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

# Report of Investigation of Former U.S. Attorney James L. Santelle

Oversight and Review Division 16-05 August 2016

## I. Introduction

This report summarizes the investigation by the Department of Justice (DOJ or Department) Office of the Inspector General (OIG) into allegations that former U.S. Attorney James L. Santelle engaged in certain political and charitable fundraising activities in violation of federal law, executive branch regulations, and DOJ policy.

On April 29, 2014, the OIG received a matter referred by the Executive Office of the U.S. Attorneys (EOUSA). According to the referral, James L. Santelle, U.S. Attorney for the Eastern District of Wisconsin, scheduled a political event at his home on May 5, 2014 on behalf of Jon Richards, a Democratic candidate for Wisconsin Attorney General, an office contested on a partisan political basis. The event was advertised as a fundraiser. EOUSA learned of the event on April 28, 2014 after an employee in the U.S. Attorney's Office for the Eastern District of Wisconsin (USAO-EDWI) received an invitation to the event on his personal e-mail account. The same day, at the direction of the Associate Deputy Attorney General, EOUSA contacted Santelle and instructed him to cancel the event, which Santelle did. EOUSA referred the matter to the OIG.

The OIG reviewed the matter and determined that it raised issues governed by the Hatch Act, 5 U.S.C. §§ 7321-7326. The Hatch Act applies to most executive branch employees and identifies authorized and prohibited political activities. The U.S. Office of Special Counsel (OSC) is the agency responsible for investigating Hatch Act violations.[1] Thus, on May 5, 2014, the OIG referred the matter to OSC. By letter dated February 6, 2015, OSC notified the OIG that because the Richards event was cancelled, OSC had closed the matter without making a determination regarding whether Santelle violated the Hatch Act.

The OIG then initiated an investigation into whether Santelle's actions with respect to the cancelled Jon Richards event at Santelle's home violated DOJ policies. During the investigation, we learned that Santelle previously held a partisan political event at his home on November 9, 2013, on behalf of Mary Burke, a Democratic candidate for Governor of Wisconsin in the 2014 election.

[1] In the Civil Service Reform Act of 1978, Congress divided the responsibility for implementing the Hatch Act between the Office of Professional Management (OPM), OSC, and the Merit System Protection Board (MSPB). Pub. L. No. 95-454, 92 Stat. 111 (codified as amended in scattered sections of 5 U.S.C.)("Civil Service Reform Act of 1978"). Congress designated OPM as the entity responsible for promulgating Hatch Act regulations, OSC as the entity responsible for investigating Hatch Act violations and presenting them to the MSPB, and the MSPB as the entity responsible for adjudicating Hatch Act cases.

We also learned that in July 2014, EOUSA advised Santelle not to participate in a local law firm's fundraising event for a local charity because the promotional material included Santelle's name and title, creating the appearance that Santelle had endorsed the event in his official capacity.[2] As with the Richards event, EOUSA learned of the fundraiser after one of Santelle's subordinates received the invitation and forwarded it to EOUSA. We reviewed Santelle's DOJ Outlook calendar and found appointments for other partisan political events (including fundraisers) and for other non-political fundraisers which implicated Department policies. We investigated these issues as well.

During our investigation, we obtained documents from the OSC review file and interviewed Santelle on two occasions in the presence of his attorneys. We also interviewed the EOUSA General Counsel, Richards, Richards's Finance Director, several Assistant U.S. Attorneys (AUSAs) from the USAO-EDWI as well as other persons with relevant information. We also reviewed relevant documents and e-mails.

In this report, we first provide background information regarding Santelle and identify the applicable laws and policies governing Department employees' participation in partisan political activities and non-political fundraisers. We then set forth our findings regarding Santelle's conduct in light of those laws and policies.

As detailed in this report, we found that Santelle violated Department policy based on his conduct with respect to the Burke and Richards campaign events. We also found that Santelle violated the Standards of Ethical Conduct for Employees of the Executive Branch governing fundraising and endorsements based on his participation in multiple non-political fundraising events. We also found that Santelle lacked candor and exhibited poor judgment.

We are referring our findings with respect to both the Burke and Richards events to OSC, the agency responsible for investigating Hatch Act violations. We believe that OSC was previously unaware of the November 2013 Mary Burke event at Santelle's home and, therefore, has not yet examined Santelle's conduct with respect to that event. We also believe that OSC should be made aware of evidence gathered in our investigation relating to the Richards event that was not previously provided to OSC.

[2] As detailed below, the 2014 promotional material did not use Santelle's title, but the 2012 and 2013 version of the material did.

## II. Background

### A. James L. Santelle

James L. Santelle is a 1983 graduate of the University of Chicago Law School. Following a clerkship with a U.S. District Court Judge for the Eastern District of Wisconsin, Santelle joined the Department. During his 30 years with the Department, Santelle held numerous positions including: AUSA, Principal Deputy Director of EOUSA, Resident Legal Advisor at the U.S. Embassy in Baghdad, and Rule of Law Coordinator for the U.S. Mission in Iraq.

Santelle began his service as the U.S. Attorney for the Eastern District of Wisconsin on January 4, 2010, following his appointment by the President and confirmation by the Senate. On July 31, 2015, during the pendency of our investigation, Santelle retired from the Department.

### B. Applicable Law and Policy

In this section, we briefly describe the laws and policies that are relevant to partisan political activities and non-political fundraisers addressed in this report.

#### 1. Laws and Policies Governing Political Activity

##### a. The Hatch Act

The Hatch Act, 5 U.S.C. §§ 7321-7326, and its implementing regulations 5 C.F.R. Parts 733-734, identify the authorized and prohibited political activities for most executive department employees.[3] Except where otherwise specified, employees subject to the Hatch Act must adhere to one of two sets of restrictions, and thus the covered employees are commonly referred to as either "restricted employees" or "further restricted employees." "Restricted employees" are authorized to take an active part in political activity subject to four prohibitions. Political activity is defined as activity directed toward the success or failure of a political party, candidate for partisan office, or partisan political group. 5 C.F.R. § 724.101. The four prohibitions provide that a "restricted employee" may not:

1) use his official authority or influence for the purpose of interfering with or affecting the result of an election;

[3] Pursuant to the Civil Service Reform Act of 1978, OPM issued the Hatch Act regulations. These regulations include numerous "examples" illustrating the application of the regulations through hypothetical fact patterns.

2) knowingly solicit, accept, or receive a political contribution from any person [];[4]

3) run for the nomination or as a candidate for election to a partisan political office; or

4) knowingly solicit or discourage the participation in any political activity of any person who –

   (A) has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the employing office of such employee; or

   (B) is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the employing office of such employee.

5 U.S.C. § 7323(a)(1)-(4)

In addition to the prohibitions applicable to "restricted employees," "further restricted employees" are also prohibited from taking an active part in "political management or political campaigns." 5 U.S.C. § 7323(b), 5 C.F.R. § 734.202. The Hatch Act defines "political management or political campaigns" as those acts prohibited for employees of the competitive service before July 19, 1940. 5 U.S.C. § 7323(b)(4). According to guidance issued by OSC, "further restricted employees" may not "campaign for or against candidates or otherwise engage in political activity in concert with a political party, a candidate for partisan political office or a partisan political group."[5]

Except where otherwise specified, under the Hatch Act, U.S. Attorneys, appointed by the President and confirmed by the Senate, are subject to the provisions applicable to "restricted employees" but not "further restricted employees."[6] (However, as discussed in the next section, it is a violation of DOJ policy for a U.S. Attorney to violate any of the Hatch Act prohibitions for "further restricted employees.")

Three of the four Hatch Act prohibitions for "restricted employees" are relevant to this matter. The first is the prohibition from using one's official authority or influence to interfere with or affect the result of an election. 5 U.S.C. § 7323(a)(1). For example, an employee cannot use his authority to coerce any person to participate in political activity. 5 C.F.R. §

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[4] There is a narrow exception for soliciting non-subordinate employees who are in the same designated Federal labor organization that is not relevant to our review.

[5] *See* https://osc.gov/Resources/HA%20Poster%20_Further%20Restricted%20Employees%20-%20with%20OSC%20contact%20info%20(5-11).pdf. (Accessed June 27, 2016).

[6] Although there are circumstances under which a U.S. Attorney may be appointed by a court to fill a vacant position, references to U.S. Attorneys in this report are to U.S. Attorneys who are appointed by the President and confirmed by the Senate.

734.302(b)(2). According to OSC and the DOJ Ethics Office website, the Hatch Act prohibition on using one's official authority to influence elections includes a prohibition on inviting subordinates to political events or otherwise suggesting that they attend political events.[7]

The second is the prohibition from knowingly soliciting, accepting, or receiving a political contribution. 5 U.S.C. § 7323(a)(2).[8] This prohibition also limits the manner in which "restricted employees" may participate in political fundraising activities. Under this provision, a "restricted employee" may not host a political fundraiser at his home or allow his name to appear on an invitation to a fundraising event as a sponsor or as a point of contact for the event.[9] 5 C.F.R. § 734.303, Examples 1 & 2. In contrast, a "restricted employee" may host a "meet-and-greet" the candidate event at his home, attend a fundraiser, and permit his name to appear on a fundraiser invitation as a guest speaker, as long as the reference in no way suggests that the employee solicits or encourages contributions. 5 C.F.R. § 734.208(b)(1), Examples 3 & 6.

The third Hatch Act prohibition relevant to this review forbids "restricted employees" from knowingly soliciting or discouraging the participation in any political activity of any person who has a matter, such as an investigation or enforcement action, before the employing office of the employee. 5 U.S.C. § 7323(a)(4). For example, if an agency has official business with a specific organization, an employee of that agency cannot solicit or discourage the political participation of that organization or its employees. 5 C.F.R. § 734.305, Example 2.

### b. DOJ Policies

In addition to the Hatch Act, DOJ policy restricts the political activities of its employees. We note that DOJ policies are broader than the prohibitions in the Hatch Act statute. For example, the policies prohibit certain political activity not subject to the Hatch Act and do not include the actual knowledge requirement incorporated into several Hatch Act provisions.

These policies are distributed periodically in memoranda to Department employees, and are the subject of periodic training as discussed below. The version of the memorandum that was in effect at the relevant time for this review was issued on December 17, 2011 ("December 2011 Memorandum"), attached to this report as Appendix A. Although the Department has periodically re-issued the memorandum, its substance

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[7] *See* https://osc.gov/pages/hatchact-affectsme.aspx. *See also* DOJ Ethics Office website at https://www.justice.gov/jmd/political-activities.

[8] The Hatch Act implementing regulations add the term "personally" to the prohibition on knowingly soliciting, accepting, or receiving political contributions. 5 C.F.R. § 734.303(a).

[9] The Hatch Act regulations include a spousal exception that is not relevant to this matter.

remains consistent and the same principles apply today for all relevant purposes.[10] Department policies are also addressed in the mandatory annual ethics training, incorporated in the U.S. Attorneys Manual, § 1-4.400, and posted on the Department's website, http://www.justice.gov/jmd/political-activities. As detailed in Section II.C. below, the Department provides training to employees, including U.S. Attorneys, regarding their ethical obligations under these policies.

Under Department policy, the Hatch Act restrictions applicable to "further restricted employees," are applicable to all political employees of the Department, including Senate-confirmed Presidential appointees such as U.S. Attorneys. These restrictions include the prohibition on "active participation in political management or partisan political campaigns, even off-duty." December 2011 Memorandum at 1. According to Department policy, the rationale for imposing the additional Hatch Act restrictions for "further restricted employees" on the Department's political appointees is to avoid even "an appearance that politics plays any part in the Department's day to day operations." *Id.*

In addition, Department policy prohibits non-career employees, including U.S. Attorneys, from the engaging in the following specific activities (among others), which are relevant to this investigation:

- Using their official authority to influence or interfere with or affect the result of an election. December 2011 Memorandum at A.

- Soliciting, accepting or receiving a political contribution; soliciting, accepting, or receiving uncompensated volunteer services (*e.g.*, working for a candidate) from an individual who is a subordinate; or allowing their official titles to be used in connection with fund-raising activities. *Id.* at B.

- Soliciting or discouraging the political activity of any person who is a participant in any matter before the Department. *Id.* at D.

- Organizing, selling tickets to, promoting, or actively participating in a campaign event, convention or fund-raising activity of a candidate for partisan political office or of a political party or partisan political group; active participation includes making a speech at an event, appearing on the dais or in the receiving line of an event, or allowing one's name to be used in connection with the promotion of the event. *Id.* at K.

[10] *See e.g.*, Attorney General Memoranda issued August 4, 2008, December 17, 2011, April 23, 2014, July 14, 2014, and March 10, 2016.

- Attending political events in their personal capacity unless they obtain advance Department approval by a designated Department official. *Id.* at 3.[11]

### 2. Regulations Governing Non-Political Fundraising

The Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, include several regulations relevant to non-political fundraising for Department employees. The applicable regulations address fundraising and endorsements. The regulations prohibit an employee from using his official title or position for a purpose that has not been specifically authorized.

#### a. Fundraising Activities

Fundraising activities are governed by Section 808 of the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635.808. Fundraising is defined as the raising of funds for a nonprofit organization through solicitation or participation. 5 C.F.R. § 2635.808(a). Participation is defined as "active and visible participation in the promotion, production, or presentation of the event and includes serving as honorary chairperson, sitting at a head table during the event, and standing in a reception line." 5 C.F.R. § 2635.808(a)(1). Participation does not include: 1) mere attendance at the event provided that, to the employee's knowledge, his attendance is not used to promote the event; or 2) the delivery of an "official speech." 5 C.F.R. § 2635.808(a)(2). Among other things, an "official speech" must relate to the subject matter of the employee's duties, be determined to take place at an event that is an appropriate forum for the dissemination of such information, and not involve a request for donations or support for the nonprofit organization, all of which is subject to agency determination and approval. 5 C.F.R. § 2635.808(a)(3). Public speaking during a fundraising event, other than such an official speech, is considered participation. 5 C.F.R. § 2635.808(a)(2).

Subsection (b) of Section 808 authorizes an employee to participate in fundraising in his official capacity only if authorized by "a statute, Executive Order, regulation, or otherwise as determined by the agency." The language as "otherwise determined by the agency" is narrowly construed. An agency must have specific authority to conduct official fundraising in order for participation in an "official capacity" to be permissible under Section 808(b); it would not be enough for the fundraising to be consistent with an agency mission. A recommendation by some agencies which would have allowed

[11] Pursuant to the December 2011 Memorandum, DOJ policy required that non-career employees obtain approval from the designated Associate Deputy Attorney General in the Office of the Deputy Attorney General, or the Associate Attorney General or his designee. The current policy requires that non-career employees obtain approval from the Deputy Attorney General or her designee or the Associate Attorney General or his designee.

fundraising in an employee's official capacity if it were deemed consistent with the agency's mission or would otherwise further agency programs was specifically rejected. 57 Fed. Reg. 35040 (Aug. 7, 1992), preamble. With one exception, there is no authority for DOJ to conduct fundraising that would render it permissible for a U.S. Attorney to participate in such activity in an "official capacity." The exception is for the federal government's Combined Federal Campaign (or CFC).[12]

Subsection (c) of Section 808 authorizes an employee to participate in fundraising in his personal capacity provided the employee does not use his official Government title or position, and does not "personally solicit" from a subordinate or a "prohibited source" (as defined in 5 C.F.R. § 2635.203).[13] "Personally solicit" includes both direct person-to-person contact as well as the use of, or knowledge of the use of, one's name or identity in correspondences encouraging or requesting donations or support. 5 C.F.R. § 2635.808(a)(4).

There is an exception for mass-produced correspondence addressed to many persons unless the employee knows that the solicitation is targeted at persons who are prohibited sources. *Id.* According to the Office of Government Ethics (OGE), whether a mass-produced correspondence is "targeted" is determined by the circumstances. Factors to consider include whether the group solicited: 1) has homogeneous interests in that each of them is seeking official action by the employee's agency; 2) is doing or seeking to do business with the employee's agency; 3) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; and 4) whether the employee's name is being used by itself or with the names of others. *See e.g.*, OGE 93x8: *Meaning of "Targeted Solicitation" in Fundraising Provision of Standards of Conduct*; OGE 93x19: *Answers to Recurring Questions about Fundraising*.

A "prohibited source" is any person who:

1. Is seeking official action by the employee's agency;

2. Does business or seeks to do business with the employee's agency;

3. Conducts activities regulated by the employees agency;

4. Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or

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[12] *See*, Exec. Order No. 12, 353, 47 Fed. Reg. 12785, (Mar. 23, 1982); Exec. Order No. 12,404, 48 Fed. Reg. 6685, (Feb. 10, 1983); 5 C.F.R. Part 950.

[13] This rule does not prohibit an employee from being addressed as "The Honorable" or by a military or ambassadorial rank, if applicable.

5. Is an organization a majority of whose members are described in Paragraphs (d)(1) through (4) of this section.

5 C.F.R. § 2635.203(d).

### b. Endorsements

Endorsements are governed by Section 702(c) of the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635.702(c), which prohibits an employee from using or permitting the use of his government position, title, or authority to endorse a product, service, or enterprise.[14] This prohibition restricts a government employee from using his or her position to endorse a charity in connection with fundraising.

## C. Ethics Training and Other Department Resources

The Department provides training and resources to employees to ensure they are aware of their ethical responsibilities and are able to obtain ethics advice as specific questions and situations arise. The Ethics Office in the Justice Management Division (JMD) administers the Department-wide ethics program and implements Department policies. The ethics program includes annual mandatory ethics training, a Designated Ethics Official in each Department component, a District Ethics Advisor in each U.S. Attorney's Office, the periodic issuance of ethics policies, and a comprehensive website.

The Department requires all attorneys to complete annual ethics training. The annual ethics training is a comprehensive curriculum that includes instruction on the Hatch Act and related Department policies, as well as the Standards of Ethical Conduct for Employees of the Executive Branch. For attorneys who file public financial disclosure reports, including U.S. Attorneys, such annual training must be conducted live (or in a manner that ensures the employee has the opportunity to ask questions to a Department ethics official). The Department also provides new U.S. Attorneys with a specialized in-person training program that includes information on the rules and regulations regarding a U.S. Attorney's participation in political events.

In addition, each component within the Department has a Designated Ethics Official. The Designated Ethics Official, who is overseen and trained by the Ethics Office, serves as ethics advisor and general resource for employees within the component.[15] EOUSA General Counsel is the Designated Ethics Official for EOUSA. There is also a District Ethics Advisor in each U.S. Attorney's Office, who is trained on these issues, provides ethics training to U.S. Attorney's Office personnel, and is available to provide advice

[14] The endorsement provision includes two exceptions not relevant to this review. 5 C.F.R. § 2635.702(c).

[15] The official title for the Designated Ethics Official is the Deputy Designated Agency Ethics Official.

or direct personnel to other available resources. The human resources available to assist Santelle understand and comply with the ethics rules included the staff at the Department Ethics Office in the Justice Management Division (JMD), the Designated Ethics Official at EOUSA (General Counsel), and the District Ethics Advisor at the USAO-EDWI.

Other resources available to Department employees include the JMD website and the memoranda of Department policies periodically sent to employees. The Ethics Office website identifies the statutes, policies, and rules applicable to DOJ employees as well as the Designated Ethics Officer for each component. http://www.justice.gov/jmd/departmental-ethics-office. The website includes links to information for specific issues, including one dedicated to political activity. The political activity webpage identifies the specific laws and policies applicable to employees and provides a link to the current DOJ memoranda. http://www.justice.gov/jmd/political-activities. The website includes a request that "[a]ny Department employees who have questions beyond what is included here [on the web page] should consult their component's ethics official." All U.S. Attorney's Office personnel also have access to the Department's information portal, USABook, which includes an ethics page with substantial informational material and videos, and links to other relevant sites, including OSC.

## III. OIG Factual Findings Regarding Political Activities

Santelle was involved in two political events that raised issues under the Hatch Act and Department Policy.

### A. Mary Burke Campaign Event

Mary Burke ran as the Democratic Party candidate in the 2014 Wisconsin Gubernatorial election. During Burke's campaign, Santelle agreed to host a campaign event on Saturday, November 9, 2013, at his home in support of Burke's campaign. Santelle did not seek approval from the Department or ethics advice before agreeing to host the event at his home. Although Santelle told us that he did not intend for the event to be a fundraiser, we learned that at least one campaign donation was made and accepted by a co-host during the event at his home.

#### 1. Initiation of the Campaign Event

According to Santelle, an attorney (Attorney A) he knew initiated the campaign event. Attorney A told us that in November 2013 she was on the Administrative Committee of the Democratic Party for the 5th Congressional District (Waukesha). Santelle, who lived in Waukesha, said that he was generally aware of Attorney A's involvement in support of Democratic candidates and policies, but not of her position within the local party. However, a November 8, 2013, e-mail received by Santelle during the planning of the event identified Attorney A as the "Democratic Party

administrative committee, 5th [Congressional District representative] to the board."

Attorney A told us that she was contacted by a member of the Burke campaign who asked that she arrange a "meet and greet" the candidate event at a private home in Waukesha before Burke attended the Waukesha Democratic Annual Dinner the same evening (November 9, 2013). Attorney A told us that at the time, no one knew the candidate and the event was planned to introduce her to the local community.

Attorney A told us that she and Santelle were part of a small group of people interested in promoting participation in Democratic Party politics.[16] Attorney A sent an e-mail to that group on November 4, 2013, the same day she was contacted by the Burke campaign regarding the November 9, 2013, proposed event. Attorney A's e-mail began by thanking the recipients for their "interest in building a coalition of prominent Dems in Waukesha County – people who could change hearts and minds at a high level for the election year." Attorney A then stated that the Burke campaign had approached her that evening and requested that they arrange a "meet and greet" for Burke in Waukesha before Saturday's "Waukesha Dems annual dinner." According to Attorney A's e-mail, the event "would NOT be billed as a fundraiser (although if someone really wants to give they wouldn't turn it down.)"

Santelle sent a "reply all" response to the e-mail and stated that he would be willing to host the event at his home. "I could/would be available to coordinate with you and others on Friday [November 8] – and . . . would offer my home . . . as a venue option. That offer remains open if we decide on another, future date. Let us stay in touch in the days ahead about plans for Saturday and as appropriate, in the future." Santelle received and responded to the e-mails relating to the Burke event (including those described below) at his personal e-mail address, at times that did not appear to be during working hours.

### 2. Planning the Campaign Event

Two days later, on Wednesday, November 6, 2013, Attorney A sent a description of the event and a list of proposed invitees to her contact at the Burke campaign at the campaign's e-mail address (name@burkeforwisconsin.com) and copied Santelle and another person. Attorney A titled the event a "Meet and Greet," designated herself and two others (not Santelle) as "organizers," identified the venue as the "home of Jim Santelle," and included Santelle's address. She did not identify Santelle by title. The e-mail included a list of potential invitees, whom Attorney A wrote she identified from "the list of dues–paying Dems in the [local area]"

[16] Attorney A told us that the Burke event was the only activity that Santelle participated in as part of this group.

and as "Dems and major donors to Tammy Baldwin, Obama. More names TBA." Attorney A wrote that she intended to telephone the invitees.

The next day, Thursday, November 7, 2013, the campaign contact sent a "reply all" e-mail stating "Looks like a great list, thanks for the heads up!" Later that day, Santelle sent Attorney A and another "organizer" an e-mail in which he identified two restrictions based on his position with the federal government. First, Santelle stated that he could not host a gathering "in which funds/monies can be affirmatively solicited" but that based on their earlier e-mails, he did not think that restriction was an issue. Second, Santelle stated that while his name could appear on the invitation, his official title could not. Attorney A replied that she understood the restrictions and confirmed, "This is not a fundraiser and your title will not be used."

The next day, on November 8, 2013, Attorney A sent an e-mail to Santelle and the other "organizer" indicating that she would send the invitees a follow up e-mail with Santelle's address and asked Santelle if they could serve "wine and cheese or something." Santelle offered to provide food and beverages and stated that he was "very much looking forward to the gathering and [thanked Attorney A] again for thinking of [him] as a host."

Later that evening, Attorney A sent an e-mail with the updated invitation list to the Burke campaign contact, Santelle, and the other "organizer." Next to the name of each invitee, Attorney A listed his or her profession. Attorney A identified Santelle in the e-mail as "US Attorney, hosting as a private citizen."

### 3. Santelle's Explanation of the Burke Event

Santelle said that the e-mails reflect that the event was a "meet-and-greet" and that it was initiated by Attorney A. He said that he did not request authorization to host the event from EOUSA, the JMD Ethics Office, or the Deputy Attorney General's Office. The Designated Ethics Official and the District Ethics Advisor confirmed to us that Santelle never sought advice or asked them about the partisan political event.

With regard to the invitees, Santelle said that he recognized only one name from the invitation list and that individual was an attorney who was not employed by the USAO-EDWI and who did not attend. Santelle said that because he did not recognize the other names on the invitation list or know how broadly the invitations were distributed, he could not state whether any USAO-EDWI employees or attorneys with matters before the Department were invited. We confirmed with the USAO-EDWI that the attorney whose name Santelle recognized did not have any active cases with the USAO-EDWI at the time.

Santelle sent a personal e-mail inviting four individuals. Santelle's e-mail said that it was a "NON-fundraising" event and that "no one will ask you for any money." Santelle said that two of the individuals he invited were

attorneys and that one of them may have had an active case with the USAO-EDWI. We confirmed with the USAO-EDWI that one of those attorneys interacted with the USAO-EDWI at that time in his capacity as a bankruptcy trustee.

#### 4. Campaign Donation

Santelle said that, to his knowledge, no one solicited campaign donations at the event. However, Attorney A told us that an invitee did in fact make a campaign donation at Santelle's home. Attorney A told us that she informed the donor that the event was not a fundraiser, but that the donor stated that it was convenient for her to donate at that time. Attorney A said that she then accepted the campaign donation. She told us that she did not know whether Santelle was aware of the contribution.

### B. Jon Richards Campaign Event

Jon Richards ran as a Democratic Party candidate for Wisconsin Attorney General in the 2014 primary election. During Richards's campaign, Santelle agreed to provide his home as the location for an event on May 5, 2014, to support Richards's candidacy. As with the Mary Burke event, Santelle said that he did not seek approval from the Department. However, on April 28, 2014, EOUSA General Counsel learned of and instructed Santelle to cancel the event, which Santelle did.

#### 1. Santelle's Relationship with Richards

Richards was a member of the Wisconsin State Assembly when he announced his candidacy for Wisconsin Attorney General (a partisan position) in October 2013. Santelle said that he knew Richards professionally as a local attorney and as a member of the Wisconsin State Legislature. Santelle and other members of the USAO-EDWI stated that, on occasion, Richards raised issues with the office. For example, the OIG was told that in September 2012, Richards and 11 other members of the State Legislature signed a letter to Santelle asking for an investigation of a high-profile incident involving the death of a man while in police custody. In October 2012 Santelle announced that the FBI would investigate the incident with assistance from the U.S. Attorney's Office and the DOJ Civil Rights Division. In May 2013 (before Richards announced his candidacy and almost a year before the campaign event in question), Santelle announced that no charges would be brought against the officers.[17]

[17] According to calendar entries and witness accounts, Santelle met with Richards on a few other occasions before and after Richards's candidacy for Attorney General. We discuss a meeting between Santelle and Richards that occurred after Richards lost the primary in Section B.6, below.

### 2. Initiation of the Campaign Event

Santelle told us he did not recall where or when he agreed to have a campaign event for Richards at his home. According to Richards and his Finance Director, Richards spoke to Santelle at a fundraiser for FairWisconsin (a local charitable and advocacy organization) in February or March 2014.[18] Richards said that he probably initiated the discussion and asked Santelle to hold a fundraiser. Richards also said that he did not recall Santelle identifying any restrictions. Richards's Finance Director said that Santelle "offered" to host a fundraiser for Richards and gave Richards his card.

According to Santelle, he did not intend for the campaign event to be a fundraiser. Santelle told us: "my intent in planning that event was to open the doors for the purpose of permitting people to listen to Jon Richards." When asked about his discussion with Richards, Santelle said, "I don't recall the specifics of that conversation other than to say again that if we did this, it would not be involving campaign contributions and could not be a public endorsement. Those are the two concepts that I would have articulated." Santelle said "I certainly told [the Finance Director] that it was my intent that it would not be a fundraiser."

Santelle told us that he did not know where he "derived [his] sense of where the lines were." He said he did not check the Department regulations or consult with anyone before agreeing to have the event at his home or before it was cancelled. The Designated Ethics Official and the District Ethics Advisor confirmed to us that Santelle never sought advice or asked them about the partisan political event.

According to both Richards and his campaign Finance Director, the event at Santelle's house was a fundraiser for the Richards campaign, the event was promoted as a fundraiser, and fundraisers were the only type of events in which the Richards campaign participated at that time. The campaign Finance Director also said that she and Richards generally referred to fundraisers as "events," rather than "fundraisers."

### 3. Planning the Campaign Event

On March 27, 2015, the Finance Director began coordinating the event with Santelle through e-mails to Santelle's personal e-mail account. The Finance Director said that other than at the FairWisconsin fundraiser, she only spoke to Santelle on the day he cancelled the event. Richards said he did not involve himself in the mechanics of his fundraisers and did not recall if Santelle called him when Santelle cancelled the event. Santelle said that he did call Richards when he cancelled the event but he did not recall the discussion beyond the fact that he canceled the event. Santelle said he did

[18] According to Santelle's calendar, the local charity's annual gala was held on February 8, 2014.

not recall whether he spoke to the Finance Director at any time other than the day he cancelled the campaign event. According to the e-mails provided to the OIG by Santelle and the Finance Director, the two exchanged eight e-mails between March 27 and April 28, the day Santelle cancelled the event at the direction of the Associate Deputy Attorney General and EOUSA. (*See* Appendix B).[19]

In her initial March 27, 2014, e-mail to Santelle, the Finance Director identified herself by her title (Finance Director) and asked Santelle about the date and the invitation for the event. She wrote that she understood that as U.S. Attorney, Santelle could not be listed as a host and that "on the invitation [she] would put at the home of James Santelle and [] put some of [Richards's] attorney friends as hosts on the invite." She told us that she did not recall who told her that a U.S. Attorney cannot be identified as a host.

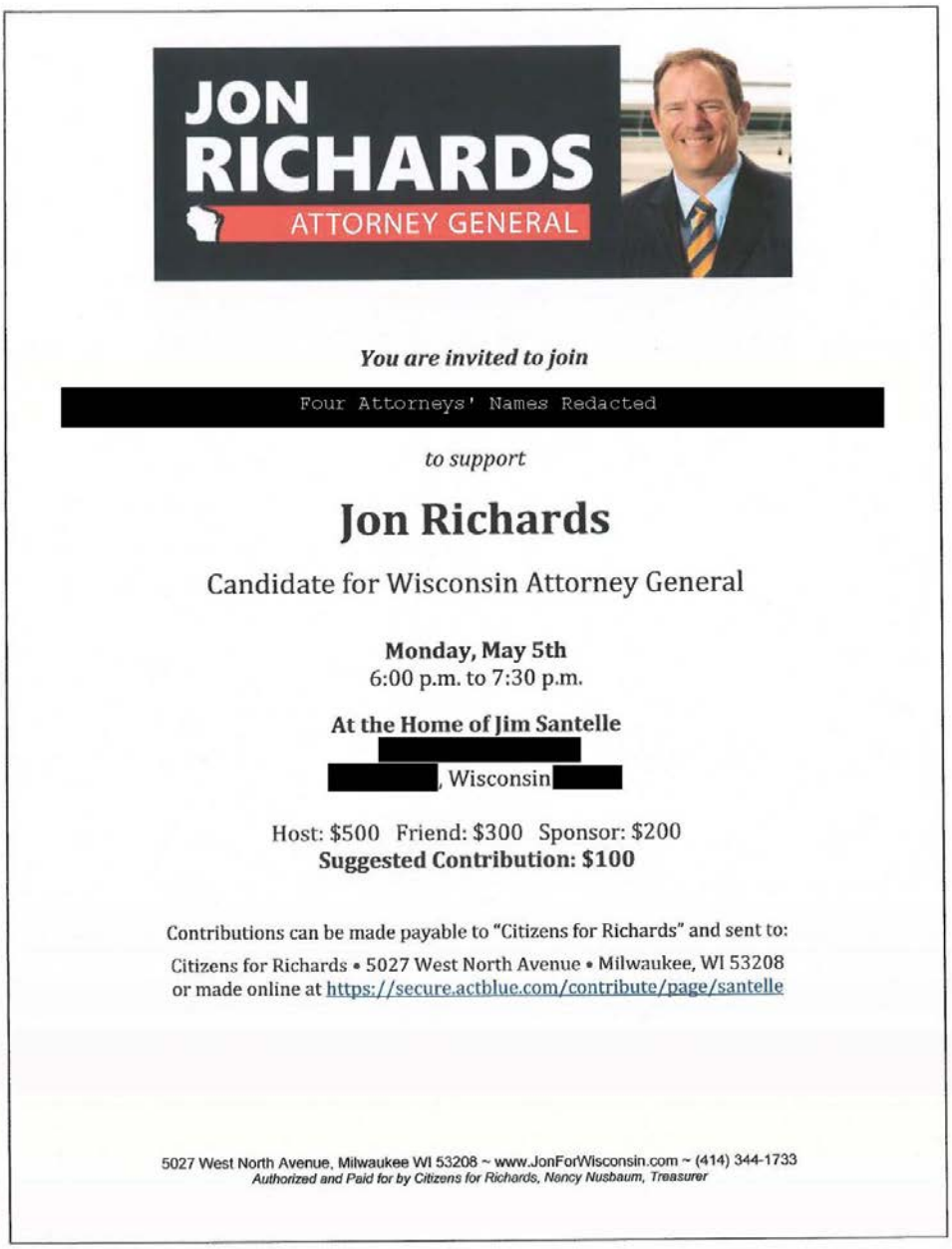
Santelle replied that he was "delighted to host an event at [his] house *in support* of [Richards's] candidacy" and that he had "recently hosted a like gathering for Mary Burke."[20] (Emphasis added). Confirming the Finance Director's understanding of his restrictions, Santelle wrote that "Justice Department and White House ethical standards [made] it inappropriate for [him] to formally, officially, and publically endorse [Richards] and, in connection even be identified as the host or sponsor of this event." Santelle agreed that the Finance Director should identify "others who might serve in that capacity." Santelle wrote that he would supply food and beverages "for the people that we assemble" and thanked the Finance Director "for reaching out to [him] to plan for this."

On April 3, 2014, the Finance Director e-mailed a draft of the invitation to Santelle "for his approval" before sending it to Richards's "attorney friends" who had agreed to "help build for the event." The draft invitation that was sent to Santelle is shown as Figure 1.

[19] Santelle told us that he did not provide OSC with these e-mails. When we asked why, Santelle stated that he gave OSC what he thought was "helpful" to OSC (the original and revised invitations). We believe these e-mails are relevant to OSC's review of this matter.

[20] As was the case with the Burke event, the times of Santelle's e-mails do not evidence that he was sending them during work hours.

**Figure 1:**



JON RICHARDS
ATTORNEY GENERAL

*You are invited to join*

Four Attorneys' Names Redacted

*to support*

**Jon Richards**

Candidate for Wisconsin Attorney General

**Monday, May 5th**
6:00 p.m. to 7:30 p.m.

**At the Home of Jim Santelle**
[redacted]
[redacted], Wisconsin[redacted]

Host: $500 Friend: $300 Sponsor: $200
**Suggested Contribution: $100**

Contributions can be made payable to "Citizens for Richards" and sent to:
Citizens for Richards • 5027 West North Avenue • Milwaukee, WI 53208
or made online at https://secure.actblue.com/contribute/page/santelle

5027 West North Avenue, Milwaukee WI 53208 ~ www.JonForWisconsin.com ~ (414) 344-1733
*Authorized and Paid for by Citizens for Richards, Nancy Nusbaum, Treasurer*

As indicated on Figure 1, the invitation stated that contributions could be made by check or online through ActBlue, a Democratic Party fundraising website. The ActBlue website address on the invitation included Santelle's name: https://secure.actblue.com/contribute/page/santelle. The ActBlue webpage included the same information and contribution amounts as the invitation.

On April 6, 2014, Santelle responded that "the invitation looks just fine." Santelle wrote, "In addition, I am unable to solicit or accept any monies on [Richards's] behalf (I suspect that you or one of the official hosts

can and will be responsible for that.)." Santelle also wrote that he was "very much looking forward to hosing [sic] this event!"

On April 14, 2014, Santelle e-mailed the Finance Director that although he understood that the invitation may have already been distributed, he requested that the text related to campaign donations be removed from future invitations. Santelle wrote:

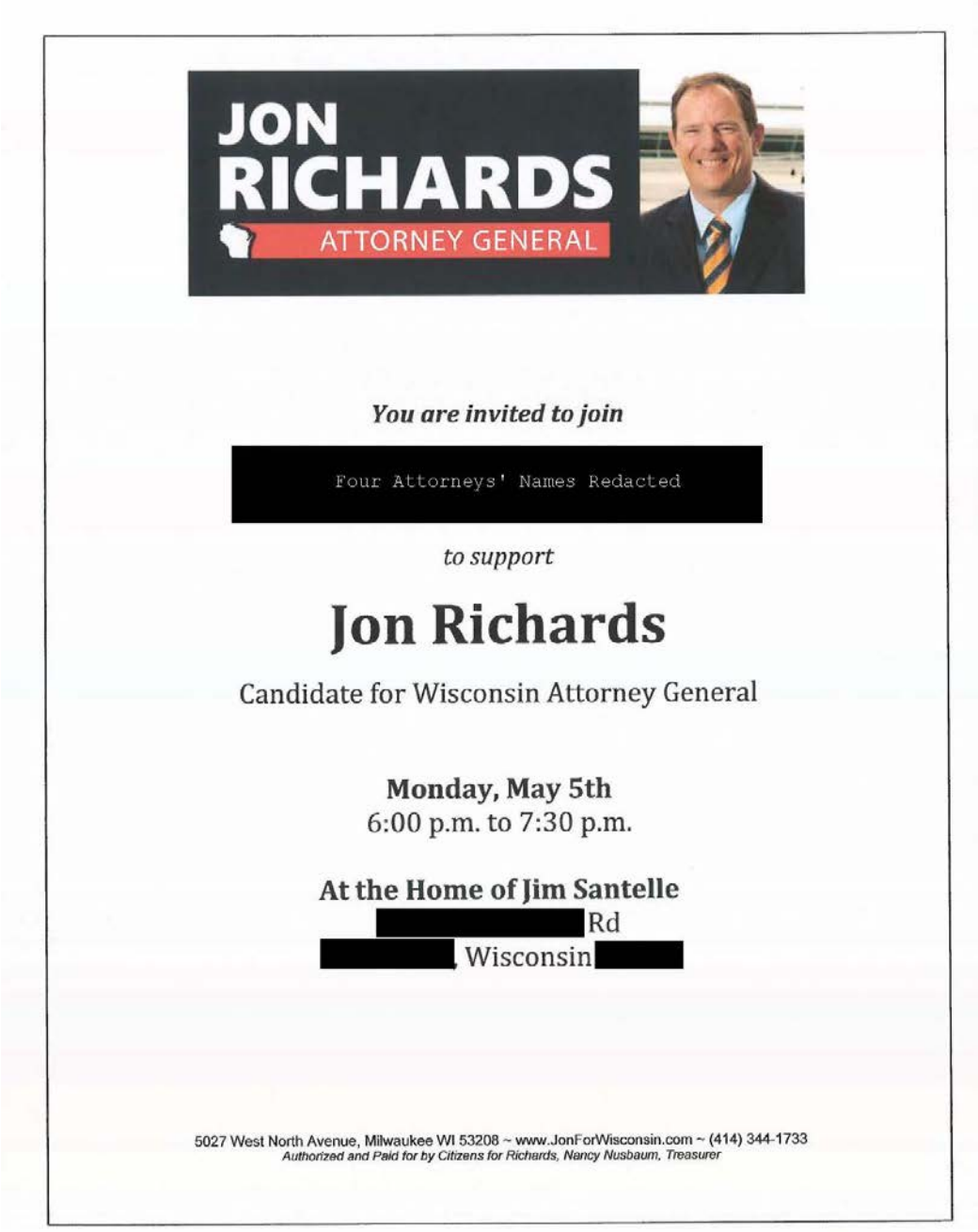
> Appreciating fully that the invitation may have already gone out, I have an admittedly significant request about the text in its future transmission. My ethical prohibition on soliciting or accepting monies for [Richards's] campaign may extend even to the invitation language about contributions at various levels and to the office to which they could be made. If still possible – and to avoid any potential issues related to this financial issue - could those lines beginning with "Host: $500 …" and continuing through". . .payable to 'Citizens for Richards' and sent to;" be eliminated? (The campaign address can plainly remain, but I am also concerned about the online site that includes my name.)

Santelle also referred to his earlier e-mail and wrote, "As I noted earlier, the actual hosts of the event might well be able to assume fiscal responsibility for solicitations and collections, but my role as an appointed federal official precludes me from participating in any manner in that, including the invitation text and on-line payment location." As discussed below, when he was interviewed by the OIG, Santelle said that he was referring to what the actual hosts might do at an event that was not at Santelle's home.

On April 15, 2014, the Finance Director e-mailed Santelle a revised invitation removing the language he requested. She said that she had already sent the original invitation to the other hosts/Richards's attorney friends but would contact them.

The revised invitation appears below as Figure 2.

**Figure 2:**




On April 28, 2014, the Finance Director asked Santelle to approve an e-mail advertising the event. She wrote that they would be "sending it to attorneys with mid level donor history in the [local] area." The e-mail added another attorney friend of Richards as a fifth person officially extending the invitation for the event.

Hours later, Santelle replied asking the Finance Director to call him and stated that he had been contacted by the Director of EOUSA who told Santelle that he was "unable to provide [his] personal residence as the site

for this gathering, even with the limitations and restrictions about which [they had] previously communicated." Santelle wrote that he was "obliged to cancel this event and ask[ed] that no postings of this invitation be made on any website or that it otherwise be transmitted to any invitees."

At the direction of the Associate Deputy Attorney General, EOUSA contacted Santelle and instructed him to cancel the event after an employee of the USAO-EDWI provided EOUSA with a copy of the invitation that had been sent to the employee's personal e-mail account. The employee received the version of the invitation as edited by Santelle and without the contribution amounts.

#### 4. Finance Director

As noted above, the Finance Director stated that the event was always intended to be a fundraiser and that was the only type of event held by the campaign. She said that she understood that Santelle could not be the "official host" of the fundraiser, so the campaign arranged for other attorneys to be named as "official hosts." She said that she also understood from Santelle's e-mails that Santelle would not personally solicit money at his home but that the other "hosts" could. She said that when Santelle cancelled the event, they arranged to hold it at a local bar/restaurant. The campaign sent out a new invitation much like the initial invitation. The new invitation included the recommended contributions and an ActBlue website that included the name of the new venue.[21]

Neither Richards nor his Finance Director recalled how much money was raised from the event and whether any money was raised through the ActBlue website with Santelle's name. Santelle said that he never accepted any contributions for Richards and did not know how much money, if any, was raised.

The Finance Director could not recall where the campaign advertised the fundraiser or if the hosts distributed the original invitation with Santelle's name, contribution amounts, and ActBlue website with Santelle's name. In addition to the invitations, e-mails, and ActBlue website, the event planned for Santelle's home was also advertised as a Richards "fundraiser" in two local online publications, Wispolitics.com and Wisconsin LTC Legislative Update.

#### 5. Santelle's Explanation

Santelle told the OIG that he did not review Department regulations or ask any Department officials for permission to have a political event at his home.

[21] https://secure.actblue.com/contribute/page/rubytap.

Santelle told us that, at the time, he had two general principles in mind with respect to the campaign event: that he could not be the official sponsor or host of the event and that he could not engage in fundraising. Santelle stated that his responsibilities and duties were to provide the venue and refreshments and to greet people at the door and take their coats. While Santelle acknowledged that he was the "host" of the event as a factual matter in that he was hosting it at his home, he stated Richards's attorney friends were the "official" or "capital H" hosts. Santelle said that he equated "official host" with sponsor and knew that Department Ethics Rules prohibited his participating in the event in the capacity of official host or sponsor.

With regard to fundraising, Santelle said he did not "intend" for the event to involve fundraising. Santelle said that his e-mails to the Financial Advisor were "inartful" and "inarticulate" attempts to distinguish what the "official hosts/Richards's attorney friends" could do at his home and what they might do in any other setting. Santelle also stated that at the time, he did not know whether it was permissible for others to collect donations at an event at his home as long as he did not.

With regard to his approval of the invitation with the contribution amounts and ActBlue website, Santelle said that he did not "recall specifically looking at this invitation even though I wrote it looks just fine. I may have glanced at it. It was perfunctory and I wrote the note." He said his subsequent e-mail about removing the contribution amounts reflected his intent that the Richards event not be a fundraiser. Santelle said that when he asked that the language regarding the contributions be removed, he did not ask whether the invitations had been distributed or that, if they were, that they be recalled. Santelle said that he could not specifically recall what happened that made him ask the Finance Director to change the language of the invitation but that he did not review the Department regulations, contact EOUSA, the Department's Ethics Office, or anyone else.

Santelle also told us that he never asked the campaign to take down the ActBlue site that included his name. Santelle said that it was his intent that the Richards campaign do so and remove anything related to campaign solicitations. Santelle said that he thought that his expression of concern about the reference to the online site on the invitation would also result in the elimination of the site itself. However, Santelle said that he did not check to see if the site was taken down. He said he did not understand that a website existed independent of a link to that website.

Santelle said that he believed that he and the Finance Director were the only two people to plan the Richards event. He said he was not involved in preparing the invitation list or in distributing the invitation. Santelle told us that he never saw an invitation list for the Richards event. He never asked that the invitations not be sent to USAO-EDWI employees or persons who have business with his office. When asked whether he thought that since he knew that they were targeting attorneys he should affirmatively request that they not solicit his subordinates in the U.S. Attorney's Office or

attorneys with business with his office, Santelle told us he "did not go through that process" and "did not think of that." Santelle said that he did not make the distinction between a campaign Finance Director and campaign manager and attributed it to his lack of sophistication with these matters.

Santelle stated that he did not consider the appearance concerns or ethical implications of: 1) hosting the event with attorneys with active cases with the USAO-EDWI; 2) inviting local attorneys who may have cases with the USAO-EDWI; or 3) inviting subordinate USAO-EDWI employees. Santelle said that he knew all but one of the five attorneys named on the invitation and interacted with them solely in his capacity as U.S. Attorney. Santelle stated that some of them may have had active cases with his office at the time but that he made no effort to determine whether they did.

According to USAO-EDWI records, at the time, two of the five attorneys named on the invitation were the attorneys-of-record for six defendants with active cases with the USAO-EDWI. A third was a partner in a law firm which represented seven defendants in active criminal prosecutions by the USAO-EDWI.[22]

### 6. Pre-Election Meeting between Santelle and Richards

Approximately six and a half months after the cancelled/relocated Richards event and the day before the general election, Santelle met with Richards and others at Richards's request to discuss the role of USAO-EDWI during the general election.[23] According to Santelle, in addition to Richards the group included two of the "official hosts" from the cancelled/relocated Richards event, one of whom was also the sponsor of one of the annual fundraisers discussed in Section V.A. below. Santelle did not include either his First Assistant or District Election Officer in the meeting. Both the First Assistant and the Election Officer told us that they found it odd that they were excluded from the meeting and that the only attendees were persons who promote local Democrats. Santelle told us that he, Richards, and the others discussed the USAO-EDWI's plans for responding to election fraud on Election Day and that he routinely accepted requests to meet with individuals.

We received differing accounts regarding whether Santelle also met with Republicans in advance of the election. Santelle told us that he thinks that he left a message with the State Republican Party to offer to meet with them but that his call was not returned. When we asked who he would have

[22] According to a managing attorney, these cases were not particularly high profile and none required Santelle's intervention during that time period. However, the managing attorney also told us that Santelle met with one of the attorneys on one of the active cases in June 2011.

[23] Richards lost the primary election for Attorney General and therefore was not a candidate for office at the time of the meeting.

called, Santelle said that he could not remember. In contrast, a managing AUSA in the USAO-EDWI told us that when he asked Santelle about meeting with only Democrats, Santelle said he had already met with a Republican group. However, the managing AUSA said that he found no such meeting on Santelle's calendar.

### C. Other Political Events

We reviewed Santelle's Department Outlook calendar and identified four other campaign events for specific partisan political candidates, three of which were advertised as fundraisers. Santelle told us that he was invited to these events, entered them into his calendar as "informational items," but did not attend. We found no evidence that Santelle's name was used to promote these events. We contacted several of the candidates, and were told that to their recollection, Santelle did not attend.

### D. Santelle's Awareness of Ethical Requirements

Santelle told us that he completed the Department's required annual ethics trainings which included training on the Hatch Act and related Department policies. EOUSA General Counsel confirmed that Santelle received specialized training for new U.S. Attorneys in January 2010, when Santelle became U.S. Attorney.

Santelle said that he did not seek advice from the Department Ethics Office, from his EOUSA Designated Ethics Official, or from the District Ethics Official at the USAO-EDWI in connection with either the Burke or Richards events. In addition, Santelle told us that he did not review the federal statutes, federal regulations, or Department policy with regard to his planning or participation in these events. Santelle said he has since reviewed Departmental policy and now realizes that he was subject to the additional restrictions of "further restricted employees."

As previously noted, at the time of the Burke and Richards events, the December 2011 Memorandum from the Deputy Attorney General was the controlling Department policy regarding restrictions on political activities. EOUSA e-mailed Santelle (and all U.S. Attorneys) the December 2011 Memorandum along with several other documents concerning restrictions on political activities on April 4 and June 27, 2012. After receiving the April 4, 2012, e-mail, Santelle forwarded the e-mail to his assistant and asked her to print the attachments. We further note that in the April 4 e-mail, EOUSA specifically reminded the U.S. Attorneys that they were "considered 'further restricted employees' by the Department."

## IV. Analysis Regarding Political Events

We found that the November 9, 2013, Mary Burke event that Santelle hosted at his home and the May 5, 2014, Jon Richards event that was

advertised to be held at his home and then relocated elsewhere raised potential Hatch Act issues and violated Department policy.

### A. Burke Event

#### 1. Hatch Act

Under the Hatch Act regulations, Santelle was prohibited from hosting a political fundraiser at his home or allowing his name to appear on an invitation to a fundraising event as a sponsor or as a point of contact for the event. 5 C.F.R. § 734.303, Examples 1 & 2. Santelle referred to the Mary Burke event as a "Meet-and-Greet," although Santelle was on notice that political donations might be offered and accepted at the event in his home.

E-mails show that while the organizers did not intend to affirmatively solicit campaign donations, they were willing to accept them. Santelle agreed to host the event at his home in response to Attorney A's e-mail that included the statement that although the event would not be "billed" as a fundraiser, "if someone really wants to give they wouldn't turn it down." Additionally, Santelle knew the persons invited were targeted because of their financial contributions to the Democratic Party and recent democratic candidates. Attorney A's e-mail to Santelle stated that the list of potential invitees were identified from "the list of dues–paying Dems in the [local area]" and as "Dems and major donors to Tammy Baldwin, Obama."

At least one campaign donation was made and accepted by a co-host at the event. As Attorney A indicated, she would and did accept a campaign donation from an invitee, a person invited because of her history of making campaign donations.

We also took note of two e-mails which include exchanges stating that the event would not be a fundraiser. In the November 7 e-mail exchange with Attorney A, Santelle wrote that he could not host the event if money was "affirmatively solicited." Similarly, in his November 9, 2013, e-mail inviting his personal friends, Santelle wrote that "no one will ask you for any money."

Santelle's e-mails gave significance to the fact that money would not be "affirmatively solicited," but this is not necessarily dispositive of the Hatch Act issue regarding whether the event was a fundraiser in fact. Santelle was on notice that donations would be accepted if offered, and he did not instruct Attorney A or anyone else that campaign donations could not be accepted. He knew the parameters of the event and agreed to host it, and at least one campaign donation was offered and accepted at the partisan political event at his home.

For these reasons, we believe that there is a question of whether Santelle hosted a political fundraiser within the meaning of the Hatch Act regulations, 5 C.F.R. § 734.303, Examples 1 and 2. Because OSC has

jurisdiction over Hatch Act violations, and because OSC was not aware that Santelle hosted an event for candidate Burke, we are referring these facts to OSC for its review and determination.

### 2. Department of Justice Policies

We found that Santelle violated Department policy with respect to the Burke event that he hosted in his home on November 9, 2013, in at least three respects.

#### a. Acceptance or Receipt of Political Contributions

DOJ policy prohibited Santelle from accepting or receiving political contributions. *See* December 2011 Memorandum at B.

While the primary purpose of the Burke event may not have been fundraising, we do not believe this is dispositive of the issue. Santelle hosted an event in his home at which at least one political donation was accepted. Santelle hosted the event knowing that the guest list was compiled from prior donors and that political donations would be accepted at his home if offered. With this explicit context, we believe his e-mail stating that donations would not be "affirmatively solicited," contemplates that donations might nonetheless be passively accepted, as at least one was.

Although the DOJ policy does not explicitly require a political contribution to be "knowingly" accepted in order to be a violation, we believe that some form of knowledge is implicit in the concept of "accepting." For example, if Santelle had not been told that unsolicited contributions would be accepted at the event, we would not find that he participated in the acceptance of donations that occurred at his home without his knowledge. However, we found that Santelle *was* told that unsolicited contributions would be accepted, and he gave no instructions to ensure that they would not be. Taking the circumstances as a whole, we believe that Santelle violated the December 2011 Memorandum by hosting an event at which it was foreseeable and indeed contemplated that political donations would be accepted on behalf of the Burke campaign. A different interpretation of the DOJ policy would invite officials to evade the prohibition on accepting contributions by closing their eyes while knowing that such contributions were foreseeable.

#### b. Organization or Active Participation in a Campaign Event

DOJ policy prohibited Santelle from organizing or actively participating in a campaign event or fundraising activity of a candidate for partisan office. *See* December 2011 Memorandum at K.

At a minimum, the Burke event at Santelle's home constituted a "campaign event." The event was initiated by the Burke campaign and

organized with input from a representative of the Burke campaign and Attorney A, a local party official. Santelle's actions included participating in the planning for the event, providing his home as a venue, providing food and drink, allowing his name to be used in promoting the event, reviewing the guest list, and inviting his personal friends, all of which constitute "organizing or actively participating" in the campaign event. Therefore, we found that Santelle's conduct violated the DOJ policy.

#### c. Department Approval for Attending a Campaign Event

Department policy prohibited Santelle from attending a political event in his official capacity, and required Santelle to obtain approval from specific Department personnel before attending a partisan political event in his personal capacity. December 2011 Memorandum at p. 3. At the time, DOJ policy required that Santelle obtain permission from the designated Associate Deputy Attorney General in the Office of the Deputy Attorney General, or the Associate Attorney General or his designee. *Id.*

Santelle attended the event in his home but did not obtain prior Department approval for that attendance. As such, his conduct violated Department policy.

Santelle had 30 years of experience as a prosecutor and had received training multiple times on the Hatch Act and DOJ policy. While Santelle said that he was aware that there were restrictions on his participation in political activity, he made no effort to review the regulations before agreeing to host a partisan event, and thereby to ensure that his actions conformed to Department policy. Santelle's failure is particularly troubling since Santelle was the U.S. Attorney, the chief federal law enforcement officer in the District. Santelle could have easily avoided all of these violations by reading the Department's policy or seeking ethics advice. Either way Santelle would have learned that since the Burke event was a partisan campaign event, he was prohibited from participating actively in the event. Furthermore, the admittedly closer issue of whether under Department policy, Santelle was responsible for the campaign contribution that was accepted at the event, would never have arisen because Santelle would not have hosted the event at his house or otherwise participated actively in the event.

### B. Richards Event

Even though the Richards event was cancelled before it took place, Santelle's conduct in connection with it raised several issues under the Hatch Act and Department policy. In addition, we found that Santelle's testimony to the OIG regarding his intent and understanding with respect to the Richards event to lack candor.

### 1. Hatch Act

We identified several potential Hatch Act issues involving the Richards event and are therefore referring the matter to OSC, which has sole jurisdiction to investigate Hatch Act violations. The potential Hatch Act issues include whether Santelle knowingly solicited campaign donations, knowingly solicited the political activity of persons who were participants in a matter before the Department, and used his official authority or influence for the purpose of interfering with or affecting the result of an election.

#### a. Knowingly Soliciting Campaign Funds

The Hatch Act prohibited Santelle, as a "restricted employee," from knowingly soliciting a political contribution from any person. The Hatch Act regulations state that "[a]n employee may not host a fundraiser at his or her home" and that "[a]n employee's name may not appear on an invitation to a fundraiser as a sponsor of the fundraiser, or as a point of contact for the fundraiser." 5 C.F.R. § 734.303, Example 1 & 2. Although the Richards event was canceled after EOUSA learned about it, we considered whether Santelle solicited political contributions when invitations for the event approved by him and containing his name were distributed.

On April 3, the Finance Director for the Richards campaign sent a draft invitation to Santelle for his approval. The draft identified Santelle as the person at whose home the event would occur, and included contribution amounts and provided payment platforms. When the Finance Director e-mailed Santelle the draft invitation she specifically asked for his approval of the invitation for dissemination. She wrote that she "wanted to run the invite past [Santelle] for [Santelle's] approval and then [] send it to our hosts." Even if there had been initial confusion regarding the nature of the event, once Santelle received the original invitation with the contribution amounts and payment platforms, Santelle was on notice that the campaign intended the event to be a fundraiser and that the invitation (with his name on it) was a solicitation for funds.

Three days later, Santelle responded that the invitation looked "just fine." Although Santelle wrote that "I am unable to solicit or accept any monies on [Richards's] behalf," he said "I suspect that you or one of the official hosts can and will be responsible for that." The Finance Director sent this first version of the invitation to Richards's "attorney-friends," the named co-hosts, for their further distribution. Thus, Santelle personally approved an invitation containing his name that explicitly solicited campaign contributions, and the invitation was sent to the "official hosts" for distribution. In addition, the content approved by Santelle was also posted on the "Act Blue"

webpage, which also bore Santelle's name.[24] When Santelle approved this content and it was disseminated, the first knowing act of solicitation was completed.

The invitation did not explicitly identify anyone as a "sponsor," or "point of contact," but it identified Santelle as the owner of the venue for the event and included his address. We believe the invitation raises a serious question as to whether Santelle was a "sponsor" or "point of contact" for the event within the meaning of the regulation.

Eight days after he approved the initial invitation, Santelle e-mailed the Finance Director to request that the invitation be modified "in its future transmission" to omit the language about contribution levels and the website address that used his name. Santelle did not write that the event could not be a fundraiser and that no solicitation of funds could occur at the event. Instead, he once again acknowledged that others could solicit and accept funds during the event, writing: "As I noted earlier, the actual hosts of the event might well be able to assume fiscal responsibility for solicitations and collections."

As modified, the invitation still contained Santelle's name and still invited recipients to an event at a location identified as Santelle's home where Santelle knew they would be asked by others to contribute to the Richards campaign. The Finance Director sent this second version of the invitation out, and, as planned, it was further disseminated to a larger invitation group, which included at least one of Santelle's subordinates. Thus, a second knowing act of solicitation was completed at this point. As with the original invitation, the revised invitation did not explicitly identify anyone as a "sponsor," or "point of contact," but it again identified Santelle as the owner of the venue and included his address. Again, these facts present a serious question as to whether Santelle was a "sponsor" or "point of contact" for the event within the meaning of 5 C.F.R. § 734.303 and therefore violated the regulation relating to fundraiser invitations.

Santelle's attempt to distinguish between himself from and the "official hosts" or "capital h hosts," whom Santelle acknowledged would be responsible for soliciting and accepting contributions, clearly shows that Santelle was aware that the purpose of the event – and the invitation – was to solicit funds for Richards's campaign.[25]

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[24] The campaign also disseminated similar content in advertising a "fundraiser" at Santelle's home, again using his name. These advertisements appeared in at least two local online publications.

[25] During his OIG interview, Santelle said that he did not "intend" for the Richards event to be a fundraiser, but rather to provide an opportunity for people "to listen to Jon Richards." As detailed further in Section IV.C. below, we determined that Santelle's claim that he intended that no solicitation or acceptance of funds would occur during the Richards event at his home was not credible and reflected a lack of candor.

We did not attempt to determine whether any campaign contributions were made in response to Santelle's solicitation, because solicitation of political contributions is prohibited regardless of whether it is successful. The acts of knowing solicitations were not eliminated when EOUSA learned about Santelle's activities and, per the direction of the Associate Deputy Attorney General, instructed him to cancel the event. As noted, the solicitation was complete when Santelle approved the original invitation.

For these reasons, we believe there is a question of whether Santelle, by approving the use of his name and address on the invitations for the fundraiser, knowingly solicited campaign contributions within the meaning of the Hatch Act, 5 C.F.R. § 734.303, Examples 1 and 2.

#### b. Knowingly Soliciting the Political Activity of Persons Who Are Participants in a Matter Before the Department

The Hatch Act prohibited Santelle from knowingly soliciting the political activity of a person who is the subject or participant in any ongoing investigation or enforcement action being carried out by the U.S. Attorney's Office. 5 U.S.C. § 7323(a)(4)(B). There are two different concerns regarding this provision.

First, Santelle knew that, per his request not to be identified as an "official" host, the Richards campaign would (and did) recruit Richards's "attorney friends" to co-host the event at Santelle's home. By the time Santelle began approving the invitations, he also knew the names of the recruited attorneys and that some of them accepted cases that were prosecuted by the USAO-EDWI. Despite this knowledge, Santelle admitted that he made no attempt to determine whether any of the attorneys had active cases with the USAO-EDWI. In fact, three of the attorneys or their firms had active cases with the USAO-EDWI at that time. While we have no evidence that Santelle personally contacted the attorneys to solicit their involvement as "official hosts" for the event at his home, this is not necessarily dispositive of the Hatch Act issue. Ultimately, the event was to take place at Santelle's home and he exercised control over its planning and promotion, including the decision to recruit "official hosts." We believe that these facts present a serious question as to whether Santelle violated the Hatch Act with respect to the recruitment of the "host" attorneys.

Second, Santelle at least arguably solicited the political activity of every person who received the invitation to come to his home to support the Richards campaign. While Santelle may not have reviewed the names of the attorneys on the invitation list, Santelle knew that the campaign was targeting local attorneys and therefore knew that attorneys with active cases with the USAO-EDWI may be invited. Again, Santelle made no effort to ensure that attorneys with active cases with the USAO-EDWI were not invited to the partisan event at his home.

For these reasons, we believe that there is a question as to whether Santelle solicited the political activity of persons with matters before the Department within the meaning of the Hatch Act and are referring these facts to OSC for its review and determination.

#### c. Use of Official Authority or Influence For the Purpose of Interfering with or Affecting the Result of an Election

The Hatch Act prohibits the use of one's official authority or influence for the purpose of interfering with or affecting the result of an election. 5 U.S.C. § 7323(a)(1). As discussed above, OSC interprets this provision to prohibit a "restricted employee" from inviting subordinates to political events. Santelle knew that the invitations for the Richards event were targeted to local attorneys but made no effort to exclude his subordinate attorneys or other employees within the U.S. Attorney's Office from being invited to the event at his home in support of the Richards campaign. At least one of Santelle's subordinate employees received the invitation and referred it to EOUSA.[26]

#### d. Referral of Facts Regarding the Richards Event to OSC

In conclusion, we found that Santelle's conduct with respect to planning the Richards event raised questions regarding whether he violated the Hatch Act prohibition on knowingly soliciting political contributions, knowingly soliciting the political activity of a person who is the subject or participant in any ongoing investigation or enforcement action being carried out by the U.S. Attorney's Office, and using his authority or influence to interfere with or affect an election. Many of the facts forming the basis of our concern and described in this report, were not known to OSC at the time it reviewed Santelle's conduct under the Hatch Act. Therefore, we are referring this matter to OSC for such further action as it deems appropriate.

### 2. Department Policies

Santelle agreed to host a campaign event at his home for partisan candidate Jon Richards. Santelle cancelled the event at the instruction of EOUSA after EOUSA learned about the event from one of Santelle's subordinates, who had received an invitation to the event at his personal e-mail address. Despite the fact that the event was cancelled, Santelle's conduct violated several DOJ policies. The relevant Department policy restrictions on political activities by U.S. Attorneys included prohibitions on:

[26] We acknowledge that there is no evidence that Santelle knew that the invitation list included any of his subordinates. Again, we believe that under the circumstances he should have recognized that the invitation list might include subordinates in his office and taken steps to ensure that these names were removed.

1) Soliciting, accepting or receiving a political contribution;

2) Organizing or actively participating in a campaign event or fund-raising activity of a candidate for partisan political office. Active participation includes allowing the employees name to be used in connection with the promotion of the event;

3) Soliciting or discouraging the political activity of a person who is a participant in any matter before the Department; and

4) Using the employee's official authority to interfere with or affect the result of an election.[27]

### a. Solicitation of Political Contributions

As noted, Department policy prohibited Santelle from soliciting political contributions. December 2011 Memorandum at B.

For the same reasons that we found Santelle's activities with respect to the Richards event raised Hatch Act concerns, we found that they also violated Department policy. Briefly, the evidence is clear and unequivocal that the event was a fundraiser. Although Santelle took some steps to distance himself personally from the solicitation activities, he clearly stated his expectation that the "official hosts" would solicit and accept campaign contributions at Santelle's home from people who had received invitations bearing Santelle's name.

The original invitation that Santelle approved to promote the Richards event explicitly solicited political contributions. The invitation requested specific donation amounts, and provided optional payment platforms (for submitting a contribution by check or online through the ActBlue website). Before Santelle asked that edits be made to the invitation, the Finance Director had already sent the invitation to Richards's "attorney-friends," the named co-hosts, for their further distribution. The content approved by Santelle was also posted on the "Act Blue" webpage and the "fundraiser" at his home was advertised in two local publications. Even when Santelle asked for changes to future invitations, he did not state that no fundraising should occur at the event in his home. Instead, he acknowledged that others could solicit and accept funds during the event.

We believe that in approving the issuance of both versions of the invitation, Santelle violated the Department's prohibition on soliciting contributions. Although the Richards event was relocated from Santelle's home, that decision did not eliminate the violation that had already occurred.

[27] *See* December 2011 Memorandum (Appendix A).

We therefore concluded that Santelle solicited political contributions for the Richards campaign in violation of the DOJ policy.[28]

### b. Organization or Active Participation in a Campaign Event

Department policy prohibited Santelle from organizing or actively participating in a campaign event or fundraising activity of a candidate for partisan office. December 2011 Memorandum at K. Active participation includes appearing on the program or on the dais or in the receiving line of an event, or allowing one's name to be used in connection with the promotion of the event.

Irrespective of the prohibition on fundraising activity, the Richards event constituted a "campaign event." The event was initiated in a conversation between Santelle and the partisan candidate. Santelle was personally in contact with the campaign Finance Director in planning the event. Santelle agreed to host the event and to provide food and drink. He reviewed, approved, and edited the invitation. He allowed his name to be used in both versions of the invitation promoting the event. Regardless of the fact that the event eventually was relocated after someone brought the matter to the attention of EOUSA and he was "obliged" to cancel it, Santelle's actions prior to that time constituted "organizing or actively participating" in a campaign event in violation of the DOJ policy.

### c. Solicitation of Political Activity of Persons who Are Participants in a Matter Before the Department

Department policy prohibited Santelle from soliciting the political activity of a person who is a participant in any matter before the Department. As discussed in Section IV.A.1, relating to a corresponding provision of the Hatch Act, there are two separate concerns.

The first is the question as to whether Santelle solicited the political activity of persons with business before the Department when the campaign recruited "official hosts" for a campaign event at his home. While we have no evidence that Santelle personally recruited the attorneys, they were recruited by the campaign because Santelle did not want to be identified as an "official host" for the event. Santelle knew: 1) that per his request, the

[28] Unlike the Hatch Act, Department policy does not explicitly require that the solicitation be "knowing" in order to be a violation. Nevertheless, we do believe that Santelle's knowledge is relevant under Department policy. For example, if Santelle hosted an event not knowing that the campaign intended to solicit or accept contributions, and never found out that solicitation or acceptance occurred, we would not find that Santelle violated the policy. But in this case, by approving the invitations that clearly requested contributions and e-mailing the Finance Director that he expected that his co-hosts would solicit contributions, Santelle clearly had knowledge that he was participating in the solicitation of contributions.

campaign intended to recruit local attorneys as "official hosts;" 2) the names of the recruited attorneys before he approved the invitations that included their names; and 3) that, at least in the past, some of those recruited attorneys had represented persons with matters before the USAO-EDWI. Yet Santelle made no attempt to determine whether any of the attorney "hosts" had active cases with the USAO-EDWI currently pending at the time and approved promotional material identifying these attorneys as participating in a partisan event at his home. In fact, three of the attorneys or their firms had active cases with the USAO-EDWI at the time.

In the final analysis, the event was to take place at Santelle's home and he exercised control over its planning and promotion. Taking the circumstances as a whole, we believe that there is at least a substantial question as to whether Santelle violated the December 2011 Memorandum by acting in concert with the Richards campaign in a manner that led to the recruitment of attorney co-hosts who had matters before the USAO-EDWI. Even if Santelle's conduct with respect to the recruitment of the co-hosts technically fell short of a violation of this prohibition, we do not believe Santelle made an adequate effort to determine whether the attorneys who were recruited at his request had active cases with the Department.

Second, Santelle at least arguably solicited the political activity of every person who received the invitation to come to his home "to support" the Richards campaign. Santelle knew that the targeted attendees for the event were local attorneys and therefore may have included other attorneys with active cases with the USAO-EDWI. While we did not obtain a distribution list and therefore cannot find that Santelle violated DOJ policy in this regard, we believe that Santelle exhibited poor judgment and indifference in making no effort to ensure that attorneys with active cases involving his office were not invited to a partisan event at his home.

#### d. Using Official Authority or Influence To Interfere with or Affect the Result of an Election

DOJ policy prohibited Santelle from using his official authority or influence to interfere with or affect the result of an election. December 2011 Memorandum at A. As noted above, this language was derived from the Hatch Act but was also incorporated into Department policy. OSC and the Department have interpreted this language to prohibit employees from inviting subordinate employees to political events or otherwise suggesting to subordinates that they attend political events.[29]

[29] *See* https://osc.gov/pages/hatchact-affectsme.aspx. (Accessed June 27, 2016). *See also* DOJ Ethics Office website at https://www.justice.gov/jmd/political-activities. (Accessed June 27, 2016).

The Richards event was a political event that Santelle agreed to host at his home. Santelle reviewed, approved, and edited the invitations. He allowed his name to be used in both versions of the invitation promoting the event at his home. Santelle knew that the invitations were targeted to local attorneys but made no effort to exclude his subordinate attorneys or other employees within the U.S. Attorney's Office from being solicited to attend the event at his home in support of the Richards campaign. At least one of Santelle's subordinate employees, in fact, received the invitation and referred it to EOUSA. We concluded that Santelle violated DOJ policy by allowing his solicitation to be mailed to at least one subordinate employee. At a minimum, Santelle failed to take even the minimal step of ensuring that the recipient list for the solicitation did not include any of his subordinates.

### C. Santelle's Lack of Candor

As previously noted, Santelle said that he did not "intend" for the Richards event to be a fundraiser, but rather merely to provide an opportunity for people "to listen to Jon Richards." We found Santelle's testimony in this regard to lack candor. As previously detailed, any possible confusion over the question of whether the event was a fundraiser was eliminated on April 8, 2014, when the Finance Director sent Santelle a draft invitation that described the purpose of the event as "to support Jon Richards" for Attorney General (not merely to "listen to" him) and listed contribution amounts and payment platforms. Santelle did not respond that there had been a misunderstanding and that he could not have a fundraiser in his home or ask that the invitations be recalled. Instead, he responded that the invitation was "just fine" and acknowledged that "you or one of the official hosts can and will be responsible for" soliciting or accepting the funds. While Santelle stated that his review of the invitation was "perfunctory," his response to the Finance Director showed that he clearly recognized that fundraising was the purpose of the event. He took pains to make the irrelevant distinction between himself and the "official hosts" who would be personally soliciting and accepting the money. That distinction would be unnecessary if the purpose of the event was anything other than a fundraiser.

A few days later, something – it is not clear what – caused Santelle to ask the Finance Director to change the text of the invitation "in its future transmission." Whatever triggered this request, it was clearly not a realization that there had been a misunderstanding about the fundraising purpose of the event. Instead of asking that the Finance Director make it clear that this was merely a "meet and greet" or similar event, Santelle attempted to reiterate his attempted distinction between himself and the "actual" or "official" hosts, who "might well be able to assume fiscal responsibility for solicitations and collections." Yet in his OIG interview, Santelle suggested that this statement referred to what the "official hosts" might be permitted to do at a *different* event, at a *different* location. We found Santelle's attempted explanation to be completely lacking in credibility because the e-mail contains nothing to support this interpretation. Santelle's

suggestion that his e-mails were "inartful" and "inarticulate" attempts to state his understanding that there would be no solicitation of campaign donation in his home defies common sense and the plain language of his e-mails.

We believe that Santelle's testimony lacked candor and was unbecoming of the former chief federal law enforcement official in the Eastern District of Wisconsin.

## V. OIG Findings Regarding Non-Political Activities

In this section, we describe Santelle's participation in several non-political fundraising events. We first describe Santelle's participation in annual fundraisers sponsored by two local law firms, in which Santelle's name, title, and/or attendance were used to promote the events. We then describe Santelle's participation in fundraisers sponsored by several non-profit organizations, in which Santelle gave speeches in his official capacity without Department approval.

### A. Annual Fundraisers

Santelle supported the annual fundraisers sponsored by two local law firms. Law Firm One sponsored an annual fundraiser to benefit local charity A. Law Firm Two sponsored an annual fundraiser to benefit local charity B. Both law firms used Santelle's name, title, and/or attendance to promote their fundraisers. Both law firms targeted local attorneys to participate in their fundraisers.

Santelle acknowledged that both fundraisers: 1) identified Santelle by name, title, and/or attendance in promotional material for the fundraisers; 2) were sponsored by local law firms that routinely represented defendants in cases being prosecuted by the USAO-EDWI; and 3) sent promotional material in one or more mass e-mails to USAO-EDWI employees at their Department e-mail addresses. Santelle stated that he did not ask that his name and title not be used to promote the fundraisers until after he was contacted by EOUSA in July 2014 (discussed below).

According to the Director of the Department Ethics Office, the regulations regarding fundraising and endorsements are in place in part to avoid the impression that any group has special access to the Department or that the Department endorses particular groups. She told us that there is no statute, Executive Order, or regulation that would permit a U.S. Attorney to participate in these fundraisers in his official capacity (aside from the authorized "official speech" exception) and that a U.S. Attorney can participate in a personal capacity as long as he does not permit the use of his title or participation to promote the event or otherwise be used to "draw" people to the fundraiser.

### 1. Law Firm One Fundraiser

Law Firm One's fundraiser was an annual event that began in 2012. Santelle told us that the named partner of the firm (partner) personally invited him to attend the fundraisers and that although Santelle accepted the invitations, he only recalled attending in 2013. Santelle calendared the fundraiser in his Department Outlook calendar in 2012, 2013 and 2014.

We obtained Law Firm One's invitations for the 2013 and 2014 fundraisers.

The 2013 invitation stated:

> Please join us with featured guests:
> **Tom Barrett**
> City of Milwaukee Mayor
> [redacted]
> President, [redacted] Foundation
> **James Santelle**
> US Attorney, Eastern District of WI
> **John Chisholm**
> District Attorney, Milwaukee Co.
> (Names emphasized in original in larger font).

The 2014 invitation stated:

> Join us along with Mayor **Tom Barrett**, the staff of [local charity A], and special guests District Attorney **John Chisholm**, and **James Santelle** for cocktails and appetizers in support of a great cause. (Emphasis in original).

Both the 2013 and 2014 invitations stated that the suggested donation was $100.

Law Firm One sent e-mails advertising the fundraiser to USAO-EDWI employees at their Department e-mail addresses in 2012, 2013, and 2014. The 2013 e-mail included a message from the partner which emphasized the participation of local attorneys in the fundraiser. The partner's e-mail restated his invitation to join U.S. Attorney Santelle and the three other featured guests along with "many members of the Milwaukee Legal community" at the fundraiser.

In each of these years the District Ethics Advisor in the USAO-EDWI informed Santelle orally or by e-mail that Law Firm One's use of the Department e-mail system for fundraising was inappropriate because the only fundraising allowed within the government is for the Combined Federal Campaign. The District Ethics Advisor told us that he did not raise the issue of the use of Santelle's position on the invitation, and assumed that Santelle had received authorization from EOUSA. Santelle told us that until 2014, neither he, the District Ethics Advisor, nor his First Assistant identified the

issues regarding the use of his position in the promotion and that no one identified the separate issue of soliciting subordinates.

In 2014 after receiving another Law Firm One invitation, the District Ethics Advisor forwarded Santelle the 2013 e-mail that the District Ethics Advisor had sent to Law Firm One the previous year asking that the partner not promote his fundraiser on the Department e-mail system. (Santelle was not originally copied on that 2013 e-mail to the partner.) Santelle's June 23, 2014, reply to the District Ethics Advisor stated, "I was disappointed to see both the re-transmission of it to our office – and, although it may not be quite as problematic, the reference to my appearance in seeming/arguable solicitation of funds for this purpose." However, Santelle told us that he did not contact the partner about the issue until after being contacted by EOUSA in July 2014 about his participation in the event[30]

On July 31, 2014, EOUSA contacted Santelle after being informed of the issue by a USAO-EDWI employee who had received Law Firm One's promotional material at his Department e-mail address. EOUSA initially asked Santelle to describe the event, his participation, and whether Law Firm One had active cases with the USAO-EDWI. Santelle told EOUSA that it was not a political event and described his planned participation as "passive." Santelle also told EOUSA that Law Firm One routinely represented clients prosecuted by the USAO-EDWI.

Santelle then forwarded to EOUSA the e-mail that the District Ethics Advisor had sent to the partner in 2013 requesting that the firm refrain from sending the promotional material to USAO-EDWI e-mail addresses. The 2013 e-mail was a reply to the 2013 promotion. Upon receiving the forwarded 2013 promotion which identified Santelle by name, title, and attendance (as one of four "featured guests"), EOUSA advised Santelle not to attend the 2014 event even though the 2014 promotion identified Santelle by name and attendance (as one of two "special guests"), but not by his title. It does not appear that EOUSA received the 2014 version of the promotion.[31]

After consulting with the JMD Ethics Office, EOUSA informed Santelle that the Ethics Office recommended that he not attend the fundraiser. EOUSA explained that based on the invitation that Santelle sent EOUSA, Law Firm One's use of Santelle's title in promoting the fundraiser violated the regulations governing fundraising and endorsements in the Standards of Ethical Conduct for Executive Branch Employees. 5 C.F.R. § 2635.808(c)(2), 5 C.F.R. § 2635.702(c). EOUSA wrote that since the law firm used Santelle's title in the promotion for the fundraiser, it appeared that Santelle was engaging in fundraising and endorsing the charity in his official capacity. In

[30] Even then, in 2015, the partner asked Santelle by e-mail if he would "lend [his] name" to the fundraiser and post the promotional flyers in the USAO-EDWI. The record is not clear as to whether or how Santelle responded, but Santelle told us he did not attend.

[31] The invitation included the month and day of the event but not the calendar year.

addition, the fact that the law firm was a prohibited source (as it had active cases with the USAO-EDWI) further exacerbated the appearance problem. Santelle told us that per EOUSA's instruction, he did not attend the fundraiser in 2014.

Santelle said that he did not identify the ethical implications involved when his name, title, and/or attendance were emphasized in the promotional materials for a fundraising event which solicited the participation of his subordinates in the USAO-EDWI and other local attorneys, who may have had active cases with the USAO-EDWI.

### 2. Law Firm Two Fundraiser

Law Firm Two's fundraiser for local charity B began in 2002. One of the two named partners of the firm (partner) was one of the "official hosts" of the cancelled Richards campaign event at Santelle's home and one of the attendees of the meeting with Santelle and Richards the day before the 2014 general election. During Santelle's 2010 – 2015 tenure as U.S. Attorney, Santelle calendared the fundraiser in his Department Outlook calendar each year.

Santelle told us that he only recalled attending in 2013, and that he did not give a speech at the event, stand in a receiving line, or sit at a head table. Santelle said that the fundraiser was a reception, not a program.

Law Firm Two's fundraiser was advertised as a fundraiser for local charity B and targeted members of the legal community for participation. The promotional materials described the fundraiser as "Milwaukee's premier lawyer-led fundraiser" and an event that "attracts a large group of participants – top lawyers, judges, and community leaders - each year."

As a promotional strategy, the firm added the names of the attorneys and their law firms to a rolling list included in the promotional materials as those individuals committed to a specific contribution amounts. For example, the 2012 e-mail stated that "The invitations will be sent in the coming weeks to all judges and attorneys in the greater Milwaukee legal community. Each invitation will list all sponsors, and sponsorships also include additional signage at the event."

The 2013 and 2014 invitations included a separate informational sheet that described the various sponsorship levels.

> We would like to keep your name on the list of [current year] sponsors . . . donate at the $100 (Neighborhood Counsel), $250 (Community Protector), $500 (Crime Prevention Champion), and $1,000 (Paladin for local charity B) levels.
>
> [Donation Level $X]: Includes attendance for [# depends on donation amount] to the event, on-site signage, name recognition on the invite

going out to Milwaukee's criminal justice community, in addition to Milwaukee and Waukesha County Judges.

Santelle sponsored the fundraiser at the Community Protector level each year from 2011 to 2015. As with all sponsors, once Santelle committed as a sponsor, he was identified in all subsequent invitations. Santelle then received the subsequent promotional e-mails with the updated sponsor lists which identified him by name in 2011 and by name and title in 2012, 2013, and 2014.[32] Santelle was one of the few contributors identified by title.[33] After the 2013 event, the law firm website described the fundraiser as a "success" and identified only four attendees: the mayor, the District Attorney, "U.S. Attorney James Santelle," and the President of local charity B.

There is no question that Santelle saw the e-mails using his name. (As noted below, he discussed the e-mails with the District Ethics Advisor in connection with the firm's use of the office e-mail system.) Santelle said that he did not ask the firm to stop using his name or title until after EOUSA contacted him in July 2014 regarding the federal ethics regulations with respect to Law Firm One's fundraiser, discussed above. In response to Law Firm Two's 2015 invitation, Santelle said that he would contribute but wanted to be identified as an anonymous government employee.

Law Firm Two sent e-mails advertising the fundraiser to USAO-EDWI employees at their Department e-mail addresses in 2011 and 2012. In both years the District Ethics Advisor informed Santelle orally or by e-mail that Law Firm Two's use of the Department e-mail system for fundraising was inappropriate, again because of the prohibition on unauthorized fundraising in the government. In a 2011 e-mail, Santelle suggested that the District Ethics Advisor have someone telephone the partner to address the issue.[34] In 2012, after another mass e-mail, the District Ethics Advisor sent the

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[32] In 2011, Santelle received at least two e-mails that included his name in the promotional materials after he agreed to sponsor the fundraiser - April 28 and May 11, 2011. In 2012 and 2013, Santelle received at least two e-mails each year that included his name and title in the promotional materials after he agreed to sponsor the fundraiser - May 10 and 15, 2012; and April 25 and May 3, 2013. In 2014, Santelle received at least six e-mails that included his name and title in the promotional materials after he agreed to sponsor the fundraiser – May 8, 15, 22, 27, 29, 2014.

[33] In 2012, of the 72 named sponsors, Santelle was 1 of 6 identified by title along with the Mayor, District Attorney, Superintendent, and 2 state representatives. In 2013, of the 54 sponsors named within 2 weeks of the event, Santelle was 1 of 7 identified by title along with the Mayor, District Attorney, Deputy District Attorney, Administrative Law Judge, State Representative, and Deputy State Public Defender. In 2014, of the 63 named sponsors, Santelle was 1 of 7 identified by his title along with the Mayor, Administrative Law Judge, Deputy District Attorney, County Board Chairman, and 2 state representatives.

[34] At the time, the District Ethics Advisor was prosecuting a defendant represented by Law Firm Two, and therefore the District Ethics Advisor thought that it best to have someone else contact Law Firm Two.

partner an e-mail. The District Ethics Advisor forwarded Santelle a copy of the 2012 e-mail to the law firm and stated, "[t]his is undoubtedly confusing to people in the office who rightly wonder why [the partner] is the fair-haired boy getting to advertise his pet cause." As with Law Firm One's invitations, the District Ethics Advisor assumed that Santelle received authorization from EOUSA and did not raise the issue of the use of Santelle's name or title or the potentially coercive effect of soliciting from subordinates with respect to Law Firm Two's invitations.

Santelle said that he did not identify the ethical implications involved when his name, title, and/or attendance were emphasized in the promotional materials for a fundraising event which solicited the participation of his subordinates in the USAO-EDWI and other local attorneys, who may have had active cases with the USAO-EDWI.

### 3. Analysis

We found that Santelle violated the Standards of Ethical Conduct for Executive Branch Employees regulations governing fundraising and endorsements in the years that he permitted his title or attendance to be used in the promotions for Law Firm One and Law Firm Two's fundraisers. We also found that Santelle used poor judgment when he allowed his title and position to be used in promotions for fundraisers that solicited the local legal community which included subordinates and prohibited sources.

Fundraising activities are governed by 5 C.F.R. § 2635.808. In brief, an employee cannot participate in a fundraiser in his official capacity unless it is specifically authorized by statute, Executive Order, or regulation, or as otherwise determined by the agency. 5 C.F.R. § 2635.808(b). An employee may participate in his personal capacity provided that he does not use his title or position, and does not "personally solicit" from a subordinate or a "prohibited source." 5 C.F.R. § 2635.808(c). We therefore analyzed whether: (1) Santelle "participated" in the fundraisers; (2) he was acting in his "official capacity;" (3) he was acting in his "personal capacity;" and (4) he personally solicited from a subordinate or prohibited source.

Santelle "participated" in fundraising with respect to both law firms' annual fundraisers. Participation in fundraising includes "active and visible participation in the promotion" of the event. 5 C.F.R. § 2635.808(a)(1). While participation does not include mere attendance, it does include situations in which an employee knows that his attendance is being used to promote the event. 5 C.F.R. § 2635.808 (a)(2). Santelle knew that his attendance at the annual fundraisers was being used to promote one or both of the fundraisers in 2011, 2012, 2013, and 2014. With regard to Law Firm One's fundraisers in 2013 and 2014, Santelle was identified as a "special" or

"featured" guest along with only three or fewer other individuals.[35] With regard to Law Firm Two's fundraisers in 2011 – 2014, Santelle's participation (as well as that of each and every other sponsor) was used to promote the event. Santelle's sponsorship was emphasized in 2012-2014 when he was also identified by his title.

Santelle was not authorized to participate in these events in his "official capacity" because, as noted above, he was not authorized to do so by operation of a statute, Executive Order, regulation, or otherwise as determined by the agency. 5 C.F.R. § 2635.808(b). We therefore considered whether he was permitted to participate in his personal capacity. Such participation is not permitted if the employee uses his Government title or position. 5 C.F.R. § 2635.808(c).

We found that Santelle violated this prohibition when he allowed his title and position to be used to promote the fundraisers. Santelle was aware that both law firms used his title and position to promote their fundraisers as Santelle received the promotions on his Department e-mail system. The fact that this occurred over several years, 2011 – 2014, evidences that this was not a simple oversight on the part of Santelle. Moreover, Santelle discussed the fundraising promotions with the District Ethics Advisor each year from 2011 – 2014, in the context of the law firms' use of the Department e-mail system. In 2014, Santelle specifically identified the problem with referencing his "appearance in seeming/arguable solicitation of funds for this purpose." Nonetheless, Santelle told us that he did not ask either law firm to refrain from using his name or title until after EOUSA contacted Santelle.

The evidence shows that Santelle knew of and thus permitted the use of his title and position to promote the fundraisers in 2012 (Law Firm Two), 2013 (Law Firm One and Law Firm Two) and 2014 (Law Firm Two). It was not until after the 2014 promotions were distributed that EOUSA contacted Santelle, and Santelle asked that his name and title no longer be featured in the promotions. By allowing the use of his title to promote these events, Santelle violated 5 C.F.R. § 2635.808(c)(2).

We also considered whether Santelle "personally solicited" his subordinates to support his favored charities by means of the use of his name and position in correspondence, in violation of 5 C.F.R. §§ 2635.808(a)(4) and (c). Beginning in 2011, Santelle knew that solicitations had been directed at his subordinates through e-mail invitations bearing his name and position, delivered on the Department e-mail system. This occurred in connection with Law Firm Two's fundraisers in 2011 and 2012 and Law Firm One's fundraisers in 2013 and 2014. Although the District Ethics Advisor and Santelle identified the unauthorized fundraising on the

[35] Indeed in 2015, the partner of Law Firm One specifically requested that Santelle "lend [his] name" to the fundraising event, an acknowledgement of the value added by identifying Santelle in the promotions.

Department system, Santelle took no steps to prevent the solicitation of his subordinates, at any address. The potential for subordinates to feel pressure to support Santelle's favored charities should have been obvious to him under these circumstances.

We also considered whether Santelle personally solicited from any prohibited sources in violation of Section 808. The promotions clearly stated that they were soliciting members of the local legal community. Santelle failed to take any action to prevent the use of his name and position to solicit members of the legal community who had active cases before the USAO-EDWI, and thus were prohibited sources.

We acknowledge that the prohibitions on soliciting from subordinates or prohibited sources contains an exception for "the contemporaneous dispatch of like items of mass-produced correspondence, if such remarks or correspondence are addressed to a group consisting of many persons, unless it is known to the employee that the solicitation is targeted at subordinates or at persons who are prohibited sources." 5 C.F.R. § 2635.808(a)(4). As noted above, both fundraisers broadly targeted the legal community and were not limited to persons employed by or with matters with the USAO-EDWI. Since we already found that Santelle violated the fundraising regulation, we do not have to determine whether the mass-correspondence exception applies. However, we do find that Santelle exhibited poor judgment by failing to even identify, much less address the concerns raised by the use of his name on fundraising solicitation being sent to his subordinates and other persons in the legal community who may have had cases with his office.[36]

We are troubled by Santelle's admission that he failed to identify the various problems associated with the use of his name or title in fundraising by local law firms, or to seek ethics advice on the matter. We concluded that Santelle violated 5 C.F.R. § 2635.808 with regard to his participation in several Law Firm One and Law Firm Two fundraisers.

Lastly, the regulations prohibit an employee from using or allowing the use of his position, title, or authority to endorse a product, service, or enterprise. 5 C.F.R. § 2635.702(c). For the reasons cited above, including in particular the evidence that Santelle repeatedly allowed the use of his name and title to promote these fundraisers, we also found that Santelle violated the prohibition on endorsements.

[36] The potential that the invitees would include prohibited sources was easily foreseeable. The far more responsible course of action would have been the one Santelle took in 2015, when he requested that he be identified as "an anonymous government employee."

### B. Other Non-Political Fundraisers

In this section we briefly discuss, Santelle's participation in non-political fundraisers at which Santelle gave a speech.

#### 1. Factual Findings

We reviewed Santelle's Department Outlook calendar and identified several entries for non-political fundraisers with the notation "JLS Remarks." JLS are Santelle's initials. We asked Santelle about several entries, each of which was identified as a fundraiser either in Santelle's calendar or the event's promotional material.[37]

Santelle acknowledged that he spoke at several of these fundraisers. Despite his calendar notations, Santelle told us that he did not give remarks at some of the fundraisers. According to Santelle, he wrote "JLS Remarks" in his calendar if he thought he might be asked to speak at the event as well as when he had been asked.

Santelle said that when he spoke at the fundraisers, he spoke in his capacity as the U.S. Attorney and about Department initiatives and official work done "in affiliation with the organizations themselves." Santelle said that he never sought authorization from the Department to give an official speech at any fundraiser or requested that his title not be used in the promotional material.

E-mails show that, for one of the fundraisers at which Santelle spoke in his capacity as U.S. Attorney and without Department authorization, the organizer asked if she could identify Santelle in the promotional material and he agreed. The promotional material identified Santelle by name and position, and this was a fundraising event at which Santelle gave the keynote speech.

#### 2. Analysis

Section 808(a) of the Standards of Ethical Conduct permits an employee to make an "official speech" at a fundraiser provided that the employee obtains agency approval based on finding that the speech relates to the subject matter of the employee's duties, that it takes place at an event that is an appropriate forum for the dissemination of such information, and that it does not involve a request for donations or support for the nonprofit organization. 5 C.F.R. § 2635.808. Santelle told us that he spoke at the events described above in his capacity as the U.S. Attorney, and that he spoke about Department initiatives. We concluded that these speeches likely

[37] There were many of these events in Santelle's calendar. We asked only about a small sample and did not attempt to identify all of the fundraising events at which Santelle spoke in his official capacity without Department authorization.

would have qualified as "official speeches" within the meaning of Section 808(a) if Santelle had received agency approval. However, because Santelle did not obtain agency approval, they were not "official speeches" within the meaning of Section 808(a)(2) of the Standards of Ethical Conduct, 5 C.F.R. § 2635.808(a)(2).

Even if we were to treat Santelle's participation in these events as being in his personal capacity – which seems implausible given that he gave speeches about Department matters – he violated the Standards of Ethical Conduct because he allowed the use of his position or any authority associated with his public office to further the fundraising effort. 5 C.F.R. § 2635.808(c)(2). Because his speeches were not "official speeches," they constituted "participation" in the fundraisers within the meaning of 5 C.F.R. § 2635.808(a)(2). And by giving speeches about matters relating to his work as U.S. Attorney and Department initiatives, Santelle used his Department position to further the fundraising efforts, a violation of 5 C.F.R. § 2635.808(c)(2). *Id.* In addition, Santelle also allowed his title to be used in the promotional materials for one of the events, in violation of 5 C.F.R. § 2635.808(c).[38] Therefore, regardless of whether Santelle thought he was acting in his official or personal capacities, these speeches violated the applicable regulations.

We recognize that Santelle's actions with respect to these matters were not self-interested and that they were at events intended to support charitable causes. However, the rules he violated are not insignificant, as they serve to ensure that Department employees do not exploit their position for their preferred causes or create the impression that any group has special access to the Department or that the Department endorses particular groups.

## VI. Conclusion

As the U.S. Attorney for the Eastern District of Wisconsin, Santelle was the chief law enforcement officer in the District, holding a position of public trust. He received substantial detailed training and had robust resources available to him in order to ensure that he did not run afoul of the ethical restrictions that ensure public trust in the exercise of that authority and, conversely, avoid the actual or perceived misuse of that powerful office for personal gain or the benefit of favored persons or organizations. Nevertheless, by his own account without even perceiving the legal and ethical issues, Santelle repeatedly violated these important restrictions.

We find that Santelle violated Department policy restricting employees' participation in political activities based on his conduct with respect to

[38] Again, this conduct also violated Section 702(c) of the Standards of Ethical Conduct, 5 C.F.R. § 2635.702(c), which prohibits an employee from using or allowing the use of his position, title, or authority to endorse a product, service, or enterprise.

campaign events for partisan candidates Mary Burke and Jon Richards. Santelle organized and hosted a campaign event for Burke at his home where campaign donations were not affirmatively solicited but at least one was accepted. Santelle organized (and eventually had to cancel at the instruction of EOUSA) a campaign fundraiser for Richards at his home that was co-hosted by local attorneys, some of whom had active cases with the USAO-EDWI. Santelle approved an invitation for the latter event that solicited donations and included his name. Contrary to Santelle's claims, the evidence clearly demonstrates that he knew that this event was to be a fundraiser, and that he only asked to revise the promotional materials after the issue was brought to his attention in some manner that he claimed he could not recall. Regardless, Santelle failed to obtain the requisite Department approval to participate in either indisputably partisan event.

The important policy provisions that Santelle violated include:

- using one's official authority or influence to interfere with or affect the result of an election;
- soliciting, accepting, or receiving a political contribution;
- organizing or actively participating in a campaign event or fund-raising activity of a candidate for partisan political office or allowing one's name to be used in connection with the promotion of the event; and
- participating in a partisan political event without prior approval of the designated Department personnel.

We note that had Santelle followed the Department policy and contacted one of the designated Department personnel regarding his participation in the partisan events (or utilized any of the many of resources available to him and noted in this report), he would have been informed of the applicability and scope of the relevant laws and policies. Despite having obtained substantial training on these issues and the availability of these resources, he chose not to avail himself of them, further undercutting his claims of innocent intentions.

We believe that Santelle exhibited lack of candor in denying to the OIG that he ever intended for the Richard's event to be a fundraiser, but rather merely to provide an opportunity for people "to listen to Jon Richards." Santelle's account was patently inconsistent with the testimony of Richards and his Finance Director and with clear statements in the contemporaneous e-mail correspondence about the event. Santelle plainly intended and expected that the purpose of the event was "to support" Richards's candidacy and that the "official hosts" of the event would solicit and accept political contributions during the event in Santelle's home.

Santelle's actions exhibit a disregard for safeguarding the Department's role as a non-partisan institution. Santelle said that he knew there were legal and ethical restrictions on his participation in partisan political activity, but that he did not review the regulations or speak to an ethics advisor. Santelle said he did not consider the ethical implications of co-hosting a partisan event at his home with attorneys who had active criminal cases with his office. Santelle said he did not consider the ethical implications of invitations to his subordinates or other attorneys who may have had active cases with the USAO-EDWI to a partisan event at his home. Santelle's deliberate indifference to the effect his actions could have on the U.S. Attorney's Office was particularly concerning given he was a 30-year career employee and the recipient of clear and repeated guidance from the Department on such matters.

We also found that Santelle violated the Standards of Ethical Conduct for Employees of the Executive Branch governing fundraising and endorsements based on his unsanctioned participation in multiple non-political fundraising events. These regulations are not insignificant as they are in place to avoid the impression that any group has special access to the Department or that the Department endorses particular groups, a concern that was brought specifically to Santelle's attention by his own District Ethics Advisor.

In sum, we found that Santelle violated Department policy based on his conduct with respect to the Burke and Richards campaign events. We also found that Santelle violated the Standards of Ethical Conduct for Employees of the Executive Branch governing fundraising and endorsements based on his participation in multiple non-political fundraising events. We also found that Santelle lacked candor and exhibited poor judgment.

We are referring our findings with respect to both the Burke and Richards events to OSC, the agency responsible for investigating Hatch Act violations. We believe that OSC was previously unaware of the November 2013 Burke event at Santelle's home and therefore, has not yet examined Santelle's conduct with respect to that event. We also believe that OSC should be made aware of the additional evidence gathered in our investigation relating to the May 2014 cancelled Richards event in order to fully assess whether Santelle violated the Hatch Act conduct with respect to that event.

# APPENDIX A

**U. S. Department of Justice**

Office of the Deputy Attorney General

The Deputy Attorney General

*Washington, D.C. 20530*

December 17, 2011

MEMORANDUM FOR ALL DEPARTMENT OF JUSTICE NON-CAREER EMPLOYEES

FROM: THE DEPUTY ATTORNEY GENERAL 12/17/11

SUBJECT: Restrictions on Political Activities

The next Presidential election is on the horizon and serves as an important reminder to all Department of Justice (Department) employees that we must be familiar with the rules governing participation in partisan political activities and ensure that politics does not compromise the integrity of our work. The public trusts that we will enforce the laws of the United States in a neutral and impartial manner, without the actual influence or the appearance of influence of political agendas. With that objective in mind, the purpose of this memorandum is to outline the restrictions on political activity applicable to the Department's non-career appointees.

Hatch Act

The Hatch Act, 5 U.S.C. 7323(a) and 7324(a), generally prohibits Department employees from engaging in partisan political activity while on duty, in a federal facility or using federal property. Political activity is activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. The statute applies to all federal employees, with some variation in the specific restrictions that are based on an employee's position. "Less restricted" employees, which includes most career employees in the executive branch, are able to participate actively in political management or partisan political campaigns, while off-duty. "Further restricted" employees are held to stricter rules that preclude active participation in political management or partisan political campaigns, even off-duty. The following Department of Justice employees are "further restricted" by statute: all career Senior Executive Service (SES) employees; administrative law judges; employees in the Criminal Division, the Federal Bureau of Investigation, and the National Security Division; and criminal investigators and explosives enforcement officers in ATF.

Considering the Department's mission, the Attorney General has previously determined that, as a matter of Department policy, all political appointees will be subject to the rules that govern "further restricted" employees under the Hatch Act to ensure there is not an appearance that politics plays any part in the Department's day to day operations.

Restrictions on Political Activities

Non-career appointees may *not*:

A. Use their official authority or influence to interfere with or affect the result of an election;

B. Solicit, accept or receive a political contribution; solicit, accept, or receive uncompensated volunteer services (e.g., working for a candidate) from an individual who is a subordinate; or allow their official titles to be used in connection with fund- raising activities;

C. Run for nomination or election to public office in a partisan election;

D. Solicit or discourage the political activity of any person who is a participant in any matter before the Department;

E. Engage in political activity (to include wearing a political button or displaying campaign materials) while on duty, while in a government-occupied office or building, while wearing an official uniform or insignia, or while using a government vehicle; *however*, an employee may put a bumper sticker on a personal vehicle and park the vehicle in a government-owned or subsidized parking lot, but may not use the vehicle in the course of official business; and employees may display signs on their lawns and in their residences, and in similar personal circumstances;

F. Distribute fliers printed by a candidate's campaign committee, a political party or partisan political group;

G. Serve as an officer of a political party, a member of a national, state or local committee of a political party, an officer or member of a committee of a partisan political group, or be a candidate for any of these positions;

H. Organize or reorganize a political party organization or partisan political group;

I. Serve as a delegate, alternate, or proxy to a political party convention;

J. Address a convention, caucus, rally, or similar gathering of a political party or partisan political group in support of or in opposition to a candidate for partisan political office or political party office, if such address is done in concert with such a candidate, political party, or partisan political group;

K. Organize, sell tickets to, promote, or actively participate in a campaign event, convention or fund-raising activity of a candidate for partisan political office or of a political party or partisan political group; active participation includes making a speech at an event, appearing on the program, on the dais or in the receiving line of an event, or allowing your name to be used in connection with the promotion of the event;

L. Canvass for votes in support of or in opposition to a candidate for partisan political office or a candidate for political party office, if such canvassing is done in concert with such a candidate, political party or partisan political group;

M. Endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material if such endorsement or opposition is done in concert with such a candidate, political party, or partisan political group;

N. Initiate or circulate a partisan nominating petition;

O. Act as recorder, watcher, challenger or similar officer at polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office;

P. Drive voters to polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office.

Attendance at Partisan Political Events

Passive participation in a personal capacity at a partisan event is allowed and means merely attending a fund-raising or campaign event; acceptance of a gift of free or discounted attendance may be approved if it meets an exception to the gift rules including the restrictions of the Ethics Pledge, Executive Order 13490. Passive participation and gift acceptance in connection with a partisan event **requires prior approval from the designated Associate Deputy Attorney General in the Office of the Deputy Attorney General, or the Associate Attorney General or his designee**. Please contact your ethics official for advice.

Attendance at Official Events

Department officials must be vigilant to prevent the appearance that any of our official duties are an effort to influence the outcome of an election. Attendance at an official event, which includes a speech, grant announcement, or appearance with a candidate for partisan office, shortly before a primary or general election may be construed as inappropriately partisan. Please consider, among other factors, the identity of the sponsor of the event, the group being addressed,

the other participants, the timing of the event, and the subject of any speech to be given. Previous Attorneys General have made an effort and encouraged Presidentially-appointed officials, or those acting in such positions, to avoid making public appearances in any state shortly before a primary or general election in that state, to the greatest extent practicable. This precedent should be followed. This policy is not meant to restrict the normal, day-to-day activities of political appointees. For example, United States Attorneys may still make public appearances related to a verdict, indictment, or investigation, and should still meet with the Department's law enforcement partners as they normally would. If you have any questions whether a particular event could be construed as inappropriately partisan please consult with the Deputy Attorney General or his designee, or the Associate Attorney General or his designee.

Social Media

It is important to note that the use of social media (e.g., Facebook, LinkedIn, Twitter, etc.) raises particular issues when it comes to political activity, and employees who utilize social media should become familiar with the restrictions that apply. There is specific, detailed guidance on use of social media in connection with political activities, which is available on the Department's website. http://dojnet.doj.gov/jmd/ethics/hatch-act-materials.php

Candidate Photographs

Displaying photographs of candidates for partisan office, including the President who is a candidate for reelection, is considered partisan political activity, and therefore is not permitted in the federal workplace. There are limited exceptions to this ban, including the official photograph of the President, official photographs of the President conducting official business, and for some personal photographs of a candidate which generally include the employee in the photograph. If you have candidate photographs in your office or workspace and have any question whether you may display the photographs, please contact your ethics official.

If you have questions concerning any of these rules or policies, please contact your Deputy Designated Agency Ethics Official (DDAEO), or the Departmental Ethics Office, at (202) 514-8196.

# APPENDIX B

**James L. Santelle**

**From:** [redacted]@gmail.com]
**Sent:** Tuesday, April 15, 2014 10:02 AM
**To:** James L. Santelle
**Subject:** Re: Event for Jon Richards/Invitation Text Amendment

**Importance:** High

Of course. I sent our hosts the other invite, but I need to follow-up with them anyway. I will give them a call today. Attached is the new invite.

Thank you!

[redacted]

On Apr 14, 2014, at 10:50 PM, James L. Santelle <jsantelle@[redacted].com> wrote:

Dear [redacted],

I am looking forward to the event at my home on the 5th of May—and write to follow up on my note of a week ago. Appreciating fully that the invitation may have already gone out, I have an admittedly significant request about the text in its future transmission: My ethical prohibition on soliciting or accepting monies for Jon's campaign may extend even to the invitation language about contributions at various levels and to the office to which they could be made. If still possible—and to avoid any potential issues related to this financial issue—could those lines beginning with "Host: $500…" and continuing through "…payable to 'Citizens for Richards' and sent to:" be eliminated? (The campaign address can plainly remain, but I am also concerned about the online site that includes my name.)

I hope that this significant adjustment might still be accomplished—and I apologize for my belated identification of this issue. As I noted earlier, the actual hosts of the event might well be able to assume fiscal responsibility for solicitations and collections, but my role as an appointed federal official precludes me from participating in any manner in that, including the invitation text and on-line payment location. I thank you very much for accomplishing this adjustment, if possible, and invite you to contact me if you have any questions or concerns about it. Regards. Jim

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**From:** James L. Santelle [mailto:jsantelle@[redacted].com]
**Sent:** Sunday, April 06, 2014 9:02 AM
**To:** '[redacted]
**Subject:** RE: Event for Jon Richards

Dear [redacted],

Thank you for your follow-up note; the invitation looks just fine. As two, unrelated asides (both of which I know you appreciate!): The living room/dining room area of my home in which the group will gather accommodates only about 20 (perhaps 25) people—unless we move outside. In addition, I am unable to solicit or accept any monies on Jon's behalf (I suspect that you or one of the official hosts can and will be responsible for that.). Let us be in touch again in the weeks just ahead as the fifth approaches; very much looking forward to hosing this event! I appreciate your reaching out to me to make it happen. Regards. Jim

**From:** [redacted] [mailto:[redacted]@jonforwisconsin.com]
**Sent:** Thursday, April 03, 2014 7:46 PM
**To:** James L. Santelle
**Subject:** Re: Event for Jon Richards

That sounds great! Jon has called a few of his friends and they will help build for the event. I wanted to run the invite pass you for your approval and then I'll send it to our hosts. I realized that we had not discussed a time. I have it listed as 6:00 pm to 7:30pm, if you would like it me to change it please let me know.

Thanks again for doing this event. We're looking forward to it.

[redacted]

([redacted]) [redacted]-[redacted]

On Sun, Mar 30, 2014 at 8:03 AM, James L. Santelle <jsantelle@[redacted].com> wrote:
Dear [redacted],

I thank you for your recent note, below, and write to let you know that I am delighted to host an event at my home in support of Jon's candidacy. As you accurately note, Justice Department and White House ethical standards make it inappropriate for me to formally, officially, and publicly endorse Jon and, in that connection, even be identified as the host or sponsor of this event. So, your proposal for identifying others who might serve in that capacity is the most suitable way of proceeding; I would, of course, supply beverages and light food items/snacks for the group that we assemble.

While a May date (as I am suggesting, below) may enable me to accommodate more guests on an outside/backyard patio (assuming some semblance of spring has arrived by then!), the interior gathering spaces of my residence are somewhat limited in size. When I recently hosted a like gathering for Mary Burke, we accommodated comfortably about 20 or so; we should probably keep the guest list at or around that number for the event with Jon, too.

The very best date among those that you have identified is Monday, May 5 (and Tuesday, April 29 would be my second choice); I will be out of town beginning on the 6th of May—but other settings later in May and into June are also options for me. I thank you very much for reaching out to me to plan for this—and I am very much looking forward to it. Warm regards. Jim Santelle([redacted]) [redacted]-[redacted]/([redacted]) [redacted]-[redacted]

Home of Jim Santelle
[redacted] Road
[redacted], Wisconsin [redacted]

**From:** [redacted] [mailto:[redacted]@jonforwisconsin.com]
**Sent:** Thursday, March 27, 2014 6:43 PM
**To:** jsantelle@[redacted].com
**Subject:** Event for Jon Richards

Hi Jim,

My name is [redacted], I am Jon Richards' Finance Director. Thank you so much for willing to do an event at your house, it means a lot to Jon. I wanted to reach out to you and find a date that works well for you as well as talk about the invitation.

Possible dates:

Mon, April 21
Tues, April 22
Tues, April 29
Mon, May 5
Tues, May 6
Wed, May 7

Correct me if I'm wrong, but because your a U.S. Attorney you can not be listed as a host? So on the inivtation I would put at the home of James Santelle and we can put some of Jon's attorney friends as hosts on the invite. If you could let me know how that works that would be much appreciated. I don't want to get you in any sort of trouble.

Thanks again!

[redacted]
([redacted]) [redacted]-[redacted]

---------- Forwarded message ----------
From: **Luke** <jsantelle@ .com>
Date: Mon, Apr 28, 2014 at 4:32 PM
Subject: RE: (HTML VERSION - A):I hope you'll join me
To: < @gmail.com>

Dear ,

Thank you for your note about the proposed transmission of this invitation. Could you please call me as soon as possible about this matter?

I have this afternoon been contacted by the Director of the Executive Office for United States Attorneys, United States Department of Justice, who has told me that I am unable to provide my personal residence as the site for this gathering, even with the limitations and restrictions about which we have previously communicated.

So, I am obliged to cancel this event and ask that no postings of this invitation be made on any website or that it otherwise be transmitted to any invitees.

I look forward to speaking with you directly about this at your very earliest convenience. Jim

([redacted]) [redacted]-[redacted]

([redacted]) [redacted]-[redacted]

**From:** [redacted] [mailto:[redacted]@gmail.com]
**Sent:** Monday, April 28, 2014 1:00 PM
**To:** James L. Santelle
**Subject:** Fwd: (HTML VERSION - A):I hope you'll join me

Hi Jim,

I wanted to make sure you approve of this email before it goes out. We are sending it to attorneys with mid level donor history in the Brookfield/Milwaukee area. Please let me know if it is ok.

Thanks for everything,

---------- Forwarded message ----------
From: **Jon Richards** <campaign@jonforwisconsin.com>
Date: Mon, Apr 28, 2014 at 12:56 PM
Subject: (HTML VERSION - A):I hope you'll join me
To: @gmail.com


***You are invited to join***

[redacted]

[redacted]

*to support*

# Jon Richards

Candidate for Wisconsin Attorney General

**Monday, May 5th**

6:00 p.m. to 7:30 p.m.

***At the Home of Jim Santelle***

Rd

, Wisconsin

Paid for and authorized by Citizens for Richards, Nancy Nusbaum, Treasurer

Citizens for Richards
5027 W North Ave
Milwaukee WI 53208 United States

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