that of friends [or] relatives . . . ." The annual ethics training materials we reviewed contained multiple reminders to seek ethics advice often and always prior to taking action.

Hamilton sought no advice from an agency ethics official regarding the propriety of his efforts to obtain JMD employment for both of his sons. Such an inquiry, he knew or should have known, would have resulted in advice that he refrain from advocating for his sons' employment by other officials in the Department.

We are referring our findings concerning Hamilton to JMD for its review and appropriate disciplinary action.

**D. Analysis of the Conduct of LaTonya Gamble**

We concluded that HR Operations Chief (GS-15) LaTonya Gamble engaged in a Prohibited Personnel Practice and violated the Standards of Ethical Conduct by manipulating the competitive hiring process to grant improper preferences to Cabell-Edelen's daughter.

**1. Unauthorized Preferences or Advantages - 5 U.S.C. § 2302(b)(6)**

We found that Gamble violated 5 U.S.C. § 2302(b)(6) in connection with Cabell-Edelen's daughter's application for employment. That provision prohibits an official from granting:

any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment

(including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

As described above, Gamble sent an e-mail to an HR Specialist instructing her to change the FASS Liaison position vacancy announcement to include "reinstatement eligible" candidates, thus enabling Cabell-Edelen's daughter to apply for the position.<sup>31</sup> Then, when the HR Specialist rated the daughter's Avue application for the FASS Liaison position "not qualified," based on her lack of relevant experience, Gamble called the HR Specialist into her office and instructed her to change the rating to "qualified" and to create an amended certificate of eligibles that included the daughter's name. The HR Specialist told us that the rating decision was still up to her because she was the Rating Specialist, so she resisted Gamble. The HR Specialist told us that Gamble rebuffed her objections, however, and "ordered" her to qualify Cabell-Edelen's daughter. The HR Specialist told the OIG that this was the only time in her career that she had been overruled in this way, and she therefore made a point of specifically memorializing Gamble's intervention by making a contemporaneous notation in the Avue database, the existence of which the OIG subsequently confirmed.

We believe that Gamble was acting on behalf of her boss and friend, Cabell-Edelen, to benefit Cabell-Edelen's daughter. Gamble's actions, apparently coordinated with Cabell-Edelen, dramatically advanced Cabell-Edelen's goal of installing her daughter as FASS Liaison.<sup>32</sup>

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<sup>31</sup> We did not credit Gamble's speculation about the reasons for changing the Area of Consideration to include reinstatement eligible candidates. As detailed above, Gamble's description of a "glitch in Avue's system" was not corroborated by any of the relevant witnesses. Moreover, even if there had been a flaw in Avue's definition of "status eligibles," this problem would have had no effect on a vacancy announcement, such as the one at issue here, open only to "current federal employees." We concluded that Gamble ordered the change to the announcement's Area of Consideration to enable Cabell-Edelen's daughter to apply for the position.

<sup>32</sup> It is difficult to quantify the extent to which Gamble enhanced Cabell-Edelen's daughter's chances of securing the FASS Liaison position. What is clear, however, is that prior to Gamble's second intervention on the daughter's behalf, her candidacy had already come to an end; the HR Specialist had disqualified her, as she indicated in Avue's database, for failing to "meet the one year specialized experience at the next lower level as required by OPM." Gamble's intervention, however, ensured the consideration of the daughter's rejected application and vaulted her over multiple other candidates. Notably, Cabell-Edelen's daughter told us that during a conversation with Cabell-Edelen regarding her application's status, her mother informed her that at some point during the application process, she "went from being top 12 to top 2."

Given that Gamble knew Cabell-Edelen's daughter from her prior employment at the Army Corps of Engineers, we considered the possibility that she intervened on Cabell-Edelen's daughter's behalf based on a sincere belief in Cabell-Edelen's daughter's merit. However, Gamble told us she had no opportunity to observe the daughter's skills or abilities when both were employed at the Army Corps of Engineers. Gamble and Cabell-Edelen's daughter each stated that there was no post-Army contact, at least until after the daughter assumed her FASS Secretary position. Gamble's prior experience with the daughter therefore provided no basis not included in the application materials for Gamble to conclude that she had skills and talents suitable for the FASS Liaison position.

Moreover, when we interviewed Gamble, she did not even attempt to justify her alleged qualification of Cabell-Edelen's daughter based on her skills and abilities. Instead, she denied any involvement whatsoever in the daughter's application process. She stated that she had no exchanges with any person regarding the daughter's application or her attempt to be hired as FASS Liaison. When asked if it was *possible* that she could have instructed an HR Specialist to change a candidate's qualification rating, she said no. Her denials of any involvement, however, were contradicted by witness testimony, contemporaneous e-mails, and the official record, which documented her involvement.

Based on these facts, we concluded that Gamble violated 5 U.S.C. § 2302(b)(6) by granting Cabell-Edelen's daughter an improper "preference or advantage . . . for the purpose of improving . . . [her] prospects . . . for employment."

**2. Use of Public Office for Private Gain - 5 C.F.R. § 2635.702**

Gamble also violated Section 702 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.702, which provides that an employee "shall not use his public office . . . for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity . . . ." Section 702 also sets forth the following, specific prohibition applying this general standard:

An employee shall not use or permit the use of his Government position or title . . . in a manner intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity. 5 C.F.R. § 2635.702(a).

Evidence showed that Gamble and Cabell-Edelen were long-time friends during Cabell-Edelen's effort to secure the FASS Liaison position for her daughter. Cabell-Edelen told us that she and Gamble had known each other for approximately 15 years, and Gamble described their relationship as "close." HR Director Markham similarly described the friendship between Gamble and Cabell-Edelen as "very tight."

The evidence further establishes that Gamble used her government position for the private gain of Cabell-Edelen on two occasions. The first occurred on January 13, 2009, when Gamble instructed an HR Specialist to widen the vacancy announcement for the FASS Liaison position to "include Reinstatement Eligibles under the WHO MAY APPLY section." This occurred immediately after - and, the evidence suggests, in coordination with - Cabell-Edelen's identical instruction to the HR Specialist. The change made it possible for Cabell-Edelen's reinstatement eligible daughter to apply for the FASS Liaison position, a job her mother wanted her to have.<sup>33</sup>

The second occasion on which Gamble used her government position for Cabell-Edelen's private gain took place the following month, after Cabell-Edelen's daughter had applied to the recently broadened announcement. As explained above, on February 10, 2009, the HR Specialist rated the daughter's Avue application "not qualified" for the FASS Liaison position, based on her lack of relevant experience. At this point, according to the HR Specialist, Gamble called the HR Specialist into her office and instructed her to change the rating to "qualified" and to create an amended certificate of eligibles that included the daughter's name. The HR Specialist did as ordered, but memorialized Gamble's intervention, which the HR Specialist characterized as unprecedented in her career, in Avue's database.

We concluded that Gamble's conduct obtained for Cabell-Edelen an improper "benefit, financial or otherwise." Twice in early 2009, Gamble helped to advance Cabell-Edelen's objective of installing her daughter in the FASS Liaison position. As noted above, Gamble's manipulation of the competitive hiring process was not inspired by any belief that Cabell-Edelen's daughter was a good candidate for the position.<sup>34</sup> We concluded

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<sup>33</sup> Twenty-four minutes after Gamble e-mailed the HR Specialist, Cabell-Edelen e-mailed her daughter, stating, "The vacancy announcement has been changed to include reinstatement candidates. Avue is not working well today so you may want to try later or tomorrow."

<sup>34</sup> Even if Gamble believed that the daughter's qualifications were comparable to those of the other candidates, it would not be a defense to a Section 702 violation. In that case, given Gamble's close relationship with Cabell-Edelen, Gamble should have disclosed the relationship and sought authorization to participate further in the hiring process. Section 502 of the Standards of Ethical Conduct directs employees to seek the approval of the agency designee where an act benefiting a friend, relative, or person with whom he is affiliated in a nongovernmental capacity might give rise to an appearance of using his office

(Cont'd.)



that Gamble's intervention on the daughter's behalf was explainable only as a personal favor to her friend and supervisor.<sup>35</sup>

We therefore concluded that Gamble used her public office for Cabell-Edelen's private gain when she "coerce[d] or induce[d]" the HR Specialist first, to expand the FASS Liaison position announcement's Area of Consideration and later, to revive the daughter's rejected application. This was an abuse of Gamble's position and violated Section 702 of the Standards of Ethical Conduct.

### **3. False or Misleading Statements to the OIG**

We concluded that LaTonya Gamble made false or misleading statements under oath when asked by the OIG about her involvement in Cabell-Edelen's daughter's attempt to be hired as FASS Liaison. She stated that she did not ever have any exchanges with Cabell-Edelen regarding how broadly or narrowly to advertise for the FASS Liaison position. She stated that she had no knowledge of the breadth of the first announcement's Area of Consideration (identifying "Who May Apply") or the subsequent effort to widen it to include reinstatement eligible candidates. She stated that she has never instructed anyone to change a candidate's qualification rating and place the candidate's name on a certificate of eligibles. She furthermore stated that it was not even *possible* that she could have involved herself in the application process in this manner.

The statements of the HR Specialist, coupled with our subsequent review of contemporaneous e-mail and Avue records, contradicted Gamble's statements. First, the evidence shows that Gamble sent the HR Specialist an e-mail on January 13, 2009, instructing her to change the FASS Liaison position vacancy announcement to "include Reinstatement Eligibles under

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for private gain or giving preferential treatment. See 5 C.F.R. § 2635.502. Gamble neither sought nor received any such approval.

<sup>35</sup> We considered the possibility that Gamble intervened on Cabell-Edelen's daughter's behalf because that was what her boss, Cabell-Edelen, wanted and that Gamble therefore felt pressured to provide assistance. Had Gamble offered this explanation to the OIG - indicating that Cabell-Edelen specifically asked her (or that Gamble's subordinate role otherwise impelled her) to assist Cabell-Edelen's daughter - the existence of their boss/subordinate relationship would have mitigated the severity of Gamble's conduct. Gamble, however, did not offer such a defense; instead, she denied any involvement in the daughter's application process. Moreover, even had she told the OIG that she felt pressured to assist her supervisor, we would be reluctant to credit fully such a claim. There is at least some evidence that Gamble's assistance to Cabell-Edelen was less an example of a subordinate following orders than a matter of two friends trading favors: As discussed below in Part VI.A.3, less than three months after Gamble assisted Cabell-Edelen's daughter's effort to be hired as FASS Liaison, Cabell-Edelen helped Gamble's daughter to obtain a paid, HR clerkship.

the WHO MAY APPLY section.”<sup>36</sup> Twenty-four minutes after Gamble’s e-mail, Cabell-Edelen informed her daughter, “The vacancy announcement has been changed to include reinstatement candidates. Avue is not working well today so you may want to try later or tomorrow.”

After the HR Specialist rated Cabell-Edelen’s daughter’s application “not qualified” for the FASS Liaison position, Gamble instructed her to change the rating to “qualified” and to place Cabell-Edelen’s daughter’s name on an amended certificate of eligibles. Avue records corroborated this account, revealing two entries that the HR Specialist had made during the events in question: one stating that Cabell-Edelen’s daughter “[d]oes not meet the one year specialized experience at the next lower level as required by OPM”; and the other stating, “Basic [qualifications] overridden for [the daughter] (Reason: Requested by LaTonya Gamble to change this rating to qualified.)” Gamble was unable to provide any explanation for the HR Specialist’s statements or the Avue entries.

We therefore concluded that LaTonya Gamble made false or misleading statements under oath to the OIG.<sup>37</sup>

#### **4. Conclusions Regarding Gamble**

We concluded that LaTonya Gamble violated 5 U.S.C. § 2302(b)(6) and that she failed to adhere to the Standards of Ethical Conduct. We believe that Gamble also made false or misleading statements under oath to the OIG.

We are referring our findings concerning Gamble to JMD for its review and appropriate disciplinary action.

#### **IV. Facts and Analysis Pertaining to Clay and McEachron**

In this Part of the report we address allegations relating to the hiring of FASS Deputy Director Michael Clay’s daughter into JMD by Jeanarta McEachron, and the related efforts of Clay to find positions for McEachron’s brother.

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<sup>36</sup> As noted, Gamble’s speculation about possible reasons for changing the Area of Consideration to include reinstatement eligible candidates was not supported by any evidence. We concluded that Gamble ordered the change to benefit Cabell-Edelen’s daughter, and then told the OIG she had no involvement in the matter.

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## **A. Factual Findings**

### **1. Hiring of FASS Deputy Director Michael Clay's Daughter.**

The daughter of FASS Deputy Director Michael Clay was hired in November 2009 by Jeanarta McEachron, who at the time was an HR Assistant Director, into HR Policy & Advisory Services as a part-time GS-5/13 HR Specialist under the Federal Career Intern Program (FCIP).<sup>38</sup> Prior to her appointment in HR, Clay's daughter attended college and received a Computer Information Systems degree in May 2009. This aspect of the investigation originated, in part, with anonymous allegations that Cabell-Edelen "made a job and hired" Clay's daughter. After determining that it was McEachron, and not Cabell-Edelen, who hired Clay's daughter, we interviewed McEachron at the Department of Homeland Security (DHS), where she has worked since leaving the DOJ in November 2009.

McEachron told the OIG that she knew Clay from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), where they were once colleagues, but that she "didn't know [the daughter] from Adam." Both McEachron and Clay described their relationship to the OIG as strictly professional and not a friendship. They had never worked in the same office, had never socialized and, before Clay contacted McEachron on his daughter's behalf, they had had very little contact during their ATF and JMD tenures.

McEachron stated that Michael Clay contacted her about opportunities for his daughter in 2009, shortly after the daughter graduated from college. According to McEachron, Clay informed her that his daughter had just graduated and needed a job. McEachron told us that Clay wanted to know "if I had anything, you know, if I could help her out." McEachron stated that Clay asked "if there was anything in HR that was available."

McEachron told us that she hired Clay's daughter after a "panel" interviewed her, explaining that, "with me receiving her résumé from her dad - I did not want to just make that arbitrary decision to select this person without the experts on my staff who she would be working with conducting the interview." She said she could not recall the members of the panel, or whether she personally interviewed Clay's daughter prior to hiring her. She stated, however, that, "for an FCIP position, if the person has a college degree, then that's enough to qualify them."

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<sup>38</sup> Clay's daughter became a full-time FCIP appointment in December 2010.

Michael Clay's description of how his daughter came to be hired was similar to McEachron's account. He told us that he knew McEachron from the ATF and contacted her about his daughter's recent graduation and need for a job. Clay told us that he asked McEachron about "opportunities" for his daughter. According to Clay, McEachron told him that she had no full-time positions to offer, but that a part-time FCIP position was available, if his daughter was interested. Clay told McEachron that his daughter would likely be interested in that job. Clay told us that after two interviews, McEachron hired his daughter.

Contemporaneous e-mails, as well as the accounts of other witnesses, however, suggest a more complicated set of circumstances led to the hiring of Clay's daughter. Specifically, the evidence shows a connection between McEachron's appointment of Clay's daughter in HR and Michael Clay's efforts to find employment for McEachron's brother within the Department.

Our investigation revealed that the following sequence of events occurred, beginning in August 2009.

E-mails show Clay in contact with his daughter regarding her effort to obtain federal employment and specifically, his daughter performing job searches on USAJOBS.gov and e-mailing the results of the searches to her father. E-mails also show that, on or before August 14, 2009, Clay asked a colleague to provide him with McEachron's telephone number. McEachron stated that this e-mail likely coincided with Clay contacting her regarding his daughter. "That was probably the only time that he reached out to me at the time that I was at DOJ," McEachron added. On September 18, 2009, Clay's daughter e-mailed her résumé to her father. McEachron told us she thought she got the daughter's résumé from the father, but that the father may have instructed his daughter to e-mail it directly to McEachron. Clay told us his daughter sent the résumé to McEachron.

McEachron then began asking Clay for help in hiring *her* relatives. On September 18, 2009, McEachron e-mailed Clay, "*As discussed*, attached is my daughter's| résumé. Thanks and have a wonderful weekend!" (Emphasis added.)

Less than a month later, on October 8, 2009, LaTonya Gamble e-mailed Clay the résumé of McEachron's brother stating, "Résumé as requested. I left you a voicemail, when you get a moment, please give me a call [phone number]. Thanks." Twenty minutes later, Clay e-mailed McEachron's brother's résumé to one of his Deputy Assistant Directors stating, "Would you float this résumé for me to some of your business partners and see if there is any interest?" Clay's Deputy Assistant Director e-mailed the résumé to "the managers that run FBI's printing operation," recommending McEachron's brother for a position, and then forwarded to

Clay the FBI's promising response. Clay likewise forwarded the e-mail chain to McEachron, stating in a "High Importance" e-mail, "Looks like a potential hit. Please alert your brother to expect a call." McEachron replied, "Will do. Thanks much. I'm waiting on the go-ahead from Rod [Markham] regarding [your daughter]." Subsequent e-mails show that Clay's Deputy Assistant Director continued to lobby the FBI on McEachron's brother's behalf and provide Clay with relevant updates: in an October 20, 2009, e-mail to Clay, his Deputy Assistant Director recounted a conversation he had had with the FBI about McEachron's brother's candidacy and promised to "continue to follow up with them and keep you abreast of what happens"; in an October 23, 2009, e-mail to Clay, his Deputy Assistant Director described another promising conversation he had just had with the FBI; and in a November 12, 2009, e-mail to the FBI, Clay's Deputy Assistant Director wrote, "Have you had a chance to meet [McEachron's brother], whose résumé I sent you? If so – how did it go? If not, do you plan to, and is it on the schedule?" Clay forwarded these e-mail chains, as well, to McEachron. We found no evidence that Clay's efforts on behalf of McEachron's brother resulted in his being hired.

In November, Clay's daughter was hired by McEachron as a GS-5/13 HR Specialist. On November 20, 2009, McEachron informed Clay that she was "glad [his daughter] has the job."

E-mails show McEachron continued to press Clay to assist her brother, stating on December 30, "[Your daughter] seems to be doing fine. . . . My brother still has not heard anything yet. . . . [P]lease don't forget about him. He desperately needs a job." Clay replied to this message, stating, "I will follow-up on the job and I have another potential . . . . I appreciate all you did for me." Clay told us that this statement of appreciation referred to McEachron's appointment of his daughter. Similarly, McEachron ascribed Clay's gratitude to McEachron's having hired his daughter, stating, "That would just be in hiring his daughter, because that's the only thing I've ever done [for him]."

When asked about Clay's assistance on her brother's behalf and shown the above-described e-mails, McEachron told the OIG that she spoke to Clay about her brother. She stated, "I had asked Mike [Clay] . . . because I knew they have wage-grade jobs in some of the work that he does." She stated that she asked Clay to let her know "if he came across anything that might be something that would lead [her] brother to a job." McEachron stated that Clay identified to her the FBI prospect, but also "mentioned to [her] a couple of contractors, so it wasn't about [Clay] getting him a job within JMD." Regarding whether the parallel efforts were related, she said, "One didn't have anything to do with the other. I didn't tell him 'If you get my brother a job, I'm going to get your daughter a job.' It wasn't that kind

of thing.” Clay similarly told the OIG, “If you’re looking for a quid pro quo, there isn’t one.”

When asked about her daughter, McEachron said that she had asked Clay about finding a job for her. She stated, “She is very qualified. I talked to him about it. I talked to several people about it, because I know, with the FCIP program, you can just bring a person in.” We found no evidence that Clay ever identified or attempted to identify any specific opportunities for McEachron’s daughter, however, and no evidence that the daughter was ever hired into DOJ.

Michael Clay repeatedly stated that he had no recollection of having helped McEachron’s brother to find a job. Eventually, Clay stated that he was “some relative of Jeanarta’s” and that he had asked one of his assistant directors to assist in the effort to find McEachron’s brother a job.

Both Clay and McEachron volunteered opinions about the hiring of relatives, generally. Clay stated, “Résumé shopping has been around for years. . . . People bring their kids’ [résumés] and help them get jobs all over the federal government and in private industry.” Similarly, McEachron told the OIG that “quite a few people have hired folks’ relatives around DOJ. It’s not any secret that it happens. There is no rule against it. It’s not a violation if they are not working in the same chain of command.” When shown that the nepotism statute’s prohibition on advocacy is not confined to actions taken within an official’s chain of command, McEachron stated, “[T]here is a lot of nepotism in the government, so I guess it’s one of those things that’s not necessarily - I won’t say that it’s overlooked - but it’s certainly not upheld.”

## **B. Analysis of the Conduct of Michael Clay**

We concluded that FASS Deputy Director (GS-15) Michael Clay’s involvement in his daughter’s successful effort to obtain a position in JMD violated multiple statutes and regulations.

### **1. Use of Public Office for Private Gain - 5 C.F.R. § 2635.702**

We concluded that Clay violated Section 702 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.702, which states that “[a]n employee shall not use his public office . . . for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.” Section 702 also sets forth specific prohibitions applying this general standard, including a rule against using one’s position or title to

“coerce or induce” another person to provide a benefit to a relative.<sup>39</sup> Clay first provided this benefit when he initially referred his daughter to McEachron and solicited her assistance in finding his daughter a job. He compounded the violation by signaling his willingness to provide a similar favor for McEachron’s brother, thereby providing additional inducement for her to follow through on his daughter’s appointment.

Clay used his public office for his daughter’s private gain when he intentionally brought his daughter to McEachron’s attention, provided her with a résumé, told her his daughter needed a job (preferably one in McEachron’s office), asked for her help, and suggested that a part-time FCIP position would suit his daughter’s needs.<sup>40</sup> Given that Clay’s relationship with McEachron was strictly professional, the only reason McEachron would have had to take Clay’s call or consider his request for help was that Clay held an influential position in FASS. Put another way, had a similar request come from a complete stranger rather than a high official, it is unlikely that McEachron would have made the same effort. In contacting McEachron about his daughter, Clay was using his public office as the basis for his request. Clay’s conduct provided his daughter with a “private gain,” an unfair advantage in the hiring process, and thus was an abuse of his position.

In addition to violating Section 702’s general prohibition, Clay’s conduct violated Section 702(a), one of the four “specific prohibitions” listed in the regulation. Section 702(a) specifically prohibits the use of a public office “in a manner intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.” 5 C.F.R. § 2635.702(a). As described above, Clay used his public office to provide his daughter a “benefit” when he brought his daughter’s need for a job to McEachron’s attention. Then, as the following facts suggest, Clay further induced McEachron’s assistance in getting his daughter a job when he returned McEachron’s favor by identifying job opportunities for McEachron’s brother.

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<sup>39</sup> Merriam-Webster’s Collegiate Dictionary defines “induce” as “to move by persuasion or influence.”

<sup>40</sup> We also considered whether Clay’s communications with McEachron constituted “advocating” for his daughter’s employment in violation of the federal nepotism statute. While it appears that Clay’s intention was to convey to McEachron his desire that she find a position for his daughter, it is not sufficiently clear from the evidence that Clay recommended or endorsed his daughter or urged McEachron to take action on her behalf. Although we believe a violation of 5 U.S.C. §§ 3110(b) and 2302(b)(7) could be supportable, we elected not to make such a finding on these facts, particularly in view of the stronger support for our other misconduct findings against Clay.

Shortly after receiving Clay's request for help in finding his daughter a job, McEachron asked for Clay's help in finding jobs for her daughter and brother. Clay responded to McEachron's request by directing a subordinate to help find a job for her brother. When Clay provided an update about his efforts on behalf of McEachron's brother, McEachron responded with both thanks and assurance that she was awaiting a "go ahead" to hire Clay's daughter. McEachron then hired Clay's daughter into her own unit. Within a few weeks she e-mailed Clay that his daughter was "doing fine" and in the same e-mail reminded him that her brother still "desperately needs a job." Clay responded by promising he would continue to try to help her brother and in the same e-mail thanked McEachron again for hiring his daughter. In short, Clay and McEachron themselves linked their simultaneous efforts to assist each other's relatives by discussing those efforts in the same e-mails on several occasions. In order to show a Section 702 violation it is not necessary to establish a mutual meeting of the minds or an explicit, *quid pro quo* agreement, and we have not found conclusive evidence of such an agreement in this case. Rather, we believe that the foregoing sequence of events shows that Clay and McEachron simultaneously exchanged favors by attempting to assist each other's relatives in obtaining DOJ employment.

We therefore concluded that Clay violated Section 702 of the Standards of Ethical Conduct when he provided or caused to be provided to his daughter an improper gain or benefit.

**2. Participation in a Matter Affecting the Financial Interest of a Person in a Covered Relationship - 5 C.F.R. § 2635.502**

We also concluded, based on his soliciting employment for his daughter from McEachron and securing her help by offering reciprocal assistance, that Clay failed to adhere to his ethical responsibilities, as articulated in Section 502 of the Standards of Ethical Conduct. Section 502 prohibits an employee's participation in a "particular matter" where he knows that such matter is likely to affect the financial interest of "a person with whom he has a covered relationship" and where he "determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter."

Clay clearly had a "covered relationship" with his daughter, who, in addition to being his daughter, lived with him during the time of the conduct in question. Moreover, this particular matter - the decision whether to recruit and select Clay's daughter - obviously was likely to have a direct and predictable effect on her financial interest.

The evidence described above also shows that Clay "participated" in this matter and likely did so "personally and substantially." The Code of



Federal Regulations state, in part, that “[t]o participate personally means to participate directly.” 5 C.F.R. § 2635.402(B)(4). Clay intervened on his daughter’s behalf “directly,” therefore “personally.”

The Code of Federal Regulations also state, “To participate substantially means that the employee’s involvement is of significance to the matter”; it was “substantial even though it [was] not determinative of the outcome.” 5 C.F.R. § 2635.402(b)(4). It cannot be disputed that Clay’s intervention with McEachron was “of significance” to the selection of his daughter for employment in HR; Clay not only involved himself in the recruitment and selection of his daughter for a federal position, it was he who *initiated* the process and, by promising to assist McEachron’s brother, helped to sustain its momentum. “A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort.” 5 C.F.R. § 2635.402(B)(4). As described above, Clay sought McEachron out specifically to solicit her assistance in finding an HR position for his daughter. He provided McEachron with his daughter’s résumé, conveyed to her his daughter’s need for a job and her willingness to accept a part-time, FCIP appointment. Most significantly, he undertook a considerable, albeit unsuccessful, effort to reciprocate by finding employment for McEachron’s brother - a fact that likely influenced McEachron’s personal investment in Clay’s daughter’s application.

Clay therefore played a “personal and substantial,” if not pivotal, role in his daughter’s attempt to secure a DOJ appointment.<sup>41</sup> These circumstances would cause any reasonable person to question Clay’s impartiality toward his daughter. Under Section 502, Clay therefore should have obtained authorization from the agency designee before participating in the matter.<sup>42</sup> The OIG confirmed that Clay neither sought nor received authorization, a fact we find particularly troubling given his thorough awareness of prior hiring abuses in FASS.

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<sup>41</sup> As discussed above in connection with Hamilton, we do not believe that Clay escapes the requirements of Section 502 because he was not the formal decision maker in the appointment of his daughter. Senior employees frequently share opinions and recommendations with fellow agency employees on hiring decisions and we believe that when they do so they are acting within their official duties. The only reason Clay had to expect McEachron to respond to his inquiries was that he held a senior position in the same agency. Having relied on his official position to get consideration, he should not be permitted to claim that he was not acting in an official capacity for purposes of Section 502.

<sup>42</sup> We are confident that the agency designee would have found it impossible to approve virtually any of the misconduct discussed in this report - including the favor trading exhibited by Clay and McEachron - had such conduct been fully disclosed to him.

### **3. Conclusions Regarding Clay**

We concluded that FASS Deputy Director Michael Clay violated the Standards of Ethical Conduct in connection with his involvement in his daughter's JMD appointment.

We are not aware of mitigating circumstances for Clay's conduct. As described above, Clay was well aware of the history of nepotism-related abuses in FASS when he transferred to JMD from ATF in July 2009. He told us that when he was hired, he and Hamilton specifically discussed nepotism and the misconduct of Hamilton's two predecessors. He has received ethics training about nepotism, conflicts of interest, and other hiring abuses.

He sought no advice from an agency ethics official regarding the propriety of his efforts to obtain JMD employment for his daughter or his reciprocation of McEachron's actions by attempting to find employment for her brother. Such an inquiry, he knew or should have known, would have resulted in advice that he refrain from inducing others in JMD to secure employment for his daughter, and that he take no action to advance the DOJ employment prospects of McEachron's relatives.

We are referring our findings concerning Clay to JMD for its review and appropriate disciplinary action.<sup>43</sup>

#### **C. Analysis of the Conduct of Jeanarta McEachron**

We concluded that HR Assistant Director (GS-15) Jeanarta McEachron's conduct violated multiple statutes and regulations. McEachron's conduct was in substantial part the mirror image of Clay's conduct.

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<sup>43</sup> After reviewing those portions of this report pertaining to his own conduct, Clay provided a written response to the OIG. Clay's comments primarily addressed what he perceived to be the scope of the federal anti-nepotism prohibition. He stated that he "was told on numerous occasions that the only stipulation was you could not hire a relative to work directly for you." He also wrote that the current OIG investigation bore "no resemblance [to] what occurred in FASS in the past," where employees "either hired or directed the hiring of individuals that were their relatives." As described throughout this report, the federal nepotism statute by its plain language prohibits both hiring and advocating for the hiring of a relative to *any* position in the same agency, not just to positions within one's chain of command. When asked to provide approximate dates, as well as the names of Department officials who on "numerous occasions" described this "only stipulation" to him, Clay was unable to do so.

## **1. Nepotism - 5 U.S.C. §§ 3110(b) and 2302 (b)(7)**

We concluded that McEachron violated the federal nepotism statute, 5 U.S.C. § 3110(b), by advocating for the appointment of her brother.<sup>44</sup> The nepotism statute prohibits a public official with hiring authority from employing or advocating for the employment of his “relative” to a civilian position in the official’s agency. An Assistant Director in HR’s Policy and Advisory Services, McEachron was at the time a public official with hiring authority. McEachron’s brother met the statutory definition of a “relative.”

The evidence shows that McEachron engaged in prohibited “advocacy” when she spoke in favor of, recommended, endorsed, or otherwise supported her brother’s appointment to a civilian position in the DOJ. When questioned about her brother, McEachron stated that she had asked Clay to help him to find a government position. She said she asked Clay for help because FASS has “wage-grade jobs in some of the work that [her brother] does.” E-mails show McEachron repeatedly urged Clay to take action on her brother’s behalf. E-mails to Clay state, on December 30, 2009, “If you have any other leads, please don’t forget about him. He desperately needs a job”; on January 11, 2010, “[Th]anks for anything you can do for [my brother], even if it’s driving or laborer”; and on January 28, 2010, “Just touching base with you to see if anything has developed on the job front.”

We therefore concluded that McEachron violated the nepotism statute when she advocated for her brother’s appointment to a civilian position in the DOJ. The same conduct also constituted a Prohibited Personnel Practice in violation of 5 U.S.C. § 2302(b)(7).

## **2. Use of Public Office for Private Gain - 5 C.F.R. § 2635.702**

We concluded that McEachron violated Section 702 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.702, which prohibits an employee from using his public office for his friends’ or relatives’ private gain. Section 702(a) also specifically prohibits the use of a public office “in a manner intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise” to friends or relatives.

We concluded that McEachron used her public office to provide a favor to Clay - in the form of hiring his daughter - and simultaneously

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<sup>44</sup> Given the strength of the evidence that McEachron advocated for her brother’s appointment, we focused our nepotism analysis on her advocacy on his behalf, rather than her actions taken on her daughter’s behalf, for which there was relatively little, conclusive evidence.

sought a return of the favor in the form of assistance from Clay in finding employment opportunities for her brother and daughter. The natural inference to be drawn from the sequence of events in Part IV.A above is that Clay and McEachron exchanged favors whereby each attempted to assist the other's relative in securing federal employment.<sup>45</sup> The statement of one HR Specialist we interviewed also indicated that, at least for McEachron, the appointment of Clay's daughter was linked to her own relatives' job searches. According to this HR Specialist, McEachron told her, "Someone I know from ATF is going to get my daughter a job, and his daughter is coming here."

We therefore concluded that McEachron violated Section 702 of the Standards of Ethical Conduct when she used her public office in a manner intended to "induce" Clay to provide a "benefit, financial or otherwise," to her relatives. McEachron's appointment of Clay's daughter left Clay in McEachron's debt, a debt to which she repeatedly alluded as she urged Clay not to "forget" about her brother. This favor-trading was an abuse of McEachron's position.<sup>46</sup>

### **3. Conclusions Regarding McEachron**

We concluded that Jeanarta McEachron violated the nepotism statute, committed a Prohibited Personnel Practice, and violated the Standards of Ethical Conduct in connection with her effort to obtain employment for her relatives. She sought no advice from an ethics official regarding her efforts to obtain DOJ employment for her relatives.

Although McEachron's misconduct described in this report occurred while she was a Department of Justice employee, she now works at DHS. Accordingly, we have referred our findings relating to McEachron to the DHS OIG. We recommend DOJ consider the findings in this report should McEachron apply in the future for another position with DOJ.

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<sup>45</sup> As stated above, we recognize that in order to show Section 702 violation it is not necessary to establish a mutual meeting of the minds or an explicit, *quid pro quo* agreement, and we have not found one here. What is relevant here is McEachron's subjective state of mind, and the evidence shows that it was McEachron's understanding and expectation that her appointment of Clay's daughter would encourage Clay to assist in finding jobs for her brother and daughter.

<sup>46</sup> We also considered whether McEachron's efforts on behalf of her relatives triggered any responsibilities under Section 502 of the Standards of Ethical Conduct. We concluded that potential employment of McEachron's relatives never ripened into a "particular matter" within the meaning of Section 502 because there is no evidence that McEachron's relatives were ever considered for a specific DOJ position in connection with her efforts.

## **V. Facts and Analysis Pertaining to Horkan and Morgan**

In this Part of the report we set forth the facts relating to the alleged misconduct of Nancy Horkan, Senior Advisor to Deputy Assistant Attorney General for Human Resources and Administration (DAAG-HRA) Mari Barr Santangelo, and JMD Finance Staff Director Melinda Morgan. The allegations relating to these JMD employees arose out of two incidents: the hiring of Horkan's son by Morgan, and the hiring of Horkan's niece by an HR Assistant Director.

### **A. Factual Findings**

Nancy Horkan came to work in the DOJ in March 2005 after spending most of her career at the Department of Transportation. Since joining DOJ, she has served as Senior Advisor to Mari Barr Santangelo, whom she has known since 2000. The anonymous allegations the OIG received in June 2011 included claims that Horkan's son and niece were improperly hired in JMD.

Horkan told us that she had read the OIG's 2008 Report, and e-mails show that Santangelo requested her assistance in developing JMD's response. She stated that she was familiar with the nepotism statute. She also described the "HR and Ethics Office" training that took place in the aftermath of the OIG's 2008 Report, noting that it addressed "hiring practices . . . merit system principles, and prohibited personnel practices." She stated that she attended these training sessions and that "the training did go into advocating for a relative . . . or any preferential treatment." Regarding the training on "advocating for a relative," she stated, "I can't recall the exact words. I guess in my mind it was encouraging someone to hire a relative or saying, 'Please hire this person. He really needs a job.'" She stated that the training established that this kind of conduct "was something you shouldn't do."

With respect to the nepotism prohibition, Horkan told the OIG that she would tell a JMD colleague looking for a job in JMD for his son or daughter to "look at the vacancy announcements." When asked why speaking in favor of, recommending, endorsing, or otherwise supporting the appointment of relatives to DOJ positions was not proper, Horkan stated that such conduct risked "giving unfair advantage to a relative." Horkan also told us she understood that FCIP appointments are not exempt from Merit System Principles or the prohibitions articulated in the nepotism statute and the Prohibited Personnel Practices.

#### **1. The Hiring of Horkan's Son**

Beginning in the summer of 2008, Nancy Horkan sought the assistance of several officials in the Department of Justice in finding

employment for her son, including HR Director Rodney Markham, JMD Finance Staff Director Melinda B. Morgan, OJP's Chief Financial Officer (CFO), a JMD Budget Analyst, and a contractor working in HR.

Contemporaneous e-mails demonstrate the nature and extent of Horkan's efforts. On August 13, 2008, Horkan e-mailed her son's résumé to Markham, thanking him for his help and stating, "I'll keep praying."<sup>47</sup> Also on August 13, 2008, Horkan e-mailed her son's résumé to Morgan, stating, "As a follow-up to our conversation the other day, I am forwarding you my son Michael's résumé. Any advice or leads you have would be very much appreciated. *He is a good worker and would be an asset to any organization*, but of course I am a little biased. Thanks so much for your help." (Emphasis added.) Notably, Horkan's relationship with most if not all of these individuals was professional, not personal. For example, Morgan told us that she "didn't know [Horkan] from Adam" when Horkan first contacted her about her son.

On August 15, 2008, Markham e-mailed the son's résumé to the Director of the Civil Division's Office of Administration, stating, in part, "See if you have anything for [him]. THANKS!!" Later that day, Horkan told the Director of the Civil Division's Office of Administration in an e-mail that her son's previous job "fell through" and that "it would be great if [she had] anything." Markham also forwarded the son's résumé to Morgan and JMD's Budget Staff Director. On August 18, Horkan e-mailed the résumé to an HR Assistant Director, writing nothing in the message body. On August 21, Horkan e-mailed her son's résumé to OJP's CFO, stating, in part, "Thanks so much for taking a look at my son's résumé. If he doesn't find anything soon, he may apply for graduate school. It's not the best time to be job hunting. . . . I do think OJP would be an interesting place to work so I will keep my fingers crossed." Later that day, Horkan e-mailed both an HR contractor and a JMD Budget Analyst on her son's behalf, sharing his résumé and seeking their assistance in identifying job opportunities among federal contractors.

Regarding whether she recommended her son to these officials, Horkan stated, "I'm sure I must have. I wouldn't have handed the résumé if I didn't think he'd be a good employee. So I'm sure I said he's a good kid, he's very reliable, dependable. . . . He's looking for a job, he'd like to work for the federal government, and he majored in finance." Horkan's

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<sup>47</sup> After reviewing a draft of this report, Horkan stated that she sent her son's résumé to Markham at Markham's request and that she did not solicit his help in the job search. She also stated that, after discussing her son with OJP's CFO and the JMD Budget Analyst, these two officials asked Horkan to send them her son's résumé.

recollection was consistent with her e-mail to Morgan, quoted above, describing her son as a “good worker,” who would be an “asset to any organization.” However, Horkan also said “I didn’t see it as advocating for him by sending a résumé.” She stated, “I was not advocating that he be hired; I was advocating that he be considered.” She also told the OIG that she told Morgan “I don’t want any preferential treatment.”

Horkan told the OIG that shortly after she began sending her son’s résumé to others in JMD, she asked the advice of HR Director Rodney Markham.<sup>48</sup> She stated, “I don’t think I did it before [the résumé was sent]. I think when it was happening I was thinking, ‘Am I doing something wrong?’” According to Horkan, Markham told her that it was permissible under the FCIP to give her relatives’ résumés to DOJ hiring managers.<sup>49</sup>

JMD Finance Staff Director Melinda B. Morgan was the JMD official who ultimately assisted Horkan in finding employment for her son. Morgan said that Horkan gave her a copy of her son’s résumé and told her that he was graduating with a finance major. Morgan then began exploring how he could be hired onto JMD’s Finance Staff. On September 11, 2008, Morgan sent a “High Importance” e-mail to an HR Specialist, with copies to the Finance Staff Deputy Director, and a Supervisory Management Analyst, attaching Horkan’s son’s résumé and asking: “Can you please review this person’s qualifications and see if he would qualify for a GS-5 or GS-7 in the GS-525 or GS-501 series? Also, could we try to use the Federal Career Intern appointing authority?”

Morgan told the OIG that most of the available vacancies on the Finance Staff at that time were at the GS-11 and GS-12 level, but that they had not been getting qualified applicants for these positions. As a recent graduate, Horkan’s son was not qualified to be appointed to the GS-11 or GS-12 positions. Morgan told us that use of the FCIP authority to fill a vacancy would enable the Finance Staff to hire someone at the GS-5 or GS-7 level.

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<sup>48</sup> We shared a draft of this report with Horkan, who provided the following clarification: Her decision to ask Markham about the propriety of sharing résumés was prompted by her reading the OIG’s 2008 report (released on August 15, two days after she sent her son’s résumé to Morgan) and thinking about the issues raised in it.

<sup>49</sup> We interviewed Markham before Horkan, and by the time Horkan told us about her conversation with Markham, Markham had left the Department. For purposes of our analysis, we accepted Horkan’s account of this conversation. Horkan stated that she asked Markham this question with regard to her son but did not revisit the issue with him with respect to her niece’s appointment, assuming that, since her niece’s appointment fell under the same FCIP authority as her son’s, the same general rule applied.

Morgan sent Horkan a copy of her e-mail to the HR Specialist, stating, "Just wanted to let you know. We have several vacancies that we can restructure . . . so let me see what [the HR Specialist] says and I will be back in touch with you!" Horkan replied, "I'll keep my fingers crossed. Thanks so much." (Ellipsis in original.)

Morgan told the OIG that her statement about "restructuring" referred to changing an existing vacancy announcement from the GS-11 or GS-12 level to the GS-5 or GS-7 level so that it could be filled under the FCIP. She said, "My intent, I believe, in [proposing the restructuring] was: we don't have current positions at this particular grade level right now."

Morgan stated that her interest in restructuring available positions to lower grades was not done "necessarily in order to hire [Horkan's son]." She told the OIG that the "intent" behind the "restructuring" was not to accommodate Horkan's son or to facilitate his appointment, although she conceded it could be taken that way.

On September 12, the HR Specialist replied to Morgan, stating that based on his résumé Horkan's son could only be qualified as a GS-5. The HR Specialist requested a copy of the son's transcript to see if he could qualify as a GS-7. Morgan forwarded this request to Nancy Horkan, adding "we are looking at our vacancies here to see what is possible, will let you know." Horkan told Morgan her son would provide the transcript, and Morgan replied, "Great, pls let me know when [the HR Specialist] has it and I [will] follow-up."

E-mails during September and October between the HR Specialist and the Supervisory Management Analyst working for Morgan in Finance reveal an ongoing effort to create a Position Description for a Finance Staff job for which Horkan's son would qualify. Later, in an October 20, 2008, e-mail, the Supervisory Management Analyst suggested to Morgan a strategy to head off possible perceptions of favoritism: "If you think we have another slot, we can ensure that the rest of the staff sees this as fair by also opening up another position and soliciting the staff for any young, qualified people they may think could fit the FCIP requirements for our staff. That would ensure this doesn't come across as favoritism."

Morgan told the OIG that she sensed that "it could be perceived that I was leaning over backwards to help [Horkan's son]." She said that she consulted JMD's Ethics Office Director Janice Rodgers on November 10, 2008, in order to confirm that "it wouldn't be perceived that [she] was giving [Horkan's son] special consideration or special treatment." She stated that she informed Rodgers that she had obtained Horkan's son's résumé from his mother, a JMD official who shared his last name but would not supervise him. According to Morgan, Rodgers did not see any problem with



the Finance Staff pursuing the son's employment, given that if hired, he would not "be working directly for his mother" and that Nancy Horkan was "not forcing [Morgan] to hire him."<sup>50</sup> Morgan stated that this conversation took place over the phone and that she did not memorialize it in writing. We interviewed Rodgers, who confirmed Morgan's account of the conversation. Neither Morgan nor Rodgers told us that their conversation included a discussion of the fact that a position was being restructured in a way that enabled Horkan's son to qualify for it. Rodgers told us that employees do not come to her asking if it would be permissible to "restructure" vacancies and positions in order to try to hire a particular person. She said that if Morgan had told her about restructuring a position to enable Horkan's son to qualify, it would have "set off alarm bells" and it would have affected the advice she gave. She stated that such restructuring would likely violate merit principles, and she would refer the person asking to HR or OGC.

JMD ultimately created a vacancy that could be filled under the FCIP, and Horkan's son was hired under the FCIP authority as a GS-5 Financial Management Specialist on January 16, 2009. This was a noncompetitive appointment under FCIP.

Horkan told the OIG that DAAG Santangelo likely learned of her son's appointment after the selection was made. Horkan said she told Santangelo that her son "was getting this job in Finance," but said she could not recall whether she specifically informed Santangelo that Horkan had shared her son's résumé with Morgan. According to Horkan, she told Santangelo she had made no recommendations on her son's behalf, since "[i]n my mind at that time, 'advocating' was saying, 'Please hire him. He's a great boy.'" She stated that she never discussed with Santangelo the propriety of her alleged involvement in her relatives' attempts to obtain employment in the Department. Santangelo told us that she learned of Horkan's son's appointment in Finance after he was hired and that Nancy Horkan told her "she stayed out of it, she did nothing, did no recommendations."

## **2. The Hiring of Nancy Horkan's Niece**

An HR Assistant Director hired Nancy Horkan's niece as a Program Specialist in HR's Programs and External Relations Section on October 25, 2009. Horkan stated that she and the HR Assistant Director who hired her daughter are friends. E-mails and witness statements show that on July 24, 2009, Horkan sent her niece's résumé to the HR Assistant Director.<sup>51</sup>

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<sup>50</sup> Horkan indeed had no formal authority or supervision over Morgan; as the Director of JMD's Finance Staff, Morgan served under a different Deputy AAG than Santangelo.

<sup>51</sup> Although Horkan was a senior advisor to the HR Assistant Director's boss (Santangelo), she did not herself directly supervise the HR Assistant Director.

According to Horkan, she informed him of their family relationship, she described to him her niece's skills, education, and background, and told him her niece "was a good worker . . . [and] would be a good employee." Horkan told us that she told the HR Assistant Director that her niece graduated from college, had a 3.0 GPA, and was working in an HR-related field. Horkan told us that she cautioned the HR Assistant Director that she "didn't want any unfair treatment."

On August 31, 2009, the HR Assistant Director e-mailed Horkan, asking, "Can we talk about [your niece] tomorrow?" Three days later, Horkan e-mailed him again, stating, in part, "Heard u called [my niece]. Wanted u to know that she tried calling back. . . . Hope she can connect with u." In reply, the HR Assistant Director informed her of his plans to interview the niece. He told the OIG that Horkan's niece was one of four candidates he interviewed. After the September 9, 2009, interview, he e-mailed Horkan, stating, in part, "I hope [your niece] works out . . . ," to which Horkan replied, "You do what your gut tells u re the hire. I'll still love u either way." (Ellipsis in original.) The HR Assistant Director subsequently selected Horkan's niece.<sup>52</sup>

Horkan stated that she does not know when or from whom Santangelo and Markham learned of her niece's appointment.

## **B. Analysis of the Conduct of Nancy Horkan**

We concluded that Nancy Horkan's involvement in her son's effort to obtain a position in JMD violated multiple statutes and regulations.

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<sup>52</sup> The HR Assistant Director told us that he selected Horkan's niece based on her background, education, attitude, and skills. He stated, "I can't consider who's giving me the résumé as a factor in the selection. That is illegal." We did not review the underlying merits of all the hiring decisions brought to our attention. Given, however, that two of the four candidates the HR Assistant Director interviewed were relatives of his HR colleagues (Horkan's niece and McEachron's daughter), we asked the HR Assistant Director to provide to the OIG the four candidates' résumés as well as any notes he recorded with respect to their interviews specifically or candidacies generally. He stated that he did not retain any résumés or notes and that he had been informed by HR that he "did not have to retain such information on applicants after a selection is made." We are therefore unable to determine whether the HR Assistant Director granted these candidates an improper preference based on their status as relatives. We believe that implementing the disclosure and pre-approval requirements described in Part VIII.B.2 and the file-retention policy recommendation described in Part VIII.B.3 of this report will bring much-needed transparency to the JMD hiring process and help address this issue in the future. In any event, we recommend in Part VII.B of this report that JMD consider questioning the HR Assistant Director to determine whether he granted these candidates an improper preference based on their status as relatives.

## 1. Nepotism - 5 U.S.C. §§ 3110(b) and 2302 (b)(7)

We concluded that Nancy Horkan, the Senior Advisor to the DAAG-HRA (GS-15), violated the federal nepotism statute, 5 U.S.C. § 3110(b), in connection with the appointments of her son and her niece. The nepotism statute prohibits a public official with hiring authority from employing or advocating for the employment of her "relative" to a civilian position in the official's agency. Horkan told the OIG that, during the time in question, she was familiar with the nepotism statute and understood that it was applicable to FCIP appointments.

During the period in question, Horkan qualified as a "public official," as defined by the nepotism statute. As Senior Advisor to the DAAG-HRA, Horkan clearly had the authority "to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in" the Department. See 5 U.S.C. § 3110(a)(2). Similarly, Horkan's son and niece each met the statutory definition of a "relative."

We concluded that Horkan's communications with other officials in JMD about her son and niece constituted "advocacy" for their employment. Horkan specifically recommended her relatives for employment, promoting their qualifications and abilities. She wrote in one e-mail that her son was "a good worker" and stated that he "would be an asset to any organization." She admitted that she told officials that her son was "a good kid, he's very reliable, dependable. . . . He's looking for a job, he'd like to work for the federal government, and he majored in finance." She told another official her son needed a job and that "it would be great if [she had] anything" for him. She wrote to another, "It's not the best time to be job hunting. . . . I do think OJP would be an interesting place to work so I will keep my fingers crossed." She similarly described her niece's skills, education, and background to her friend, the HR Assistant Director, and told him her niece "was a good worker . . . and would be a good employee." By her numerous conversations with JMD officials about employment opportunities for her relatives, Horkan conveyed the message that she was urging that her relatives be hired.

Moreover, as Senior Advisor to Assistant Director Santangelo, Horkan held a position of considerable influence. She could expect that any inquiries about opportunities for her relatives would be taken seriously by other officials in JMD. We therefore concluded that Horkan's communications on behalf of her relatives constituted "advocacy" within the meaning of the nepotism statute.

Horkan told us that she told at least some of the officials she contacted that she did not want any "preferential treatment" for her relatives, and that she consulted with HR Director Rodney Markham, who

told her there was no problem with giving her relatives' résumés to officials in JMD. If true, these claims may be mitigating factors relevant to Horkan's discipline, but they are not defenses to a violation of the nepotism statute. The statute prohibits advocacy for employment. It does not hinge on whether the statements made on behalf of the relative were accurate or whether the relative actually received an unfair advantage as a result.<sup>53</sup> And there is no "safe harbor" available by obtaining the approval of the Director of HR or any other manager in the component.

In her own defense, Horkan told the OIG, "I was not advocating that [my son] be hired; I was advocating that he be considered." Even if this distinction were relevant to an inquiry under the nepotism statute, the facts in this case fall on the wrong side of it. Horkan admitted she did more than submit the résumés for consideration. She described her relatives' education, qualifications, and character to the officials she approached, and signaled that she wanted her son and niece to get jobs in JMD. Horkan could have ensured her relatives would be given fair consideration by inquiring about potential vacancies without specifying who she had in mind as candidates, and then suggesting to her son and niece that they apply for them on an equal basis with other members of the public.

We therefore concluded that Horkan violated the nepotism statute when she recommended her son and niece to a variety of DOJ officials and conveyed urgency about their need for employment. The same conduct constituted a "Prohibited Personnel Practice" in violation of 5 U.S.C. § 2302(b)(7).

## **2. Use of Public Office for Private Gain - 5 C.F.R. § 2635.702**

We concluded that Horkan violated Section 702 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.702, which prohibits an employee from using her public office for a relative's private gain. Horkan misused her public office when she recommended her son to a variety of colleagues.

As detailed above, Horkan told the OIG that she repeatedly circulated her son's résumé, recommending him to multiple colleagues and communicating his need for a job. When the Senior Advisor to the DAAG-HRA recommends her son to multiple JMD officials, speaks in his favor, and enlists the HR Director to assist in the job search as well, she has unquestionably provided him a "private gain" unavailable generally to DOJ

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<sup>53</sup> Given the evidence that Finance Staff Director Melinda Morgan caused a vacancy to be restructured or created to fit Horkan's son's qualifications, we believe he did receive preferential treatment as a result of his mother's efforts, even though he may have been fully qualified for the position. An analysis of Morgan's conduct appears below.

job applicants. Significantly, Horkan's relationship with most if not all of these individuals was professional. For example, Morgan told us that she "didn't know [Horkan] from Adam" when Horkan first contacted her about her son. Therefore, the only reason Morgan would have had to take Horkan's call or consider her request for help was that Horkan held an influential position in JMD. In contacting Morgan about her son, Horkan was using her public office as the basis for her request. An unknown member of the public would not have gotten the same consideration.

Horkan's effort resulted in the "restructuring" of a GS-11 or GS-12 position to a much lower grade to enable her son to qualify under the FCIP. Morgan described this restructuring to Horkan in response to Horkan's request for help, and Horkan did nothing to discourage this manipulation of the hiring process.<sup>54</sup>

We also concluded that Horkan's conduct, in addition to violating Section 702's general prohibition, fit squarely into one of the four "specific prohibitions" listed in the regulation. Section 702(a) prohibits the use of one's public office "in a manner intended to coerce or induce another person . . . to provide any benefit, financial or otherwise" to himself or to a relative. As described above, Horkan intended to "induce" Morgan to provide a "benefit" to her son by sending her his résumé, promoting his qualifications, requesting Morgan's assistance, and providing expressions of hope and gratitude to her. Morgan responded by arranging for a position in Finance to be restructured to enable Horkan's son to apply for it.

### **3. Participation in a Matter Affecting the Financial Interest of a Person in a Covered Relationship - 5 C.F.R. § 2635.502**

We also concluded, based on her involvement in her son's and niece's efforts to secure jobs within the Department, that Horkan failed to adhere to the guidelines set forth in Section 502 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.502. Section 502 prohibits an employee's participation in a matter, such as a hiring decision for a federal position, where the employee knows that such matter is likely to affect the financial interest of someone in a "covered relationship," and "[w]here the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter."

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<sup>54</sup> We recognize that the restructuring of vacancies to widen the pool of available applicants is not an unusual event and may occur for legitimate reasons. Based on the contemporaneous e-mails, we concluded that the triggering event for the restructuring in this case, however, was Horkan's inquiries on behalf of her son.

Horkan clearly had a “covered relationship” with both her son and her niece. Equally obvious is that the particular matters at issue here - whether to hire her son and her niece for federal positions - would have direct and predictable effects on their financial interests. The evidence described above, most notably Horkan’s own statements, amply illustrates Horkan’s participation in each of these matters. She circulated both relatives’ résumés, sending her son’s to multiple JMD officials and sending her niece’s to the HR Assistant Director who ultimately hired her. As described above, however, Horkan’s participation in their efforts to secure jobs in JMD extended beyond résumé-sharing; she not only recommended her relatives to JMD officials but spoke in their favor and endorsed or otherwise supported their candidacies.

According to the Standards of Ethical Conduct,

To participate substantially means that the employee’s involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. . . . A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

5 C.F.R. § 2635.402(b)(4).

Horkan recommended that her relatives be hired into the same component where she served as Senior Advisor to the DAAG. Taking all of the circumstances into consideration, it is clear that Horkan’s recommendation was critically important to the decisions to hire her son and niece. There is no evidence that either of these individuals would have been hired absent her intervention. In the case of Horkan’s son, the evidence is compelling that he would *not* have been hired without his mother’s participation, because as Morgan told the OIG, there were no vacancies in Finance for which he could qualify until she arranged for one to be restructured in response to Horkan’s request for help.

These circumstances would cause any reasonable person to question Horkan’s impartiality toward her son. In fact, Horkan herself told the OIG, “I think when [the résumé-sharing] was happening I was thinking, ‘Am I

doing something wrong?”<sup>55</sup> Under Section 502, Horkan should have obtained authorization from the agency designee before participating in the matter. The OIG confirmed that Horkan neither sought nor received authorization from such official. Her failure to do so was particularly troubling, given her involvement in the aftermath of the OIG’s 2008 Report.<sup>56</sup>

Horkan told the OIG that she sought Markham’s advice regarding her participation in her son’s job search and that he told her that it was permissible under the FCIP to give one’s relatives’ résumés to DOJ hiring managers. However, she stated that she did not ask Markham’s advice prior to beginning to circulate her son’s résumé, and that she could not recall whether she shared with him any details beyond the mere act of sending the résumé to such officials. Section 502(d) requires that such authorization be secured from the agency designee, that it be granted *prior* to the employee’s participation in the matter, and that it be “based on a determination, made in light of *all relevant circumstances*, that the interest of the Government in the employee’s participation outweighs the concern that a reasonable person may question the integrity of the agency’s programs and operations.” (Emphasis added.) In addition, Markham was not an ethics official. Therefore, the authorization Horkan said she received from Markham did not meet the requirements of Section 502(d). However, we considered her consultation with the HR Director a circumstance mitigating the severity of her misconduct.

#### **4. Conclusions Regarding Horkan**

We concluded that Nancy Horkan violated the nepotism statute, committed a Prohibited Personnel Practice, and violated the Standards of Ethical Conduct in connection with her effort to obtain employment in JMD for her relatives. As the Senior Advisor to the DAAG-HRA, she is a high-profile, senior official in JMD. Horkan was aware of the history of nepotism-

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<sup>55</sup> As described above, Morgan, too, perceived the appearance of partiality; she told the OIG, “I did sense that it could be perceived that I was leaning over backwards to help [Horkan’s son].”

<sup>56</sup> As discussed above in connection with Hamilton and Clay, that Horkan escapes the requirements of Section 502 because she was not the formal decision maker in the appointment of her relatives. Senior employees frequently share opinions and recommendations with fellow agency employees on hiring decisions and we believe that when they do so they are acting within their official duties for purposes of Section 502. Moreover, as Senior Advisor to DAAG Santangelo, Horkan was in a position of great influence with all employees in JMD. While Horkan told us she was friends with the employee who hired her niece, we think that the totality of circumstances supports a conclusion that when she contacted an employee in her own agency about agency business (a hiring decision) she was performing official duties within the meaning of Section 502.

related abuses in FASS. She received ethics training about nepotism and other hiring abuses. She sought no advice from agency ethics officials regarding the propriety of her efforts to obtain JMD employment for her son and niece.

Horkan forwarded her son's and niece's résumés, and made favorable statements about each of them to potential hiring officials. In view of her position, she should have expected that even mild support would likely have an impact on those receiving her input. However, her efforts were not mild, as she communicated to several people the importance to her of her son, in particular, obtaining a job, and the urgency of his need for a job. Significantly, she knew of the efforts being made by Morgan to craft a vacancy to accommodate her son, but failed to stop it. Particularly in view of her awareness of the efforts to address issues of this nature identified in the OIG's 2008 Report, she should not have engaged in this conduct.

We note, however, that Horkan apparently consulted with HR Director Rodney Markham about the propriety of her actions, and that Markham did not identify any ethical issues. Although this consultation was irrelevant to her violation of the nepotism statute, and was insufficient to satisfy the requirements of the Standards of Ethical Conduct, it is, to some extent, a mitigating factor, and may be considered in assessing appropriate discipline. We also note that, unlike several other JMD employees whose actions we reviewed in this investigation, Horkan provided candid statements to the OIG.

Even giving credit to Horkan's efforts to communicate to others in JMD that she didn't want "preferential treatment" for her relatives, and entirely apart from the analysis of her conduct as violating the applicable prohibitions on nepotism, misuse of position, and conflict of interest, we believe that she exercised very poor judgment.<sup>57</sup>

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<sup>57</sup> After reviewing those portions of this report pertaining to her own conduct, Horkan provided a written response to the OIG. She stated that the inquiries that she made on her son's behalf were designed only to solicit certain officials' advice, so that she "could advise [her] son on how to narrow his search on USAJOBS." According to Horkan, other e-mails she sent on her son's behalf were "intended to determine if there were any entry-level positions to be announced in the finance area so [her] son could apply." The evidence described above shows that the overall objective (and result) of Horkan's efforts on her son's behalf was to provide him a competitive, insider's advantage in the hiring process and not merely to advise him on using search tools available to the general public.

Horkan also stated in her written comments that her telling the HR Assistant Director to follow his "gut" was "the opposite of urging him to hire [her] niece." As we state above, Horkan's disclaimer to the HR Assistant Director possibly mitigates the severity of her misconduct but in no way neutralizes her prior statements to him advocating for her niece's appointment.



We are referring our findings concerning Horkan to JMD for its review and appropriate disciplinary action.

**C. Analysis of the Conduct of Melinda Morgan**

**1. Unauthorized Preferences or Advantages - 5 U.S.C. § 2302(b)(6)**

We concluded that Melinda Morgan violated 5 U.S.C. § 2302(b)(6), which prohibits the granting of unauthorized preferences or advantages to job applicants. It provides that:

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority . . . grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

A violation of this provision requires an intentional or purposeful taking of a personnel action “in such a way as to give a preference to a particular individual for the purposes of improving her prospects for employment.”<sup>58</sup> An employee with hiring authority may give only those preferences authorized by law, rule, or regulation. For example, preferences in recruitment and selection are given by Congress to veterans, Indians in the Bureau of Indian Affairs, persons with reemployment rights, handicapped individuals, etc. As amply illustrated elsewhere in this report, Congress has not only declined to authorize preferences based on kinship, it has specifically prohibited any conduct influenced by such considerations.

As described above, Nancy Horkan recommended her son to Morgan, among others, in August 2008, providing his résumé for a position on the Finance Staff. At that time, the only vacancies in Finance were for GS-11 or GS-12 positions, for which her son could not qualify as a recent graduate without relevant work experience. Morgan began an effort to create a position that Horkan’s son would be qualified to fill, by “restructuring” a vacancy so that it could be filled on a noncompetitive basis at the GS-5 or GS-7 level under the FCIP. She enlisted the assistance of an HR Specialist, who worked with staff in Finance to develop a Position Description that would fit Horkan’s son’s qualifications. Contemporaneous e-mails show that the effort to restructure a vacancy was triggered by Horkan’s request to

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<sup>58</sup> *Special Counsel v. Byrd*, 59 M.S.P.R. 561, 570 (1993).

Morgan and was at all times directed specifically toward enabling the son to qualify.

Morgan told the OIG that her interest in “restructur[ing] available positions] to lower grades” was not done “necessarily in order to hire [Horkan’s son],” that she was not telling Nancy Horkan “we’re going to hire him.” We agree with Morgan that, at the time she initiated the process of creating a new vacancy description targeting a lower grade, Horkan’s son’s appointment was not yet a completed action; additional qualifying processes still lay before him. However, a preference to a particular individual may violate Section 2302(b)(6) even if the person is not selected for the position.<sup>59</sup> Although Morgan told the OIG that the “intent” behind the “restructuring” was not to accommodate Horkan’s son or to facilitate his appointment, the most reasonable view of the available evidence shows otherwise. Indeed, Morgan’s comment that “my intent [in proposing the restructuring] was: we don’t have current positions at this particular grade level right now,” suggests that the purpose for the restructuring was specifically to benefit the application by Horkan’s son. E-mails and witness statements show that Morgan worked with her staff to cause the title and series of existing Finance Staff positions to be changed for the purpose of improving Horkan’s son’s eligibility for and likelihood of appointment.

Moreover, the fact that Horkan’s son may have been adequately qualified to fill the restructured vacancy is not relevant to whether a violation occurred. As the Merit Systems Protection Board stated: “Hiring even the best qualified person for the job must be accomplished through competitive means consistent with law and merit system principles. Thus, an agency may not grant a preference even to the best qualified person, unless it is authorized ‘by law, rule, or regulation.’”<sup>60</sup>

Morgan told us that she consulted with JMD Ethics Officer Janice Rodgers about the propriety of hiring Horkan’s son, and that Rodgers told her there was no problem because he would not be working directly for his mother and that Nancy Horkan had not forced Morgan to hire him. Rodgers’s advice is not a defense to a violation of 5 U.S.C. § 2302(b)(6). First, the quality of Rodgers’s advice was affected by the information provided by Morgan. There is no evidence from either Morgan’s or Rodgers’s recollections of the consultation that Morgan told Rodgers about the restructuring effort she had initiated to create a Position Description that

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<sup>59</sup> See *Special Counsel v. Deford*, 28 M.S.P.R. 98, 103 (1985); *Special Counsel v. Brown*, 61 M.S.P.R. 559 (1994) (observing that even if the applicant had not been selected, a showing that the hiring official acted for the purpose of advantaging a particular applicant is sufficient to establish a violation of Section 2302(b)(6)).

<sup>60</sup> *Special Counsel v. Byrd*, 59 M.S.P.R. 561 at 571 n.9 (1993).

would fit the son's qualifications and enable him to apply to be hired noncompetitively under the FCIP authority.<sup>61</sup> Second, this regulation does not contain a "safe harbor" whereby otherwise illegal employment preferences can be validated by an ethics official.

By causing existing Finance Staff vacancies to be "restructured" to grades more suitable to the experience level of Horkan's son, Morgan granted him "a preference or advantage not authorized by law, rule, or regulation" for the purpose of improving his prospects for employment, in violation of 5 U.S.C. § 2302(b)(6).<sup>62</sup>

## 2. Conclusions Regarding Morgan

We concluded that Melinda Morgan granted an unauthorized preference or advantage to Horkan's son in violation of 5 U.S.C. § 2302(b)(6). Although Morgan did consult with Rodgers about the propriety of hiring Horkan's son, we found no evidence that Morgan described to Rodgers her efforts to improve his prospects for employment by position restructuring, or that Morgan's consultation with Rodgers included any consideration of unauthorized preferences under 5 U.S.C. § 2302(b)(6). Nevertheless, we consider Morgan's consultation with Rodgers a mitigating factor in assessing the gravity of Morgan's misconduct. We also note that, unlike several other JMD employees whose actions we reviewed in this investigation, Morgan provided candid statements to the OIG and did not seek to benefit her own relatives.

We are referring our findings concerning Morgan to JMD for its review and appropriate disciplinary action.<sup>63</sup>

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<sup>61</sup> We found no evidence to indicate that Morgan intentionally withheld the fact of the restructuring when she consulted Rodgers.

<sup>62</sup> The OIG recognizes that there is nothing intrinsically problematic with restructuring vacancies. Moreover, during the time of the events in question the FCIP was clearly a valid appointing authority. The words "not authorized by law, rule, or regulation," however, refer to the *preference* that is prohibited, not to the *type of action* used in granting the preference. *Special Counsel v. Byrd*, 59 M.S.P.R. 561, 570 (1993). Therefore, neither Morgan's use of the FCIP appointing authority nor the "restructuring," *per se*, was disallowed by law, rule, or regulation. Instead, it was the preference itself that was prohibited. In other words, what rendered the vacancy restructuring problematic was that it was triggered by an effort to facilitate the appointment of a colleague's relative and was implemented in a manner specifically directed at accommodating the relative's qualifications.

<sup>63</sup> After reviewing those portions of this report pertaining to her own conduct, Morgan provided a written response to the OIG. Morgan requested that "additional contextual considerations be factored into [the] report . . . [chiefly,] the needs of the organization . . . that did play a part in deciding to restructure the position at a lower grade level." As described above, the needs of the organization do not justify restructuring a

(Cont'd.)

## **VI. Facts and Analysis Pertaining to Rodney E. Markham**

In this Part of the report we set forth the facts relating to the alleged misconduct of HR Director Rodney Markham.<sup>64</sup> The allegations relating to Markham arose out of the hiring of his cousin and nephew into JMD and DOJ National Security Division (NSD), respectively.

### **A. Factual Findings**

Rodney Markham joined the DOJ in March 2006 as an HR Deputy Director, became the Director in 2008, and left federal service in September 2011. While HR Director, Markham reported directly to Santangelo. In June 2011, the OIG received anonymous allegations that Markham's nephew and cousin had been improperly appointed to DOJ positions.<sup>65</sup> We investigated Markham's alleged role in these appointments in addition to his knowledge of or involvement in a number of other allegedly improper hires.<sup>66</sup>

#### **1. The Hiring of Rodney E. Markham's Cousin**

In April 2009, JMD's Budget Director hired Markham's cousin into a full time position as a Clerk under the Student Temporary Employment Program (STEP). When asked how she came to be appointed, Markham told us that he tried to "help her get a position in the Budget Office through [the Budget Director]." He said that he told her that his cousin "was looking for a job and that she was very bright in budget." Markham stated that he "advocate[d]" for his cousin's employment.

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position for the purpose of improving an employee's son's eligibility for and likelihood of appointment.

Morgan also reiterated her testimony that "just restructuring the position at a lower grade level did not mean that [Horkan's son] was automatically selected for the position." Again, the fact that additional qualifying processes still lay before Horkan's son after the restructuring enabled him to apply is not relevant to whether a violation occurred.

<sup>64</sup> Markham left the Department in September 2011. DAAG-HRA Mari Barr Santangelo told the OIG that Markham's departure had nothing to do with improper hiring practices or the OIG's investigation. Markham was succeeded, in an acting capacity, by Finance Staff Director Melinda B. Morgan. Terence L. Cook became HR Director on February 13, 2012.

<sup>65</sup> E-mails show that Markham shared a close relationship with his nephew and cousin, and that Markham housed his nephew for a period of time.

<sup>66</sup> We did not review the underlying merits of all of the hiring decisions involving relatives brought to our attention, and did not do so with respect to Markham's relatives. However, we recommend in Part VIII.B of this report that JMD consider conducting this inquiry and, if deemed necessary by JMD leadership, take appropriate action if it finds that any hiring official granted an improper preference to Markham's relatives in a hiring decision.

Markham also told the OIG that after her appointment, his cousin appeared to be abusing her leave. He said that he recommended that she be removed, and that she subsequently resigned. E-mails confirm Markham's involvement in discussions regarding his cousin's management and discipline.

We asked Markham whether his involvement in his cousin's appointment gave her an unfair advantage. Markham stated, "That gave her an unfair advantage. But also - when it came time to remove her - I was the one that said 'You better get her out of there,' and I made sure that she was written up. . . . I felt like I was fair and objective in that situation."

## **2. The Hiring of Rodney Markham's Nephew**

Markham told the OIG that he helped his nephew to secure a paid internship in NSD, one of the Divisions JMD/OBD HR serviced. Records reveal that Markham's nephew worked there during the summers of 2009 and 2010.

Witnesses told us, and e-mails show, that Markham's nephew was originally slated for an HR post. However, Markham told us that at some point he advised Cabell-Edelen that his nephew should not be appointed to a position within Markham's chain of command. Markham told us he believed he called an NSD official on his nephew's behalf. E-mails show that Markham was in touch with several NSD officials regarding his nephew's NSD appointment.<sup>67</sup> On May 6, 2009, Markham e-mailed one NSD official about his nephew, stating, "He's in the queue for JMD . . . maybe I can have [him transferred] to you guys??" (Ellipsis in original.) He was subsequently assigned to NSD.<sup>68</sup>

We asked Markham whether he recommended that NSD hire his nephew. He answered, "I did. I said he's a good kid, and he needs a position." Markham stated that he also told the NSD officials how his nephew's familiarity with a particular "architectural rendering program" would benefit NSD.

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<sup>67</sup> The NSD officials Markham contacted were a GS-15 Supervisory Management & Program Analyst, an Executive Officer (ES), and a GS-15 Supervisory Procurement Analyst. Although e-mails show that Cabell-Edelen knew of the applicant's relationship to Markham, the e-mails did not reveal whether the NSD officials knew prior to the applicant's appointment that he was Markham's nephew.

<sup>68</sup> E-mails reflect that the nephew's paid HR internship was subsequently given to a friend of Nancy Horkan, whose résumé Horkan forwarded to Markham on May 11, 2009.

### **3. Markham's Knowledge about Other Appointments in JMD**

In the course of our investigation, we learned that the practice of hiring friends and relatives of JMD employees into a small number of paid summer clerkships and other STEP appointments was common. Although these were not part of any allegations received by the OIG, we asked Markham about them because he was either involved in, or in a position to know about, these appointments. Further, they illustrate the widespread nature of the preferential hiring of friends and family within JMD.

According to information provided by JMD to the OIG, JMD received 1621 applications for summer clerkships and other STEP positions in 2009, and 1229 applications for those positions in 2010. There may have been even more applications than reported by JMD because Cabell-Edelen stated in an April 2, 2010, e-mail to the HR Deputy Director and the FASS Deputy Director that she had over 2000 applications to fill no more than 5 paid summer positions. An HR Specialist told us that announcements were advertised for summer clerkships and other STEP positions. She stated, however, that "very few" candidates were selected from the announcements.

Markham stated that the selection process was "not very structured." He told us, "[Y]ou don't have the ability to screen those kids out based on a competencies. . . . Honestly guys, it's word-of-mouth and being in good standing" in your academic program. He told the OIG that he receives résumés "all the time" and that "[i]t's usually a friend or a colleague or someone has a son or daughter in college that's looking to get some experience."<sup>69</sup>

Next, we showed Markham the lists identifying the 2009 and 2010 paid summer interns. These lists bear the names of multiple students whose relatives work in JMD. One list - containing 11 names of STEP and FCIP appointments for April through June 2010 - included at least 6 confirmed relatives of DOJ employees. We asked Markham his opinion of how properly to interpret nepotism prohibitions within the context of STEP, SCEP, and FCIP appointments. He said he thought that if the DOJ employee's relatives are not in the employee's "direct reporting chain" and the employee is not the selecting official, the relatives can properly be hired "if they're qualified and they meet the requirements."

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<sup>69</sup> According to JMD, clerkship compensation is generally governed by educational level. Most of the appointments at issue here were GS-3s and GS-4s (approximately \$27,000 to \$40,000 per year). These are excepted service positions that can be noncompetitively converted to SCEPs, which can be noncompetitively converted into career appointments.

We asked Markham about the following JMD employees whose relatives, based on the available evidence, appeared to have received preferential treatment in the competition for summer clerkships and other STEP positions:

- February 2009 e-mails show that a SEPS Assistant Director provided his daughter's résumé to Markham and recommended her for appointment to a summer clerkship. Markham thanked the SEPS Assistant Director, told him to have his daughter apply, told him he would bring her in for an interview, told him that he "appreciate[d] the e-mail," and forwarded his e-mail to Cabell-Edelen, stating, "This is the name request for us if we still have room." In a May 4, 2009, e-mail to some of her staff, Cabell-Edelen stated, "Per my phone conversation with [Horkan] today, they have selected [the SEPS Assistant Director's daughter] for the summer." Horkan told the OIG that the SEPS Assistant Director's daughter declined the offer of employment.<sup>70</sup>
- Markham stated that a JMD Deputy Director referred her son to him for a STEP appointment. The Deputy Director sent the following e-mail to Markham and the JMD Budget Director on March 12, 2010: "My son [ ] is going to apply to the summer program . . . [Last summer, he] did an unpaid [EPA] internship . . . but maybe he could be happy with pay at DOJ! I know the jobs are scarce, though." Markham replied, "You want him in HR?" We found no evidence of the Deputy Director responding to Markham's question at that time. The Deputy Director's son subsequently applied for a paid summer internship and was not selected. In an April 5, 2010, e-mail, the Deputy Director forwarded her son's rejection notice to Markham, stating, "Hard to believe a kid with straight A's in high school couldn't compete for a summer job here! But I guess there must have been a ton of highly qualified applicants . . .". (Ellipsis in original.) Markham replied, "Oh no . . . wait, did you want him in HR?" (Ellipsis in original.) The son was subsequently appointed to a paid STEP position in HR.
- LaTonya Gamble's daughter was hired in 2009 under a STEP appointment. Markham stated that he did not know for sure

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<sup>70</sup> We did not review the underlying merits of all of the hiring decisions involving relatives brought to our attention, and did not do so with this particular one. However, we recommend in Part VIII.B of this report that JMD consider conducting this inquiry and, if deemed necessary by JMD leadership, take appropriate action if it finds that a hiring official granted an improper preference to a JMD relative in a hiring decision.

how this occurred. He stated that it was “[p]robably Pam” and that Gamble and Cabell-Edelen were “very tight.” One HR Specialist we interviewed told us that Cabell-Edelen originally “sent [Gamble’s daughter’s] résumé to Mari [Santangelo], and Mari selected someone else.” The HR Specialist stated that at that point Cabell-Edelen asked McEachron to hire Gamble’s daughter. E-mails confirm Cabell-Edelen’s involvement in the decision to appoint Gamble’s daughter. A May 4, 2009, e-mail shows Cabell-Edelen coordinating the placement of multiple candidates her staff preferred, stating in part, “I will take Jeanarta [McEachron’s] person and Jeanarta will take [Gamble’s daughter].” One HR Specialist we interviewed told us that “Jeanarta[s] person” was the granddaughter of McEachron’s neighbor and that she, like Gamble’s daughter, periodically returned to her paid STEP position during 2010 and 2011.

- Two of Cabell-Edelen’s granddaughters received summer STEP appointments in JMD.<sup>71</sup> Markham told us that he barred Cabell-Edelen’s granddaughters from returning to positions anywhere in HR for summer 2011. With respect to this decision, an HR Specialist asked if she could place the granddaughters in other offices, but was told by an HR Deputy Director to “just leave it alone.”<sup>72</sup>

Markham repeatedly stated to the OIG that he had no qualms about the selection of candidates who - all else being equal - are selected simply because they happen to have DOJ relatives who recommended them to DOJ hiring officials. He told the OIG that it all depends upon “where they’re working, who they’re reporting to, and what they’re doing and have they met the basic qualifications.” He stated that although he was not troubled by relative-recommended appointments of qualified candidates to positions outside their relatives’ chains of command, the OIG made “a good point” when we questioned the apparent inequity of such a policy because it gave an unfair advantage to relatives and friends of DOJ employees in what is supposed to be a merit-based hiring process. Expanding upon this statement, Markham said:

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<sup>71</sup> We did not review the underlying merits of all of the hiring decisions involving relatives brought to our attention, and did not do so with respect to Cabell-Edelen’s granddaughters. However, we recommend in Part VII.B of this report that JMD consider conducting this inquiry and, if deemed necessary by JMD leadership, take appropriate action if it finds that a hiring official granted an improper preference to a JMD relative in a hiring decision.

<sup>72</sup> By the time of the hiring decisions for summer 2011 positions had been made, the OIG had opened this investigation and interviewed several witnesses in JMD.



Actually, OPM recognizes the point you are making. . . . STEP and SCEP are going away. FCIP [is] gone away. So now we have this program called Career Pathways, where you will have public announcements.<sup>73</sup> So, agencies are going to have to put a little more structure around these programs. . . . So I think your point is a good one.

**B. Analysis of the Conduct of Rodney E. Markham**

We concluded that HR Director (SES) Rodney E. Markham's conduct violated multiple statutes and regulations.

**1. Nepotism - 5 U.S.C. §§ 3110(b) and 2302 (b)(7)**

We concluded that Markham violated the federal nepotism statute, 5 U.S.C. § 3110(b), in connection with the appointments of his cousin and nephew. The nepotism statute prohibits a public official with hiring authority from advocating for the employment of his relative to a civilian position in the official's agency. As HR Director, Markham clearly had hiring authority, and his cousin and nephew each met the statutory definition of a "relative."

Markham described his cousin's appointment with frankness, stating, "I did try to help her get a position in the Budget Office through [the Budget Staff Director]." He said he told the Budget Director that his cousin needed a job and "was very bright in budget." Markham stated, "I did advocate for [my cousin]."

Equally candid when describing his nephew's appointment, Markham stated that he helped his nephew to be appointed to an NSD STEP position as a Clerk. Markham told the OIG that he spoke with NSD officials regarding his nephew's interest in the job and suitability for it. When we asked Markham whether he recommended and spoke in favor of his nephew, he replied, "I did." He stated that he also told the NSD officials how his nephew's familiarity with a particular "architectural rendering program" would benefit the NSD.

We therefore concluded that, having impermissibly "advocated" for his relatives when he spoke in favor of, recommended, endorsed, or otherwise

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<sup>73</sup> Established by Executive Order 13562, December 27, 2010 - but not yet implemented - the "Pathways Programs" comprises three excepted service internship programs for students and recent graduates. The Pathways Programs will serve, in part, to replace the STEP, SCEP, and FCIP and are designed, *inter alia*, to "advance merit system principles." See OPM proposed regulations, Federal Register, Vol. 76, No. 151, page 47496, Friday, August 5, 2011.

supported their appointments to civilian positions in the DOJ, Markham violated the nepotism statute.

The above facts also support a conclusion that Markham committed a Prohibited Personnel Practice when he advocated for his relatives' appointments to DOJ positions. Section 2302(b)(7) of Title 5 of the United States Code prohibits any employee with the authority to affect hiring decisions from advocating for a relative's appointment to a civilian position in the employee's agency.

When interviewed by the OIG, Markham repeatedly stated his view that a DOJ official's recommending, speaking in favor of, endorsing, or otherwise supporting his relative's STEP, SCEP, or FCIP appointment is permissible as long as the candidate is qualified and not applying to work in his relative/advocate's chain of command. Markham knew or should have known that this position contradicts applicable laws and regulations.<sup>74</sup>

## **2. Use of Public Office for Private Gain - 5 C.F.R. § 2635.702**

We concluded that Markham violated Section 702 of the Standards of Ethical Conduct, 5 C.F.R. § 2635.702, which prohibits an employee from using his public office for his friends' or relatives' private gain, when he improperly assisted them to be appointed to DOJ positions.

As described above, Markham candidly described to us his relatives' appointments. He stated that he recommended his cousin to JMD's Budget Director, told her that his cousin "was looking for a job and that she was very bright in budget," and stated that his advocacy gave his cousin an unfair advantage. Similarly, he acknowledged that he recommended his nephew's appointment to NSD officials, describing to them how his nephew's familiarity with a particular "architectural rendering program" would benefit the Division. Markham's relationship with the Budget Director and the NSD officials was chiefly professional, and it was by virtue of his prominent office in JMD that he was in a position to have ready access to or influence over them. Therefore, Markham was "using his public office" as the basis for his request.

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<sup>74</sup> Notably, Section 213.3202(7) of Title 5 of the Code of Federal Regulations, "Employment of Relatives," states, in part, that "a student may work in the same agency with a relative when there is no direct reporting relationship *and* the relative is not in a position to influence or control the student's appointment, employment, promotion or advancement within the agency." (Emphasis added.) In short, Markham showed poor judgment not only when he advocated for his relatives' appointment, but also when he became involved in the Budget Staff's subsequent management and discipline of his cousin.

Markham's involvement in his relatives' efforts to secure DOJ positions provided a private benefit to them. This was an abuse of Markham's position.

In addition to violating Section 702's general prohibition, we also concluded that Markham used his public office "in a manner intended to coerce or induce" his colleagues to provide a benefit to his relatives. 5 C.F.R. § 2635.702(a). As described above, Markham intended to "induce" his Budget Staff and NSD colleagues to provide a "benefit" to his relatives by advocating on their behalf, complimenting them, and otherwise endorsing and supporting their appointments. HR provided staffing and personnel services to JMD Budget Staff and NSD and, as HR Director, Markham wielded considerable influence in this area.

**3. Participating in a Matter Affecting the Financial Interest of a Person in a Covered Relationship - 5 C.F.R. § 2635.502**

By involving himself in his relatives' efforts to obtain positions within the DOJ, Markham failed to follow the guidelines set forth in Section 502 of the Standards of Ethical Conduct. Section 502 prohibits an employee's participation in a "particular matter" where he knows that such matter is likely to affect a relative's financial interest and "determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter."

First, Markham readily acknowledged his "participation" in his relatives' appointments - each a "particular matter" likely to have "direct and predictable effect" on their respective financial interests. Second, Markham had a "covered relationship" with his cousin and his nephew. Clearly relatives, they also had "a close personal relationship" with Markham. We base this conclusion not only on the above-described favors Markham provided them, but also on e-mails exchanged between Markham and his relatives showing the nature of their relationship, as well as on the fact that Markham's nephew lived in Markham's home for a period of time. Third, his involvement in their appointments would cause any reasonable person "to question his impartiality in the matter[s]." In fact, obliquely referring to such appearance of questionable impartiality, JMD's Budget Director teased Markham about his niece's appointment in a May 15, 2009, e-mail, stating, "Amazing how quickly these things can happen."

We concluded, therefore, that Markham showed poor judgment when he either failed to recognize - or recognized and ignored - the appearance of partiality that his involvement in these matters created. He should have

“informed the agency designee of the appearance problem and received authorization” to participate, and he did not do this.<sup>75</sup> As a result, he failed to follow the guidelines set forth in Section 502 of the Standards of Ethical Conduct when he participated in hiring decisions that had a direct effect on his relatives’ financial interests.

#### **4. Markham’s Conduct with Respect to Intern Appointments**

In addition to the misconduct relating to his own relatives, Markham’s involvement in the placement of other employees’ relatives, particularly summer and other paid intern appointments in HR, further demonstrated his lack of attentiveness to Merit System Principles. The principles of merit selection stand for the idea that that employee “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.” See 5 U.S.C. § 2301(b)(1). For example, our investigation revealed that during the second quarter of 2010, relatives of JMD employees occupied 6 of 11 paid HR internships. The high number of relatives hired for HR internships should have been a warning sign to Markham that merit principles were not being followed.

Markham stated that the selection of such interns was largely based on “word-of-mouth,” and that “[i]t’s usually a friend or a colleague or someone [who] has a son or daughter in college that’s looking to get some experience.” When asked whether it was permissible to have a DOJ official “suggesting and recommending and advocating” that his relative be selected for an internship, he stated, “It would be all right if they meet the position’s requirements.”

As Santangelo stated when we asked her about the intern programs, such conduct is not all right. She told the OIG, “They are not to be hired because they are a family member or because a family member has vouched

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<sup>75</sup> As noted, Section 502(d) requires that such authorization: (1) be secured from the agency designee (AAG Lee Lofthus); (2) be received *prior to* the employee’s participation in the matter; and (3) be “based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee’s participation outweighs the concern that a reasonable person may question the integrity of the agency’s programs and operations.” Although Markham told the OIG, “When [my nephew] was working in NSD, I told Mari [Santangelo]. When [my cousin] was working in Budget, I told Mari,” such measures fall well short of those described above. Clearly, notifying your supervisor of your relatives’ recent appointments is in no way tantamount to having informed the agency designee beforehand of all relevant circumstances surrounding the appearance problem. Santangelo told the OIG that Markham never sought her approval for his relatives’ appointments.

for them. . . . If you're a relative, you should not be recommending . . . not saying 'Here is a name,' and not distributing a résumé." Santangelo also made clear that the use of the fact of an applicant's familial connection to a DOJ employee as a "tie-breaker" in that person's selection is also impermissible.

The intern appointments described above suggest a troubling pattern in which relatives and neighbors of JMD employees appear to have been granted improper preferences in the hiring process. Markham's endorsement and oversight of such a selection policy, to say nothing of his compliant response to colleagues seeking to place relatives in JMD internships, contravened the principles of merit selection.

## **5. Conclusions Regarding Markham**

We concluded that HR Director Rodney Markham violated the nepotism statute, committed a Prohibited Personnel Practice, and violated the Standards of Ethical Conduct in connection with his efforts to obtain employment for his relatives within the DOJ.

As Director of HR within JMD, Markham should have been aware of prohibitions relating to hiring abuses and scrupulous about abiding by such prohibitions. Markham was aware of the history of nepotism-related abuses in FASS. He received ethics training about nepotism and other hiring abuses. He sought no advice from ethics officials regarding the propriety of his efforts to obtain JMD employment for his relatives. He facilitated the abuse of the summer intern program to hire relatives of JMD employees.

Unlike several other JMD employees whose actions we reviewed in this investigation, however, Markham provided candid statements to the OIG. Nevertheless, we believe that misconduct of this gravity would normally require disciplinary action. However, Markham left the DOJ prior to the completion of this report and is no longer subject to Departmental discipline. We recommend however that our findings be referenced in his personnel file for consideration in the event that he applies for DOJ employment in the future.

## **VII. Facts and Analysis Pertaining to Management and Oversight by Mari Barr Santangelo**

In light of the number of appointments of relatives of JMD employees to positions within JMD, we examined the adequacy of the supervision provided by DAAG Mari Barr Santangelo. As detailed below, even after learning of OIG's 2004 and 2008 Reports and taking steps to improve training on personnel practices, Santangelo received warning signs that the hiring of employees' relatives continued to be a common practice in JMD.

Between the issuance of the 2008 Report and the initiation of this investigation, Santangelo learned of at least six separate instances in which the children or other relatives of JMD employees had been hired into the division, including the close relatives of three senior JMD employees who reported directly to her - Hamilton's son, Horkan's son and niece, and Markham's nephew. We found that she made only limited inquiries in response to these incidents and relied on the summary assurances of JMD employees that they had not been involved in the appointment of their own relatives. We concluded that Santangelo's supervision of hiring practices in JMD were insufficient to prevent the violations described in this report.

#### **A. Factual Findings**

During the entire period covered by this report, FASS and HR reported to Mari Barr Santangelo, who has served as Deputy Assistant Attorney General for Human Resources and Administration (DAAG-HRA) and Chief Human Capital Officer since 2005. As noted above, Santangelo oversees seven offices in JMD comprising approximately 600 employees, including contractors.

After learning about the violations in JMD described above, we interviewed Santangelo to determine, among other things, what steps she took to address nepotism and other hiring abuses in the wake of the OIG's 2008 Report, and the extent of her knowledge of the subsequent hiring of employees' relatives in JMD.

During her OIG interview, Santangelo demonstrated a thorough and correct understanding of applicable prohibitions on nepotism. She stated, "If you're a relative, you should not be recommending somebody to someone else who has the power to hire them. If they apply, I think you stay out of it entirely."

Santangelo initially said she was aware of three relatives of JMD employees who had been hired in JMD since she became Deputy Assistant Attorney General: (1) the son of FASS Director Edward Hamilton, hired as a GS-5 Payroll Specialist in HR; (2) the daughter of FASS Deputy Director Michael Clay, hired as a GS-5/13 HR Specialist, also in HR; and (3) the son of Santangelo's Senior Advisor, Nancy Horkan, hired onto the JMD Finance Staff as a GS-5 Financial Management Specialist.

Hamilton's son received his job offer from HR in late January 2010. Santangelo told us that she first learned about the appointment of Hamilton's son around his start date, which was in March 2010. She said she learned this from HR Director Rodney Markham. She told us that it displeased her to be notified by Markham, rather than Hamilton himself. Santangelo stated that Markham assured her that "Pam [Cabell-Edelen] is

very careful to follow the rules,” and that there was “no concern” about improper hiring practices. Santangelo said that shortly before Hamilton’s son started work, Hamilton came to tell her that his son had been hired in HR. She told us that she asked Hamilton whether he had anything to do with his son’s appointment, and that Hamilton said he had “nothing to do with it.”

Clay’s daughter began working in HR in November 2009. Santangelo stated that she learned that Michael Clay’s daughter had been hired sometime after Clay’s daughter started work in HR, but before Santangelo learned about the OIG investigation in November 2010. Santangelo stated that upon discovering the kinship, she did not question Clay about whether he was involved in his daughter’s appointment, and that she assumed Hamilton did not ask Clay such questions. According to Santangelo, she asked Hamilton to speak to Clay, and Hamilton later told her that Clay said he was not involved.

Santangelo told us that she learned about the appointment of Nancy Horkan’s son onto the JMD Finance Staff sometime after he was hired in January 2009. Santangelo stated, however, that the appointment had “nothing to do with me.” According to Santangelo, Horkan assured her that Horkan “stayed out of it . . . did nothing, did no recommendations.” Santangelo also told the OIG that it would “shock” her if Nancy Horkan “would call somebody and say, ‘Hey, hire my son’ or ‘Here’s a résumé from my son’ or anything else leading or advocacy-oriented.”

We identified to Santangelo four additional relatives of JMD employees who had been hired during Santangelo’s tenure as Deputy Assistant Attorney General. Santangelo told us she was aware of these as well. The four were: (1) the daughter of HR Assistant Director Pamela Cabell-Edelen, hired as Hamilton’s secretary, as described above in Part III.A.1 of this report; (2) the nephew of HR Director Rodney Markham, hired to a STEP position as an NSD Clerk, as described above in Part VI.A.2; (3) the niece of Nancy Horkan, hired to a STEP position as an HR Program Specialist, as described in Part V.A.2; and (4) the daughter of another FASS employee, hired to an FCIP position as a FASS Program Analyst, as described below. Together with the three appointments that Santangelo identified without our reminder (Hamilton’s son, Clay’s daughter, and Horkan’s son), there was a total of seven appointments of relatives of JMD employees during Santangelo’s tenure that she told us she knew about.

Cabell-Edelen’s daughter was selected as Hamilton’s secretary in November 2009. Santangelo told us she learned that Hamilton’s secretary was Cabell-Edelen’s daughter well after the appointment was made and in fact after the OIG had begun its investigation. She stated that she spoke with Hamilton about this appointment as well and that he again stated that

there had been no misconduct in connection with her appointment. According to Santangelo, Hamilton stated that when he hired Cabell-Edelen's daughter he had no idea that she and Cabell-Edelen were related.

Markham's nephew was hired as an intern in NSD in May 2009.<sup>76</sup> Santangelo told us that Markham introduced her to his nephew at some point after the nephew began working as an NSD intern. She stated that Markham never sought approval for or provided notice of his involvement in his relatives' appointments. She told us, "I think Rod may have talked to [an NSD official] about a possible internship for [his nephew]. [The nephew] wasn't in [Markham's] chain of command." However, Santangelo acknowledged that an official's chain of command was not relevant to the matter of advocating for one's relatives' appointments, stating, "I don't think we should recommend or advocate or be involved at all. . . . If [someone considering hiring my relative] called me, I would say, 'Yes, she is my niece, and I want nothing to do with this. I don't want to talk to you.'"

Nancy's Horkan's niece was hired as a Program Specialist in HR in October 2009. Santangelo told us that she learned from Markham that Horkan's niece had been hired into JMD by an HR Assistant Director. Santangelo said that neither she nor Markham knew of the niece's relationship to Horkan prior to her appointment. Santangelo stated that she did not question Horkan about her niece's appointment. She said she instead assumed Horkan had not been involved in it based on Horkan's earlier assurances to her regarding the propriety of her son's appointment.

Santangelo told us she also knew about the appointment of the daughter of a FASS Woodcrafter in 2010. Santangelo told us the employee was someone who hung pictures and performed similar tasks in JMD. E-mails show that the employee spoke to Santangelo in early January 2010 about his daughter's interest in a job and sent her résumé to Santangelo via e-mail. Santangelo forwarded the résumé to Markham that day and asked him to call the employee's daughter. On January 15, Santangelo forwarded the résumé to Markham again, stating, "I know you're busy but I would appreciate your personal attn to this one - you talked about her résumé needing some work, and a possible internship in H.R.?" Markham sent Santangelo an e-mail informing her that he was not a "placement agency," and did not have any positions available in HR. Santangelo replied to Markham, stating, in part, "I know . . . but it's an employee. [Y]ou can delegate this to someone who can show her how to navigate the system and 'how to look for' a[n] intern program. And I thought you said you might have something this summer." (Ellipsis in original.)

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<sup>76</sup> As noted above, NSD was one of the Divisions that JMD-HR provided personnel services to.



When shown these e-mails during the OIG interview, Santangelo stated, "I thought I was looking at her résumé to look at her résumé. To see what it looked like." She stated that she wanted Markham to call her "to talk about the résumé." Santangelo told the OIG, "I had an interest in helping her shape her résumé, not [get] a job here. I never asked for an internship in HR." She stated that it was Markham and not she who first suggested possible positions for the employee's daughter.

Markham told the OIG he had little recollection of this incident. According to Markham, he told Santangelo that the employee's daughter was not suitable for an HR position. The employee's daughter did not receive an internship or any other position in HR.

The employee's daughter continued her efforts to obtain employment elsewhere in JMD. In June 2010 she e-mailed an Assistant Director in FASS to inquire about job openings that her father had told her about. On September 26, 2010, the FASS employee's daughter was hired as a GS-5 Program Analyst in FASS. Santangelo stated that she had nothing to do with the daughter's appointment in FASS. "I never promised anyone an internship here. I never said, 'Please hire this person or place this person.'" Markham told us he did not recall how the daughter came to be hired into FASS. The Assistant Director in FASS who was directly involved in the appointment of the daughter told us that she never discussed it with Santangelo.<sup>77</sup> We found no evidence to suggest that Santangelo had a role in the appointment of the employee's daughter to a position in FASS, or that the appointment was made because of any perception that Santangelo favored it.

In addition to the seven appointments of JMD employees' relatives that Santangelo told us she was aware of, there were five other appointments of JMD relatives that we discussed with her. During our interview, Santangelo said she was not previously aware of these five additional appointments of JMD relatives.

The first appointment that Santangelo said she was not previously aware of was the appointment of Markham's cousin. As described above in Part VI.A.1, Markham's cousin was hired by JMD's Budget Director in April

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<sup>77</sup> The Assistant Director in FASS told us that the applicant was a good fit for a position they were having trouble filling, and that the fact that the applicant was the daughter of a FASS employee was not a factor in her selection. We did not review the underlying merits of all of the hiring decisions involving relatives brought to our attention, and did not thoroughly do so with this particular one. However, we recommend in Part VII.B of this report that JMD consider conducting this inquiry and, if deemed necessary by JMD leadership, take appropriate action if it finds that a hiring official granted an improper preference to a JMD relative in a hiring decision.

2009 as a Clerk. Santangelo told us that she was not aware of this fact until we told her during her interview with us.

The second instance involved the daughter of a FASS Visual Information Specialist. In a May 2, 2008, e-mail, the Visual Information Specialist sent his daughter's cover letter and résumé to Santangelo. The e-mail stated in part, "When I spoke to you the other day, you told me to e-mail you for the contact person I should talk to about my daughter and the summer program. We have already applied on line, but anything you can help me with would be greatly appreciated." Santangelo forwarded the employee's e-mail to Senior Advisor Nancy Horkan, asking her to forward it to the right person since Santangelo was out of the office. Horkan replied, "Not quite sure how to respond. He's attached a personal letter from his daughter to you and she has already applied online with the program. Should I talk to Pam?" Santangelo replied, "Yes. Remind me to look it over on Monday." Horkan told the OIG that she "probably" followed up with Pamela Cabell-Edelen but could not recall any details. The employee's daughter was hired to a STEP position as a Clerk in the Departmental Executive Secretariat (another unit of JMD Santangelo oversees) by the Departmental Executive Secretariat Director, and began working on May 27, 2008, less than a month after the father's e-mail to Santangelo.<sup>78</sup>

Santangelo told the OIG that she did not recall receiving the e-mail from the Visual Information Specialist asking for help, but stated, "I would not have called Pam [Cabell-Edelen] and told her to get this young lady a job. . . . I would never invite somebody to send me something like that. That doesn't mean that they won't. . . . But I don't send it on to HR and say 'Here, hire this person.'"

The other three appointments that Santangelo told us she did not know about appeared on the list of 11 interns working in HR as of June 2010, discussed in Part VI.A.3 above. As previously noted, these 11 interns included at least 6 relatives of JMD employees. These HR interns included Hamilton's son, Clay's daughter, and Horkan's niece (all of whom Santangelo told us she knew about, as discussed above) as well as three

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<sup>78</sup> We interviewed multiple JMD employees about this appointment. The Director of the Departmental Executive Secretariat told us that, to her knowledge, neither Santangelo nor Horkan played any role in the appointment of the daughter of the FASS Visual Information Specialist. She further stated that the appointment was not made because of any perception that Santangelo or Horkan favored it. Similarly, the HR Specialist responsible for handling the daughter's application, as well as two officials in the Consolidated Executive Office, told the OIG that, to their knowledge, Santangelo and Horkan had no involvement in the appointment. We nonetheless recommend in Part VIII.B of this report that JMD consider conducting this inquiry and, if deemed necessary by JMD leadership, take appropriate action if it finds that a hiring official granted an improper preference to the FASS Visual Information Specialist's daughter in this situation.

additional relatives of JMD employees: Cabell-Edelen's granddaughter (one of two granddaughters working in JMD internships at the time), LaTonya Gamble's daughter, and the son of a JMD Deputy Director. Santangelo said she was not aware of the latter three appointments.<sup>79</sup>

Santangelo acknowledged that the large percentage of HR interns on the June 2010 list who were related to JMD employees (6 out of 11, or 55 percent) was troubling. Santangelo made clear that the same prohibitions against nepotism discussed earlier in the interview, including recommending relatives, apply equally to the Department's intern programs. She stated that selections for summer internships are supposed to be based only on merit. With respect to the fact that 6 relatives of JMD employees were appointed to 11 of the filled HR intern positions, Santangelo stated that it "makes me wonder," and that she needed to look into the process to ensure it is merit-oriented.

#### **B. Analysis of the Conduct of Mari Barr Santangelo**

As the head of JMDHRA and Chief Human Capital Officer (SES), Mari Barr Santangelo is ultimately responsible for ensuring that JMD/OBD hiring complies with federal anti-nepotism statutes and regulations. We believe that a fair assessment of Santangelo's handling of this responsibility must take into account JMD's recurring problems with hiring and the OIG's prior recommendations for corrective action. In particular, the OIG's 2008 Report focused on allegations that Hamilton's predecessor had engaged in nepotism and other violations of Merit System Principles with respect to hiring and promoting relatives and friends. The 2008 Report – which was issued during Santangelo's tenure as DAAG – described the OIG's earlier 2004 Report about other improper hiring practices in FASS, so Santangelo was aware of both reports. The 2008 Report criticized existing training programs for failing to "instill within FASS a culture of compliance with the rules and principles of merit selection and the Standards of Ethical Conduct" and recommended remedial ethics training specifically addressing these rules and standards in the hiring and promotion context. We recommended that JMD "establish a zero-tolerance policy for future violations of this type in FASS."

We recognize that Santangelo took steps to implement these recommendations. She helped plan and implement JMD's responses to these 2008 recommendations, which included staff meetings and online

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<sup>79</sup> In addition, e-mails and witnesses identified three other HR interns working during this time who had personal rather than professional connections to JMD employees: an acquaintance of an HR Specialist, a friend of Markham's neighbor, and a relative of McEachron's neighbor. We did not expand the scope of our review to investigate the circumstances of these appointments.

training sessions addressing ethics, Merit System Principles, and Prohibited Personnel Practices. In particular, Santangelo convened meetings of JMD Senior Staff, including Assistant Directors and Deputies, in which she spoke “strongly to absolute adherence to merit system principles and prohibited personnel practices.” The following March, Santangelo met with Edward Hamilton to discuss the 2008 Report and “the prohibited practices noted in [the] report,” so that Hamilton would “understand [JMD’s] absolute adherence to [Merit System Principles and Prohibited Personnel Practices].” During her OIG interview, Santangelo demonstrated that she has a thorough and accurate understanding of the relevant laws and regulations, including the prohibition on advocating for relatives.

However, our findings in this report demonstrate that problems continue to exist in JMD with respect to the hiring of relatives, and that Santangelo did not take adequate steps to prevent or respond to the violations described in this report. Santangelo told us that before the OIG initiated its review, she was aware of at least six instances in which relatives of JMD employees had been hired, all of which occurred *after* the OIG’s 2008 Report was issued.<sup>80</sup> We recognize that Santangelo did not participate in the decision to hire any of these individuals. However, we believe that Santangelo should have viewed each of these appointments as warning signs when she learned of them. In view of the OIG’s 2008 Report, Santangelo was on notice of a management problem, and she should have more actively responded to indicators that the problem persisted.

When Santangelo learned that Cabell-Edelen had hired Hamilton’s son, she relied on Markham’s assurances that there was no concern about improper hiring practices. She did not immediately question Hamilton, but waited until Hamilton came to tell her about the appointment before asking him if he had been involved. She did not question Cabell-Edelen (who hired Hamilton’s son) about Hamilton’s role in the appointment. In short, we believe her response to learning that the FASS Director’s son had been hired into JMD was too limited, even though she was aware that Hamilton’s predecessor as Director of FASS had been removed just 17 months earlier in connection with hiring a relative.

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<sup>80</sup> As noted above, Santangelo told us she was aware of at least seven appointments of JMD employees’ relatives (Hamilton’s son, Clay’s daughter, Horkan’s son, Cabell-Edelen’s daughter, Markham’s nephew, Horkan’s niece, and a FASS Woodcrafter’s daughter). She also told us, however, that she did not learn that Hamilton had hired Cabell-Edelen’s daughter as his secretary until after this investigation had commenced. We are therefore not criticizing Santangelo’s failure to inquire more searchingly about this particular appointment, because our investigation had already begun by the time she learned about it, and we had requested that she not undertake any separate investigation.

When Santangelo learned that Clay's daughter had been hired in JMD, she did not ask Clay any questions about whether he was involved in getting his daughter a job. She said she asked Horkan about whether she was involved in her son's appointment, but did not later ask the same question about the appointment of Horkan's niece.

We acknowledge the limited inquiries Santangelo made when she learned about these appointments of relatives. She told us that in each case she was assured that the JMD employees had no involvement in the appointments. It is not unreasonable for a manager to expect she can rely on the assurances of her staff. However, we find it insufficient that she continued to rely on these assurances without conducting further inquiry, particularly because there was not just a single, isolated occurrence of employee involvement in the hiring of a relative. At some point, the numerous instances of relatives being hired should have triggered more probing inquiries by Santangelo, particularly in light of the past nepotism and other hiring problems in JMD.<sup>81</sup>

Moreover, she should not have relied on the assurances of the employee whose relative was hired because that employee was the person suspected of advocating on the relative's behalf. Instead, she should have made inquiries with the hiring officials. Santangelo told us that all of the officials she questioned told her that they had no involvement in the appointment of their relatives. In fact, as detailed above, in each case the JMD employees actually had significant involvement in these appointments.

Santangelo had better options than merely relying on a succession of assurances that there had been nothing inappropriate about the relatives' hiring. In addition to more thoroughly examining these appointments, particularly after learning of several of them, and imposing discipline in the instances of violations of law and policy, she could have issued a formal reminder to staff regarding the prohibitions on nepotism, misuse of public office, and conflict of interest. Moreover, she could have directed her staff to abide by the bright line rule regarding relatives' applications for employment with the Department that Santangelo described to us – "stay out of it entirely." This bright line approach would be consistent with a goal of

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<sup>81</sup> After reviewing a draft of this report, Santangelo told us that, on several separate occasions, she asked then-HR Director Markham to examine the appointments and application processes discussed in this report in order to confirm that appropriate laws and regulations had not been violated. She stated that Markham told her that he personally reviewed the files, and assured her that all processes were properly followed, stating "all paperwork was in order." We do not believe that these inquiries were adequate, for the reasons stated. Among other things, nepotism is not a paperwork issue; Santangelo should not have expected that any relevant evidence of improper hiring practices would be contained in personnel files.

establishing a “zero tolerance policy,” a 2008 OIG recommendation with which JMD concurred.

We also considered Santangelo’s own involvement in circulating the résumés of relatives of two other JMD employees: the daughter of a FASS WG-4605 Woodcrafter and the daughter of a FASS Visual Information Specialist. These were not Santangelo’s own relatives, and her stated motive in the Woodcrafter’s daughter’s case was to assist the employee’s relative in learning how to improve her résumé and search for jobs she could apply for. We found no evidence that Santangelo had a role in the ultimate decision to hire these individuals, and we did not find that she violated any ethics rules or merit principles. However, we believe that Santangelo risked giving an unfair advantage to these applicants, even if she did not intend to do so. Santangelo’s e-mails to Markham could have created the impression that she wanted the applicant to be hired because she is related to a JMD employee – even if that was not her intent.<sup>82</sup>

In sum, we believe that there were management deficiencies in Santangelo’s supervision of hiring practices in JMD, and we refer this report to JMD for the action that it deems appropriate.

## **VIII. Additional Observations and Recommendations**

### **A. The OIG’s Assessment of JMD Nepotism Training**

The OIG concluded that the ethics training and guidance provided to JMD personnel - both in the aftermath of the OIG’s 2008 Report as well as annually - was generally well-produced and served as a suitable primer on the Standards of Ethical Conduct for Employees in the Executive Branch, codified at 5 C.F.R. Part 2635. Some guidance we reviewed, however, particularly the treatment of certain non-ethics-related subjects, raised concerns. We were troubled, for example, that the federal nepotism prohibition was not addressed clearly or forcefully enough.

Specifically, some materials - but not all - failed sufficiently to address the problem of the federal official who, rather than directly hiring his

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<sup>82</sup> After reviewing a draft of this report, Santangelo submitted a comment that stated, in part, that she did not “implicitly or explicitly suggest to an employee, or act in any manner toward an employee to help him or her believe they would receive any favoritism from me, or that I would act in any way to assist their family members to gain a federal job.” Accepting this statement of Santangelo’s intent as true, we nevertheless believe that her e-mails to Markham could have created a contrary impression. We also do not think it was appropriate for Santangelo repeatedly to direct Markham, over his protest, to provide this assistance in what was essentially a personal favor Santangelo wanted to provide to an employee.

relatives, recommends them to his colleagues. JMD's message has, at times, been particularly unclear on this point, rendering ambiguous an otherwise unequivocal federal nepotism prohibition. The "anti-advocacy" prohibitions articulated in the nepotism statute and reiterated in the list of Prohibited Personnel Practices announce an unambiguous rule, stating, in substance: a public official shall not advocate for the appointment of a relative to any person working in his agency.

Many of the internal guidelines, plans, and instructional materials the OIG reviewed during this investigation addressed the problem of advocating on behalf of one's relatives either not at all or in a misleading way. For example, a September 28, 2007, Memorandum from JMD's then-HR Director, purporting to instruct Component Human Resources Officers on the subject of Merit System Principles and Prohibited Personnel Practices, defined the applicable Prohibited Personnel Practice barring nepotism with the following 5-word statement: "Employ or promote a relative." We believe this brief definition is inadequate because the federal nepotism regulations on their face prohibit far more than employing or promoting a relative.

Even those materials that specifically address the issue of advocacy, the OIG concluded, do little to clarify the scope of the federal nepotism prohibition. For example, the above-referenced Merit System Principles and Prohibited Personnel Practices "fact sheets" prohibit "advocat[ing] the hiring or promotion of relatives," but immediately undercut this salutary instruction with the following, highly misleading example: "Second-level supervisor Jane asks first-level supervisor Joe to hire her son." As described above, the federal nepotism prohibition bars advocating for a relative's appointment - whether inside or outside one's chain of command - and reaches conduct short of an explicit request to hire a relative. Such guidance misleadingly signals to employees that advocacy on behalf of a relative's appointment occurs only when an official specifically asks or instructs her *subordinate* to hire her relative.

Other anti-nepotism guidance the OIG reviewed provided similarly misleading advice by again stating that an official engages in prohibited "advocacy" only when he refers his relative *to a subordinate*. For example, the Merit Promotion Plan for the Offices, Boards and Divisions of the Department of Justice (OBD Order 1335.1) states outright that a public official has "advocated" for a relative if he or she "recommends a relative, or refers a relative for consideration by a public official *standing lower in the chain of command*, for appointment, employment, promotion, or advancement . . ." (Emphasis added.) To be sure, as the Merit Promotion Plan points out, "recommend[ing] . . . or refer[ring] a relative for consideration" to a colleague qualifies as "advocacy." As explained above, however, the nepotism statute, 5 U.S.C. § 3110, by its plain language prohibits advocating for the hiring of a relative to *any* person in the same

agency, not just to persons in the same chain of command. The Merit Promotion Plan's "chain of command" language arguably (and incorrectly) implies that advocating for a relative is acceptable provided that the advocacy is directed to someone outside of the advocate's chain of command.<sup>83</sup> We believe that the quoted provision of the Merit Promotion Plan should be replaced with a broader formulation, in keeping with the broad scope of the federal nepotism prohibition.<sup>84</sup>

## **B. Recommendations**

This report marks the third occasion in eight years that the OIG has found illegal hiring practices in JMD. We note that, other than the handful of exceptions identified in Part VIII.A of this report, the guidance and training materials the OIG reviewed were adequate to the task of educating JMD staff about relevant laws and regulations. However, based on the incidents described in this report, JMD senior leadership must exercise more vigilance to ensure that the requirements and prohibitions described in the training materials are followed by JMD's managers.

In addition to the disciplinary referrals discussed above, we believe that JMD should take corrective action to prevent similar conduct from occurring in the future. The significant number of instances of improper advocacy and related conduct detailed in this report indicates that existing training and guidance, including the training programs instituted in response to the OIG's 2008 Report, have not been effective.

### **1. Revise Training Materials and Guidance to Conform to the Nepotism Statute**

In light of the history of hiring abuses in JMD, we recommend that training materials and all oral and written guidance - including the Merit Promotion Plan provisions described above - be revised to reflect the plain language of the nepotism statute, 5 U.S.C. § 3110, which prohibits advocating for the hiring of a relative to *any* person in the same agency, not just to persons in the same chain of command. We specifically recommend that all such guidance include language making clear that the prohibition on nepotism is *not* limited to communications to persons in the same chain of command. We fear that some of the current guidance, as described

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<sup>83</sup> The cited provision of the Merit Promotion Plan (which appears in Chapter 1, Section 7) was lifted verbatim from a version of a federal regulation, 5 C.F.R. § 310.103(c), that was superseded in 2005. In issuing a new version of the regulation, OPM deleted the "chain of command" language, which did not find textual support in the nepotism statute.

<sup>84</sup> We note that none of the JMD employees alleged to have engaged in nepotism cited the Merit Promotion Plan as the basis for their claimed belief that the nepotism prohibition does not apply to advocacy outside of the employee's chain of command.



above, might contribute to a misunderstanding of the prohibitions on nepotism. We further recommend that all such guidance state that the words “advocate for appointment” should be construed broadly in keeping with the Merit System Principle of ensuring that recruitment and selection is based “solely” on merit “after fair and open competition which assures that all receive equal opportunity,” and that employees wishing to have *any* communications with other DOJ employees regarding the potential employment of their relatives should first consult an ethics official.

## **2. Require Disclosure of Applications by Relatives and Certifications**

We recommend that JMD require that applicants for positions disclose whether any of their relatives, as defined in 5 U.S.C. § 3110(a)(3), or any members of their household, work at DOJ.<sup>85</sup> We further recommend that JMD consider establishing a rule that any senior JMD employee, including any GS-14 or above, having knowledge that his or her relative is applying for a position in JMD must disclose to a designated senior official the existence of the application and certify his or her non-involvement in the relative’s recruitment and selection process (including sharing résumés or referring, recommending, or in any way endorsing the relative’s candidacy).

In addition, any JMD official who makes an appointment of a candidate should disclose whether the JMD official is aware that the applicant is known to be a relative of a JMD employee. If that is the case, the JMD official should be required to: (1) certify that the JMD employee played no role in his or her relative’s recruitment and selection process (including sharing résumés or referring, recommending, or in any way endorsing the relative’s candidacy); (2) certify that the existence of the familial relationship did not influence the hiring official’s decision; and (3) obtain the written approval of the designated senior official prior to making the selection. We also recommend that JMD consider requiring all of its supervisors to disclose annually whether any relative is employed by DOJ and to certify annually that they played no role in the recruitment or selection (including sharing résumés or referring, recommending, or in any way endorsing the relative’s candidacy) on behalf of any relative.

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<sup>85</sup> The nepotism statute defines “relative” as a “father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.” 5 U.S.C. § 3110(a)(3).

### **3. Review Whether JMD Hiring Officials Granted an Improper Preference to Job Applicants because of their Family Connections**

We also recommend that JMD consider reviewing the appointments discussed in this report, to the extent that JMD leadership considers it necessary to do so, in order to determine whether officials granted unauthorized preferences to the candidates who were appointed. The focus of the OIG's investigation was on allegations that certain JMD officials had played an improper role in the appointment of their and others' relatives. Restrictions on such conduct are set forth in the nepotism statute and Sections 502 and 702 of the Standards of Ethical Conduct. The question of whether the ultimate appointment of the candidate was based on merit is not relevant to these restrictions, which are triggered by advocacy in favor of the candidate, "participation" in the hiring process, or misuse of the advocating official's position.

However, the fact that an official – particularly a senior official – has advocated on behalf of his or her own relative at least raises the question whether the person making the hire granted the applicant a "preference or advantage not authorized by law, rule, or regulation" in violation of 5 U.S.C. § 2302(b)(6). The fact that a JMD official has improperly advocated on behalf of his relative to another official who then hires the relative does not necessarily mean that the other official failed to observe merit principles in making the selection. The candidate may have been fully qualified for the position and the selection may have been made consistently with merit principles. However, it may be difficult for a hiring official to ignore the advocacy of a senior official, even if the hiring official is not in the same chain of command. Moreover, there exists the possibility that the hiring official will grant an improper preference to the applicant because of a friendship between the advocating official and the hiring official.

Reviewing the underlying merits of each of the appointments discussed in this report was beyond the scope of our investigation. However, we recommend that, to the extent that JMD leadership deems it necessary, JMD review each of the hiring decisions discussed in this report to determine whether the hiring official granted an inappropriate preference to another employee's relative. Should JMD determine that a candidate did receive an inappropriate preference because of the candidate's status as a relative of a DOJ employee, JMD should impose appropriate discipline against the hiring official who granted that preference. We do not recommend that any action be taken against the individuals who were hired as a result of any of the conduct described in this report, because they are not at fault for the conduct. JMD should consider reviewing the following appointments:

- Whether JMD's Budget Director granted an improper preference to the cousin of HR Director Rodney Markham when she hired her as a Clerk in April 2009.
- Whether the NSD Supervisory Management & Program Analyst granted an improper preference to the nephew of HR Director Rodney Markham when he hired him as a Summer Intern in June 2009.
- Whether the HR Assistant Director granted an improper preference to the niece of Nancy Horkan, Senior Advisor to DAAG Santangelo, when he hired her as a Program Specialist in HR's Programs and External Relations Section in October 2009.
- Whether FASS Director Edward Hamilton granted an improper preference to the daughter of HR Assistant Director Pamela Cabell-Edelen when he hired her to be his secretary in November 2009.
- Whether HR Assistant Director Jeanarta McEachron granted an improper preference to the daughter of FASS Deputy Director Michael Clay when she hired her as a part-time GS-5/13 HR Specialist.

Lastly, to facilitate future reviews of apparent hiring irregularities, including efforts to determine whether a hiring official granted an improper preference to a DOJ employee's relative, we recommend that JMD review its policies regarding the retention of applicant files.

**4. Review Whether Nepotism, or Improper Preferences Occurred in Connection with the Appointment of Additional Relatives of JMD Employees Not Investigated as Part of the OIG's Review**

Late in the course of the OIG's review, we learned of several additional appointments of relatives of JMD employees that we were unable to investigate. We did not attempt to identify every incident of a relative of a JMD employee being hired into JMD. To the extent that JMD leadership deems it necessary, JMD should conduct its own review of these appointments to determine whether they involved misconduct, including but not limited to violations of the nepotism statute, the Standards of Ethical Conduct, or the granting of a "preference or advantage not authorized by law, rule, or regulation" in violation of 5 U.S.C. § 2302(b)(6). JMD should consider reviewing the following appointments:

- The decision by the Director of the Departmental Executive Secretariat to hire the daughter of a JMD Information Specialist as a Clerk in May 2008.

- The decision by FASS Director Edward Hamilton to hire a granddaughter of HR Assistant Director Pamela Cabell-Edelen as an Intern in June 2009.
- The decision by Nancy Horkan, Senior Advisor to DAAG Santangelo, to offer a Summer Clerkship to the daughter of SEPS Assistant Director in May 2009.
- The decision by HR Assistant Director Jeanarta McEachron to hire the daughter of HR Operations Chief LaTonya Gamble as a Student Intern in June 2009.
- The decision by HR Director Rodney Markham to hire the son of a JMD Deputy Director after the Deputy Director informed Markham that her son was looking for an internship in June 2010.
- The decision by an HR Assistant Director to hire a second granddaughter of HR Assistant Director Pamela Cabell-Edelen as an Intern in May 2010.
- The decision by FASS Deputy Director Michael Clay to hire the daughter of a FASS employee as a GS-5 Program Analyst in September 2010.

In the event that JMD declines formally to review the above-described hiring decisions, we encourage JMD leadership to, at the very least, reiterate to those hiring managers the importance of strict adherence to proper hiring procedures, including legal, ethical, and Merit System principles.

As stated above, this report marks the third occasion in recent years in which the OIG has found illegal hiring practices in JMD. Although our 2008 report recommended remedial training and the establishment of a zero-tolerance policy for future hiring violations, neither measure has addressed the problem. Although some of the training materials and other guidance we reviewed addressed important topics (such as nepotism) in a superficial and incomplete manner, the pattern of fundamental misconduct described in this report did not stem from ignorance of the rules. Rather, most of the misconduct described in this report - the nepotism, the Prohibited Personnel Practices, the ethical lapses, the false and misleading statements - was the result of bad behavior by individuals insufficiently impressed with the principles of fair and open competition.<sup>86</sup>

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<sup>86</sup> After reviewing a draft of this report, the Assistant Attorney General for Administration Lee J. Lofthus, submitted to the OIG a response to this report's recommendations, which is attached as Appendix A.

We urge JMD to demonstrate its zero tolerance for such behavior and vigilantly to enforce proper hiring procedures and applicable ethical standards in the future.

# Appendix A



JUL 23 2012

Washington, D.C. 20530

MEMORANDUM FOR MICHAEL E. HOROWITZ  
INSPECTOR GENERAL

FROM:

Lee J. Lofthus  
Assistant Attorney General  
for Administration

SUBJECT:

Response to Recommendations Contained in the Office of the Inspector General's (OIG) Investigation of Improper Hiring Practices in the Justice Management Division – July 2012

This responds to the Investigation of Improper hiring Practices in the Justice Management Division (JMD) dated July 2012. The report clearly established that inappropriate hiring occurred regarding relatives of JMD employees. While it was a small number of JMD staffs and individuals implicated in the investigation, the report was particularly troubling as it identified hiring improprieties for the third time in eight years. It is disappointing to me that we have had another instance of a small number of individuals whose failure to follow proper hiring practices may color the work of over 1,000 other dedicated JMD employees who properly follow the hiring process.

The report recommends, and I will put in place, appropriate and immediate corrective actions to ensure the problems are not repeated, and will pursue disciplinary and other actions as appropriate based on the circumstances of each of the cases raised in the report.

**Recommendation 1:** Revise [JMD] Training Materials and Guidance to Conform to the Nepotism Statute.

**Response:** Concur. We will strengthen and clarify the training provided to all JMD staff, supervisors and non-supervisors alike, regarding Merit Systems Hiring Principles and particularly the plain reading and broad applicability of the nepotism rules. Since receiving your draft report last month, we have already updated our training materials and will incorporate them into our upcoming training classes immediately.

**Recommendation 2:** Require Disclosure of Applications by Relatives and Certifications.

**Response:** Concur. Based on receipt of the draft OIG report, we have developed three new certification forms designed to prevent a reoccurrence of the improper practices outlined in the report. We have developed an applicant disclosure form that requires applicants to disclose

whether they have relatives working at DOJ; we have developed an analogous form whereby any JMD employee with knowledge of a relative seeking employment with DOJ must disclose that fact; and we have developed a JMD supervisory selecting official disclosure form that requires selecting officials to certify whether or not they are selecting a relative of their own, or of any other DOJ employee, and if so, certifying that no relative exerted influence on the hiring decision and that the selection adhered to merit hiring principles. JMD will implement these controls by July 27, 2012, and I will designate an impartial senior official in my own office to review the disclosures and assure that confidentiality is maintained.

**Recommendations 3 and 4:** (3) Review Whether JMD Hiring Officials Granted an Improper Hiring Preference to Job Applicants Because of Family Connections; and (4) Review Whether Nepotism, or Improper Preferences Occurred in Connection with the Appointment of Additional Relatives of JMD Employees Not Investigated As Part of the OIG's Review.

**Response:** Concur. The report recommends that JMD consider whether proper practices were followed in other potential instances that came to the attention of the investigators during the course of the original investigation. The majority of the additional instances involved the same JMD staff already identified in the body of the OIG investigation as violating various hiring rules, and as such, we believe we have already been provided with the basis for any appropriate action. In the other instances, we will take appropriate measures to ensure the cited offices and individuals are properly aware of the merit hiring principles.

The OIG report concludes by saying most of the misconduct identified in the report did not stem from ignorance of the rules, but rather was the result of bad behavior by individuals insufficiently impressed with the principles of fair and open competition. That is particularly unfortunate as JMD did take action after the 2008 report to both improve its training and discipline the individuals found to have committed misconduct. There was no lack of aggressive action after the last report. There also should have been no lack of clarity on the subject of inappropriate hiring. Nonetheless, it is evident training alone cannot compensate for what your report describes as bad behavior by the individuals involved. Accordingly, the additional disclosures we are now putting in place should provide a layer of preventative and detective controls I would have hoped were unnecessary.

As noted above, the results of this investigation were very disappointing to me. I want JMD to genuinely fulfill its role in ensuring fairness in hiring and providing sound human resources management across the Department. We will work to that end.



