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U.S. Department of Justice
Justice Management Division
Office of General Counsel

Washington, D.C. 20530

DEC 30 2019

RE: Your FOIA Request JMD # 103140

I am responding on behalf of the Justice Management Division (JMD) to your Freedom of Information Act (FOIA) request dated June 8, 2015, for DOJ Ethics Office logs for FY 2009 and FY 2010.

Enclosed are records responsive to your request with redactions under Exemptions 6 for certain personally identifiable information. We have determined that the privacy interests outweigh the public interest in disclosure of such information.

You may contact our FOIA Public Liaison, Karen McFadden, at (202) 514-3101 or JMDFOIA@usdoj.gov, for further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202 741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to your request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or transmitted electronically within 90 days of the date of the response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,


Arthur E. Gary
General Counsel

DEO Counsel Log, Fourth Quarter, 2008 (October 1- December 31, 2008)

1. (b) (6) [REDACTED] OIG, Hatch Act. Employee (not further restricted) wants to work for a now defunct president campaign to help finish up campaign finance reports. Would be part time employment, done off duty. Advised that it would be permissible so long as other Hatch restrictions are followed (no solicitation of funds, no use of government resources or work done on government time.) (b) (6) [REDACTED] October 1, 2008.
2. (b) (6) [REDACTED] OSG, awards. (b) (6) [REDACTED] won the ABA law student essay award last year but was unable to attend the ABA conference to accept the prize (\$500). They have invited him to attend this year's conference to receive the award. The essay has already been published, prior to his joining the DoJ. Told (b) (6) [REDACTED] he could attend the event but must do so in his personal capacity. Any introduction should be generic as possible - either leaving out his place of employment completely or mentioning it only as the federal government or the Department of Justice. (b) (6) [REDACTED] October 2, 2008.
3. (b) (6) [REDACTED], Procurement Services Staff. Confidential post employment advice. Summary and post employment chart sent to him, he printed it for reference and will call us as circumstances evolve. (b) (6) [REDACTED] had counseled him on seeking employment and he accepted employment with a company he had been recused from. (b) (6) [REDACTED] advised - all OK. Notes and emails are in log file. (b) (6) [REDACTED] October 2, 2008
4. (b) (6) [REDACTED] OAG, Invitation to event at Embassy. She was invited to a happy hour at the Embassy of Rwanda, which is being hosted by 4 couples who are close friends of (b) (6) [REDACTED] friends, the (b) (6) [REDACTED], a couple who are going as missionaries to Rwanda. I asked if the Embassy is actually hosting, because that requires ODAG approval, otherwise no approval is needed. The Embassy is secured for the space, but is not monetarily supporting the (b) (6) [REDACTED] or this event. The real focus of the event is to send the (b) (6) [REDACTED] off and have an opportunity for them to see lots of friends before leaving. There will be an option to donate, but fundraising is not the entire focus. I advised (b) (6) [REDACTED] that she was able to attend. (b) (6) [REDACTED] October 2, 2008
5. (b) (6) [REDACTED] (b) (6) [REDACTED], Hatch Act Question. He has a personal e-mail account that enables him to have all e-mail sent to that account automatically forwarded to another e-mail address of his choosing. He has activated that feature and has e-mail sent to his personal e-mail account automatically forwarded to his DOJ e-mail address. He does so in case any e-mail message sent to his home account that require his immediate attention while he is at work get addressed. Among the e-mail messages that his home account receives and forwards to his DOJ address are partisan messages pertaining to, among other things, the 2008 presidential election. He deletes all such messages from his DOJ account without reading, forwarding, or responding to them. (That is what he does with almost all personal e-mail that gets forwarded to his DOJ e-mail address.) He would like to know if this creates a Hatch Act problem, and if so, he can deactivate the forwarding feature, although he would prefer not to. I referred the question to (b) (6) [REDACTED] EOUSA with message: (b) (6) [REDACTED]

[REDACTED]

[REDACTED] (b) (6) of EOUSA responded as follows: pursuant to the United States Attorneys Procedures (USAP), Section 1-4.320.001 (Official and Personal Use of the Internet and Intranet), although government-provided access to the internet is intended for official use, employees are authorized to use the internet for personal purposes to the extent that such use does not interfere with official business. All employees have an obligation to use official time in an honest effort to perform their official duties. See USAP 1-4.320.001 (6)(B). As you are aware, the Hatch Act however, prohibits partisan political activity in the workplace. See 5 U.S.C. §§ 7321-7326. Pursuant to the USAP and consistent with the Hatch Act, employees may access political websites, but may not engage in additional activities directed toward the success or failure of a political party, group, or candidate for partisan political office, such as inviting individuals to attend a political event, recruiting campaign volunteers, or disseminating campaign literature. See USAP 1-4.320.001 (6)(B)(5). GCO (and DEO) concur that utilization of the e-mail forwarding feature is analogous to accessing a personal e-mail account from work. Therefore, so long as you do nothing more than open and read the partisan message or delete it, your actions do not appear to run afoul of the Hatch Act. Obviously, forwarding the partisan e-mail to others within or outside of the Department from the DOJ-provided internet may be construed as disseminating campaign literature. If you are concerned, for example, that you may inadvertently forward a partisan political message to others, you may deactivate the forwarding feature until after the November election. As always, additional information regarding the Hatch Act may be obtained at www.osc.gov, click on the tab "Political Activity" then "Federal Employees." (b) (6) October 3, 2008

6. (b) (6) OVAW, Reference on National Sheriff's Association of DOJ Procurement. (b) (6) emailed me an email chain that the Civil Division has sent (b) (6), an OVW program specialist who administers our Elder Abuse program, a questionnaire regarding the performance of the National Sheriff's Association (NSA). The Civil Division is considering awarding a large contract to NSA. (b) (6) manages OVW's current cooperative agreement with the NSA, and apparently the NSA has not been doing a good job. In the past, (b) (6) stated I have strongly cautioned OVW against providing references for their grantees beyond simply acknowledging objective facts such as whether they received an award and completed requirements in a timely fashion. In this case, however, another component in DOJ is asking their views, and (b) (6) thinks they'd be remiss if they didn't provide them. (b) (6) (the OVW employee) doesn't want to answer the questionnaire because she doesn't think that should decide the matter.) (b) (6) wanted to know if I have an objection to OVW providing a reference in these circumstances? I told (b) (6) this was different from a reference, because the other DOJ component is doing its due diligence as to NSA's performance on other DOJ work. I suggested she call the Civil Division and explain (b) (6) concerns, and see what they say. (b) (6) spoke with (b) (6) and his contracting officer at JMD. The contracting officer assured her that, although the bidder would have the opportunity to respond in general terms to negative issues raised by references, he would be able to keep the references' identities confidential.

(b) (6) recommended to the program specialist that she complete the questionnaire. (b) (6) October 6, 2008

7. (b) (6) OCIO, Contracting. He is a IT Project Manager in the Wireless Management Office. He is a disabled veteran and wishes to explore the possibility of starting a construction company which would bid on some of the set asides advertised on Fed Biz Ops for disabled vets. I advised him that the FAR (and other contracting regulations) would not allow him to be the sole owner of such a contracting company and to be able to contract with the Government. He said he would not be seeking anything with the Department of Justice but I explained that the regulations were stricter than that. He asked me to send him the cite to the FAR so he could research himself. I emailed him FAR part 3.601(a). He said he may contact us again with further questions. (b) (6) October 6, 2008.

8. (b) (6) FCSC, Hatch Act. Commissioner (b) (6) wanted to attend a fund-raiser the next day for Sarah Palin. I advised (after confirming with (b) (6) that because the commissioner is a political appointee, he cannot do that. I directed her to the AG's memo on Hatch Act restrictions, she asked if there were any way to get it approved - I directed her to the Hatch Act info on the Intranet but explained it was extremely unlikely attendance at this even would be approved. (b) (6) October 6, 2008.

9. (b) (6) U.S. Marshalls, 7-9728, sent an email to (b) (6) and (b) (6) regarding a Hatch Act question. (b) (6) wanted to know if he could allow the use of his name, with his former (b) (6) title, on a list of supporters of Senator (b) (6) in the current campaign. (b) (6) indicated (b) (6) worked for (b) (6) when he was Governor and (b) (6) put his name forward for the (b) (6) position. (b) (6) had already advised him that he could not use his name, with or without any title, in support of a candidate in a campaign. I told (b) (6) I agreed that the answer was that he could not do this. Subsequent, (b) (6) sent (b) (6) an email also confirming that the use of his name is prohibited. (b) (6) October 2, 2008

10. (b) (6) (b) (6), Surface Transportation Board, (b) (6) first spoke to (b) (6) about co-sponsorship. (b) (6) asked me to call her back and I left a message but did not hear back from her. Called her back again on 10/07/08 and talked to her about co-sponsorship issues. She had attended the co-sponsorship panel at the OGE conference in which (b) (6) was a panelist. A law firm that appears before the STB and is a "known quantity" wants to conduct a symposium on Alternative Dispute Resolution. The firm is trying to build its prestige in this area. They are also interested in having the Federal Maritime Commission participate as another government co-sponsor. The attorney at the law firm who is trying to set this up used to work at the FMC. (b) (6) said that the STB has never co-sponsored anything and of course has no policy on co-sponsorship. She asked how explicit the authority had to be. I told her the Small Business Administration has express statutory authority but that is probably not common. She is looking for a way to tie it to the agency mission, possibly as an outreach to shippers. But she wondered if

that required a lot of players. She noted that (b) (6) had described an outreach effort at HHS that involved a invitation to participate published in the Federal Register that drew more than a 1,000 interested persons. She was wondering whether to reach out to the Association of Transportation Practitioners. Her second biggest concern after the question of authority is the planning and control of the activity. The law firm wants to take the ball and run with it but she is concerned about letting that happen. We also discussed conflict concerns. Does the firm have sensitive matters currently pending? Etc. We also discussed advertising/promotional issues. I gave her the name of (b) (6), the (b) (6) at SBA, which has published regulations and has extensive written policy. She is also thinking of reaching out to other agencies like SEC, FERC and EPA that have regulatory functions. (b) (6) October 7, 2008

11. (b) (6) EOUSA, United States Attorney (USA) (b) (6) (b) (6), seeks approval to attend the 15th Annual Morris K. Udall Awards Dinner, a general fund-raising dinner to benefit the Parkinson's Action Network tonight, Tuesday, October, 2008, at 6:00 PM. (b) (6) recommendation to ODAG: (b) (5)

(b) (5)

(b) (5)

(b) (6) approved.

(b) (6) October 7, 2008

12. (b) (6) (b) (6) formerly an attorney with the OSG called with a question about disclaimers. She is writing an article for the Journal of (b) (6) and will be writing about the OSG (but not about any cases that she worked on and not using confidential information). She wanted to know if she needed a disclaimer that the views expressed were not the views of the government. I told her the administrative standards apply only while someone is a government employee. She read the bio paragraph that would accompany the article and it

refers to her current position at the law firm and the fact that she was a career attorney in OSG for 11 years prior to that. She was going to state that her views were her own and were not on behalf of the firm or did not represent the views of the government. It struck me as strange to give a disclaimer with respect to the government when the bio made clear she no longer worked there. I suggested she might simply say that the views expressed were the personal views of the author. I think she may go with that approach. (b) (6) October 7, 2008

13. (b) (6) (b) (6) OIPL, called with a question about seeking employment. She is a noncareer employee. She wanted to know if she could contact someone at the Association of Corporate Counsel about a job. This is someone that she has dealt with in her job. I advised her that there is no prohibition on seeking employment with a particular organization but she must recuse from matters affecting that organization while she is seeking employment. She also asked about blind applications to a listing on Craig's List or Roll Call and I said she must recuse if she becomes aware of who the potential employer is. This would also apply if a friend or some other third party intermediary told her that they had submitted her name for consideration by a particular employer. We talked about being careful to keep track of who you contact about employment, especially mass emails or "blasts". We also talked about when seeking employment ends. She had interviewed for a job last year and had gotten a rejection letter in December 2007. In January, she was contacted by (b) (6) who used to work in her office and now was with the company that had rejected her and he asked about setting up a meeting for the company which occurred in June. We talked about the rejection letter and it definitively ended her employment prospects, so she was no longer seeking employment in January. We talked about the two month rule with respect to unsolicited inquiries. I again emphasized the importance of keeping track of her job search inquiries and being careful not to work on something that could affect someone with whom she has the prospect of employment. I sent her an email with the guide on post-employment restrictions. The email is in the advice file. (b) (6) October 9, 2008

14. (b) (6) (b) (6) called with a question as to whether the Department's limited personal use policy would allow an employee to occasionally use DOJ resources to purchase stock on line. He said he was not talking about day trading. This might happen several times in a year. And on the employee's own time, like a lunch hour. He mentioned example 2 at 5 CFR 2635.704 which says that a CFTC employee with government access to a commercial investment service could not use that access for personal investing. I looked at 5 CFR 2635.704, 5 CFR 3801.105 and 28 CFR 45.4, as well as some older policy memos and did not find anything that would prohibit such limited use. I confirmed with (b) (6) that this limited personal use would not be prohibited and so advised (b) (6) (b) (6) October 9, 2008

15. (b) (6) ODAG, post government question. Negotiating position with ENRON task force and is concerned about the 207c restrictions with the salary cap. Explained that it is not just the salary that brings the restriction but the position itself. Also told him that the salary cap is looking at the base salary - does not include the COLA or other adjustments to salary. (b) (6)

October 10, 2008

16. (b) (6) Tax, Hatch Act. Career attorney. Used to work for campaigns before coming to the Department. Has been asked to join one of the campaigns as it gets closer to the election. Because he is career and not further restricted, I told him he could campaign in his personal capacity - on his own time and in no way identified as a Justice employee. Also discussed that he could not solicit for donations in anyway while working on the campaign. He asked if he could take leave and work on the campaign on leave and I told him that would be fine, with appropriate management approval for leave. (b) (6) October 10, 2008.

UPDATE: (b) (6) called back Oct 22 and asked if the campaign could pay for his travel/hotels. I advised that since the travel payments would be given based on his personal relationship with the campaign and not his official duty, he may accept. Advised that if he was a financial reporter, he would have to report the gift on his disclosure report. He asked for an email stating that it was ok. Email in background file. (b) (6) October 22, 2008.

17. (b) (6) OLA, Schedule C question. (b) (6), formerly a career attorney, has been moved to a political position. Wanted to know if he needed to file a 278 now. Consulted with (b) (6) and relayed that he had to file one within 30 days of being appointed to the Schedule C position. (b) (6) October 10, 2008.

18. Met with (b) (6) and (b) (6), OAG, on general OAG briefing; also discussed seeking employment at length with (b) (6). He is talking to 2 firms; he has notified deputy chief of staff (b) (6) of the recusals. Went over the seeking rules and the gift rules. He also asked: he has a "strong family connection" to a party who is likely to become a client when he leaves and goes with a firm. Can he let the firms know and could they speak to the prospective client during this process? (b) (6) is not working on any matters involving the prospective client - he does not think they have anything before DOJ or at least not in Main. As long as he is not in a position to affect the prospective client's interests (from which he would have to recuse) then there is no real danger. If the client is willing to talk to these firms it may; should anything arise at DOJ even after discussion with these firms ceased, (b) (6) would not be able to participate in anything that could affect the prospective client, because this situation is likely to arise again. Also went over the rules/policies on announcing his departure, the firm announcing it, etc. (b) (6) October 10, 2008

19. (b) (6) former chief of staff, OAG, called to confirm that he was a senior employee (subject to 207c) and NOT a very senior employee (subject to 207d). Correct. (b) (6) October 10, 2008

20. (b) (6) (b) (6) OJP, Hatch Act question. Employee in NIJ excerpted and sent a clipping around that has a partisan cast. Lauren and I discussed with them what was said at OGE conference about circulating articles; they will do more fact-gathering and get back. (b) (6)

(b) (6) October 10, 2008

21. (b) (6) FBI, CFC Video Issue. (b) (6) received complaints from employees in their WVA office about the 2008 National CFC Video, 'The Great Debate'. I'm sure this is the one (b) (6) and I spoke about months ago and which (b) (6) recommended that the DC area CFC not use. The video uses a campaign debate theme which isn't a good idea for feds and the Hatch Act. The video was developed and issued by the National CFC Committee and not reviewed or approved by OPM, and in fact OPM issued the following statement to local campaign officials regarding the video on October 7, 2008: "Dear LFCC Chairs and PCFO Directors: The U.S. Office of Personnel Management (OPM) has expressed concerns over the appropriateness of the 2008 National CFC Video, 'The Great Debate'. The video potentially politicizes the Combined Federal Campaign (CFC) and local campaigns **must not use** the video in any way to promote the 2008 CFC. The video was developed and issued by the National CFC Committee and not reviewed or approved by OPM". I let (b) (6) in HR know. (b) (6) October 10, 2008

22. (b) (6) ODAG, gift question. In Honor of His Excellency Yousef Al Otaiba, Ambassador from the UAE. (b) (6) have been invited by (b) (6) to attend a dinner on Monday, October 27th, cocktails at 7 pm and dinner at 8 pm at Café Milano. (b) (6) were also invited. (b) (6) is the owner of the (b) (6) Georgetown and a personal friend of the DAG. I advised (b) (6) that the exception provides that an employee may accept a gift given under circumstances which make it clear the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors include the history of the relationship and whether the friend personally pays for the gift (since (b) (6) owns Café Milano I would view him as "personally paying"). Here, the event is honoring a foreign ambassador; inviting the DAG and also the AG suggests that the DAG's position is a factor, if not the only factor, in extending the invitation. So, it would be helpful to know who else is being invited to the dinner (and, in particular, are there other friends who both the DAG and (b) (6) have in common invited) and how many invitees there are, and also, for how long and how do the DAG and (b) (6) know each other, and what other activities have they engaged in as friends, etc. (b) (6) doesn't know who else is going; his sense is that (b) (6) hosts many people at the restaurant for such events --- including, he has been told, many members of Congress and other American government officials --- as well as, at times, other foreign government visitors and that he was trying to facilitate the DAG's ability to thank the UAE ambassador for his nation's help on law enforcement and counter terrorism and encourage him to do more of the same. (b) (6) wife would not be attending and he is planning on paying for his own meal. I advised (b) (6) that with him paying for himself there is no gift and therefore no ethics issue. (b) (6) October 10, 2008

23. (b) (6) ODAG, foreign gifts question. The DAG participated in a signing ceremony on October 8th with Secretary Chertoff/DHS and the Deputy Prime Minister of the Government of the Slovak Republic and Minister for the Interior of the Slovak Republic. (b) (6)

██████████ presented the DAG with a bottle of wine. The DAG presented a book of the United States as the gift from the Department. It is Chateau Vinicky Anno 1695 - Tokaj 1989 Tokajsky 6 Vyber Putnovy - she is attempting to find a cost but so far no luck. She is looking for a suggestion. I advised her that she should check with (b) (6) in Exec Sec/OAG as to how she values gifts - there may be someone in FASS who helps when you can't find something on the Internet. I also advised that the DAG may keep the wine as long as the fair market value is no more than \$335. (b) (6) was able to help. They found a comparable bottle - value approx \$40.00. (b) (6) October 10, 2008

24. (b) (6) (b) (6) OIPL, called with a follow up question arising out of her previous question about her job search with Pepsi and subsequent interaction with (b) (6) who used to work with her at DOJ. She said that she asks for his advice about job searches and considers him a friend and has attended family birthday events. She may want to use him as a reference. I said that it would be better if someone else in the office handled any future requests that ██████████ might make as the Standards require an employee to consider recusal from matters that could affect a friend. She also asked about her interaction with AARP. She could not recall when she had contacted AARP about employment but does not recall ever getting an AARP response to her email. The timing is not clear. But at some point AARP wanted to be invited to a meeting. The meeting was cancelled because too many people wanted to attend. Later when it was rescheduled it was restricted to 8 groups and AARP was not invited. In another case, she could not remember whether she had ever inquired about a job with the Financial Services Roundtable. She contacted someone in the HR function and they could not find any indication that she had ever inquired about a job. I advised that these occurrences illustrate why it is important to keep track of job contacts and be able to document when you made an inquiry, when you received a response (if at all), the nature of the response, etc. She said that she had not realized until recently that sending out a resume (which she called the "resume rule") would trigger a recusal obligation even before you received any response. (b) (6) October 9, 2008

25. (b) (6) (b) (6) OIPL, called with a Hatch Act question. She received an unsolicited email at her DOJ address from the McCain-Palin campaign from a (b) (6). The content of the email is talking points for the day that can be used by conservative groups. She does not know this person but believes that her address might have been picked up from a list serve of a conservative group. This is the second time an email has come from this same source. She previously sent an email back telling the person to take her off the list. This time she wanted to go to the unsubscribe screen and remove her name that way but when she got to the screen she could not simply unsubscribe without giving a reason. The reasons began with the phrase "I am a McCain supporter but I wish to unsubscribe because. . . ." She did not want to click any of those options. So I said send another email back to the person telling her to remove her from the list and that she can't receive political emails at work. I advised she should keep a copy of her response and delete the political email. She said that there was a pending FOIA request that might be relevant. I said she would need to discuss the FOIA aspect with a FOIA expert. She then had another question about whether it was appropriate to provide a person associated with the National Center for Missing and Exploited Children with a link to a safe child project site which I believe was a public DOJ site. She may have made an inquiry of

NCMEC. I advised that was more in the nature of a ministerial matter (providing assistance to reaching publicly available information) but again underscored the importance of keeping track of job inquiries. (b) (6) October 10, 2008

26. (b) (6) OLC, Hatch Act question. (b) (6) is a Special AUSA on detail to the USAO-DC National Security Section from OLC at Main Justice. She would like to know if it would be o.k. for her to go on a "get out the vote" drive over the weekend that would be designed to encourage people to vote and would be sponsored by one of the political campaigns. (b) (6) addressed the issue as follows: Let me give you my view, (b) (6) about the (b) (6) application of the restrictions that might come from your position at OLC. (b) (6) maybe you could look over my analysis and then address the SAUSA issue. As far as your position at OLC is concerned, I believe that you're not under any of the special or additional restrictions under the Hatch Act. OLC is not one of the components listed in 5 U.S.C. 7323. Nor would your position here cause any of the additional restrictions to apply. Although you have a "Senior Level" position in OLC, *see* 5 U.S.C. 5376, and your position is thus "classified above GS-15," the statute expressly declares that Senior Level positions are not in the Senior Executive Service, *see id.* 5376((a)(2)(A); and you therefore wouldn't come within the special restrictions imposed on members of the career Senior Executive Service by 5 U.S.C. 7323. Through cross-references, section 7323 also imposes more stringent restrictions on employees paid under other provisions in subchapter VII of chapter 53 in title 5 -- specifically, administrative law judges, contract appeals board members, and administrative appeals judges (5 U.S.C. 5372, 5372a, and 5372b) -- but section 7323 contains no cross-reference to section 5376, the authority for paying Senior Level employees. Insofar as your position in OLC is concerned, the activity you describe seems permissible under 5 C.F.R. 734.205(c). Under that provision, an employee may "canvass for votes in support of or in opposition to a partisan political candidate or a candidate for political party office." I then followed up by advising (b) (6) that SAUSA's are not further restricted, and I agreed with (b) (6) analysis, so she may engage in the described activity within the confines of the general restrictions that apply to all partisan activity (no use of title or position, no activity while on gov't property or time, or using gov't equipment, no soliciting, accepting or receiving political contributions, etc.), further information is on our websites. (b) (6) October 10, 2008

27. (b) (6) OJP, gifts given to foreign individuals. (b) (6) received a list of reporting requirements from their Office of Administration noting that a report on Gifts Given to Foreign Individuals is due on October 20th. There is no indication of to whom this is to be sent, except that it is State Dept. report. She was wondering if they usually get a reminder and the contact person in JMD to send the information to. I advised (b) (6) that (b) (6) Facilities Services Office in JMD, is handling gifts from foreign governments. I asked her to check with him about the reporting requirements. (b) (6) October 14, 2008

28. (b) (6) OAG, WAG, (b) (6) have been invited to attend the annual Meridian Ball on October 17, 2008. This is an annual fundraising event for Meridian House, a non-profit organization, which is associated with the State Department, which works to foster international relations. 800 persons are expected, including Members of Congress, administration officials, DC officials, representatives from international organizations, the business and philanthropic community, and a significant number of foreign diplomatic officials.

The Ball is preceded by dinners held at various ambassadors's residences at which at least several hundred attendees are expected. Tickets are \$200 each for the dinner and \$210 for the ball. (b) (6) have been invited to both events by Meridian House; OAG will have final approval over which dinner the (b) (6) attend. Both events meet the criteria for widely attended gatherings (WAG), and I believe (b) (6) may determine it is in the Department's interest for (b) (6) to attend, as this affords the (b) (6) an opportunity to interact informally with many officials who have interests in common with, or can affect the interests of, the Department. (b) (5)

(b) (6) approved. (b) (6) October 15, 2008
Follow up to the entry they were invited to the Mexican Ambassador's Residence for dinner.
(b) (6) October 23, 2008

29. (b) (6), spouse's firm event. His wife's firm, (b) (6), is holding a partner and counsel retreat in San Diego in several weeks. Spouses are invited to attend, which includes invitations to a number of meals/events during the retreat. He has advised that he will pay his own airfare; the firm is paying for the hotel room for him and his wife. He also advised that he would not attend any other events, e.g., any substantive meetings or briefings. (b) (6) is a prohibited source; and as his spouse's firm he is generally recused from participation in matters in which (b) (6) is or represents a party or has a financial interest, subject to case-by-case authorization. Since the firm is a prohibited source, he is prohibited from accepting gifts from the firm, unless the gift falls within one of the exceptions to the general gift ban. One of the exceptions allows gifts based on a spouse's employment. Under that exception, he may accept the invitations to attend firm events open to spouses. (b) (6) and I also discussed the sensitivity of attending the retreat given that (b) (6) has matters before (b) (6), especially at this point late in the administration, in light of his likely job search in January. (b) (6) is his former firm, and he has not ruled out the possibility of returning to the firm after his service as (b) (6). However, he is not currently seeking employment, and it is not necessary for him to make a decision to rule out a particular firm while he is serving as (b) (6) and before he begins seeking post-government employment. Therefore, it is fine for him to accompany his wife to the retreat and to attend the 2 large dinner events described in the attached email (Thursday and Friday evenings). (b) (6)
October 14, 2008

30. (b) (6) Civil, conflict of interest. (b) (6) is working on a bankruptcy case in Maryland, representing several federal agencies against the Debtor, a security firm and the government has over \$60 million in claims against the firm. The Chapter 7 trustee is in the process of liquidating the Debtor's assets to bring money back to the estate to distribute to the creditors. One of the assets is a car. (b) (6) found out about the car in a motion filed in court. She contacted the Trustee who said she would be selling the car for no less than \$35,000 in a sealed bid process (this info was in the motion) and she also revealed that she had several offers of \$35,000 already. The car is valued at around \$80,000. (b) (6) fiancé (who she lives with) and her fiancé's brother were both interested in bidding on the car. We advised that she has a covered relationship with her fiancé and therefore he could not bid on the car because it was a conflict of interest. (b) (6) asked if (b) (6) could request a waiver, but we advised there is no compelling reason to request a waiver in this situation. (b) (6) reported that (b) (6) is not close to

her fiance's brother, and only sees him every three or four months. Consulted with (b) (6) and we felt that there would not be a conflict with the brother bidding on the car. Advised that (b) (6) should not discuss the car with the trustee any further and not discuss it with her fiance's brother either. If through her normal work she discovers more information about the car or the bidding, she should not relay this information to her fiance's brother. (b) (6) October 14, 2008.

31. (b) (6) NSD, WAG. (b) (6) emailed regarding an attorney who wants to attend the Council on Foreign Relations' New York Symposium on International Law and Justice on October 17, 2008. The employee's supervisor approved her to attend the symposium and that the Department would pay for travel. (b) (6) wanted to know if the employee could also accept lunch and attend the cocktail reception. She stated there was no charge for the events or the lunch. Advised (b) (6) that while there may not be a charge to attend the event, it is still a gift because the event is not open to the public and the employee had been invited to attend. She would be receiving something of value from the Council on Foreign Relations. (b) (6) sent over the program for the symposium and after conferring with (b) (6) recommended that the request be sent to (b) (6) the component head, for approval as a WAG. (b) (6) October 15, 2008.

32. (b) (6) Free Space Usage, JMB Finance. (b) (6) called regarding the use of "free space" for training purposes. DEA agents in (b) (6) want to use the (b) (6) PD conference room for training on Sunday, October 19. The space was appropriate for their training needs and accessible to all involved. The (b) (6) PD uses DEA equipment and facilities for training. This would be an exchange and advised (b) (6) she did not need to use the gift form for approval. She said she would note our concurrence on this when she forwarding the request for use of nonfederal space. (b) (6) October 16, 2008.

33. (b) (6) U.S. Trustees, (b) (6), called with a question about the (b) (6) speaking at a conference sponsored by Freddie Mac to be held in McLean, Virginia on October 28. She thought it was a one day conference. She did not have a program or agenda but it would be a conference for all of Freddie Mac's local counsels, some 250 attorneys in 19 States and would deal with bankruptcy issues. There might also be some business people in attendance. She did not think any other DOJ components would be there and she did not know if any other government agencies would be there. In her view, the event lacked sufficient diversity of viewpoints to qualify as a WAG. Her concerns, however, were not WAG concerns. She said there were no questions of accepting anything of value as the DOJ employees would not even stay for a meal and would pay for the local travel to McLean. She said that there is definitely a government interest that is served by (b) (6) attending and speaking. The agency, for example, has a Creditor Abuse Initiative and it would be beneficial to convey the Department's views on issues such as creditors filing proof of claims, whether they must file a proof or can they charge a flat fee, how that relates to local court rules etc. There are other practices that U.S. Trustees find objectionable. She thought the one hour presentation would be based on some testimony that the Director gave. Some other people might accompany him in a support role. So she believes that attending and speaking makes sense from a program perspective. However, she raised a question about what this would mean if other groups sought a speaker. I told her I thought the speaking activity was permissible but would discuss with (b) (6) I discussed with

(b) (6) and (b) (6) thought that it was not inappropriate to attend. It is a different situation from getting an invitation to come and speak at a law firm. I spoke again with (b) (6) and said the speaking event was okay. She explained in a little more detail that this type of event was something new for them. In the past they have attended events sponsored by non-profit groups like the American Banking Institute that had a broader audience and included judges etc. But she thought that the conference format gave it a training-type setting and felt it was big enough and broad enough (big firms, small firms) that she could be comfortable with it. She had checked to see how much the fee was, if any, but had not heard back. She said she would call back if she had any other concerns. (b) (6) October 15, 2008

34. (b) (6) OAG, Partisan activity. (b) (6) emailed that his significant other has asked whether he can attend the event referenced in the attached invitation and stay with her in a room which will be paid for by her law firm. It is a post-election weekend retreat sponsored by the National Republican Senatorial Committee. It is a political networking event, and not a fundraiser. Her law firm (b) (6) is a large international firm which may or may not have any pending business before the Department, although if he had to guess he would say that it is more likely than not that they do have business before the Department or a United States Attorney's office somewhere. The room rate for the retreat is \$615.00 per night, and they would stay for two nights. He would attend in his personal capacity, as well as pay for his own airfare, meals and other activities. He would like to know if he may attend the retreat in his personal capacity and if so, under what conditions. He would also like to know if he may stay in a hotel room the cost of which will be borne by (b) (6). I advised (b) (6) that under the general DOJ policy for political appointees (not the additional limitations the AG imposed in August for the period immediately preceding the election) he would need approval to attend from ODAG. The hotel room is probably not an issue - the gift appears to be based on his relationship to his significant other rather than his position, although there is the more general recusal issue for (given her relationship with him). However, since the policy allows approval only for passive attendance at partisan events (which does include fundraisers), we have recommended against attendance at events that are strategic or party-building in nature. So, if his attendance was to participate in what seems to be the networking/strategic purpose of the retreat (and it appears to be kind of seamless - the political briefing is the only "session" listed so I am guessing the networking takes place informally during other activities. I would recommend against approval as we have for similar events. (b) (6) October 20, 2008

35. (b) (6) Recusal matter question. (b) (6) represented the governor of the State of Hawaii in a case pending before the Supreme Court almost 10 years ago while at (b) (6). Hawaii has a different case before the Court this Term (represented by a different firm than (b) (6)). May he work on this case? I advised (b) (6) that he may work on the case. (b) (6) October 20, 2008

36. (b) (6) ODAG, Recusal matter. (b) (6) is putting her resume together and wanted to get the opinion of a friend of hers who she has known since law school. The friend works at a law firm in Philly that (b) (6) will not be applying to. Her friend's firm has cases

with DOJ, though she doesn't know which cases they are. She would like to know, if she seeks her friend's advice, does she need to recuse herself from any cases with her friend's firm. I advised her that if she is seeking her individual advice on her resume and will not be applying to the firm, she does not need to recuse from the firm's matters. (b) (6) October 21, 2008

37. (b) (6) former DoJ employee, post-employment question. (b) (6) was wondering whether I had a chance to confirm his recollection that he wasn't exposed to any confidential client information in connection with (b) (5). He is being pressed to give an answer to the question whether he can provide behind-the-scenes advice to a client, so he was looking for my guidance. I advised (b) (6) that I have confirmed that he did not participate personally and substantially in (b) (5) while he served with the Department, so he would not be subject to disqualification under the applicable rules of professional responsibility from advising a client with respect to the case. However, as we discussed, it was pending under his official responsibility, so he remains subject to the post-employment restriction of 18 USC 207(a)(2), which runs for 2 years from the time he left. Also, he remains subject to the one-year ban of 18 USC 207(c) on all contacts with the intent to influence, which applies to all parts of DOJ which are not designated separate components, for one year after he left. (b) (6) October 21, 2008

38. (b) (6) JMD (b) (6), (b) (6) had a question about volunteering to serve in election protection activities. He is looking at 2 options. One would be with a non-partisan group called the National Campaign for Fair Elections which has an election protection program. The other is the Voter Protection Program of the Obama campaign. (b) (6) is licensed in the (b) (6). He is not licensed in (b) (6). He would like to sign up for the training session which the Obama group is offering in Arlington on October 24. Another possible training program he might be interested in is being offered at the offices of Steptoe & Johnson on October 22. He said he is not currently working on any matters that involve Steptoe. He said he understands that he must keep this activity completely separate from his work and cannot do anything from his office, refer to his government position etc. He also said that he understood the restrictions on representing a private party. His question is whether under the DOJ supplemental regulation his volunteer work at a polling place would be considered the outside practice of law and if it were so considered would it qualify as a pro bono activity, i.e., "in the nature of community service." 5 C.F.R. 3801.106(b)(I). I discussed with (b) (6). I spoke again with (b) (6) on 10/21/08 and advised him of the memorandum on election related activities. I said that the prior approval requirement of the regulation did not apply to the outside practice of law as part of political activities. However, it is the employee's responsibility to determine if the activity complies with the bar rules of the particular jurisdiction. The Department would be concerned if an attorney involved in outside practice violated a bar rule because he was not authorized to practice in a particular jurisdiction. (b) (6) understood the policy. He is trying to find out if the Obama campaign has obtained an opinion from the Virginia bar that says that the voter protection activity is not the practice of law. I sent him a copy of the reissued memo entitled "Advice for Employees Concerning Election-related Activities", dated October 21, 2008. (b) (6) October 21, 2008

39. (b) (6), Gifts question. (b) (6) is arguing a case in a couple of weeks in which they're splitting time with a private party who's aligned with the government in the case. The case involves enrichment of uranium, and private counsel (who represents a company that performs enrichment services) has arranged for what amounts to a technical briefing on the way the enrichment process works so that they will be better equipped to answer questions on the nuts-and-bolts of what's going on. The briefing will be held at lunchtime on Thursday at the private firm. (b) (6) would like to know if the firm offers him a lunch (as he suspects they will), is he allowed to accept it? He assumes that it would be a sandwich or salad -- nothing fancy. I advised (b) (6) that while he may accept coffee anytime (modest refreshments not part of a meal), he may accept a meal only when it is \$20 or less per occasion, and there is a cap of \$50 per year on the value of gifts he may accept from the same source. (b) (6) October 21, 2008

40. (b) (6) JMD, 50/50 Raffle for CFC. I advised (b) (6) the new (b) (6) that we received a question this year, as we have in past years, about an office holding a 50/50 raffle/lottery event in support of CFC - the kind where a ticket is \$1-2 and the winners split the pot with the CFC. My office and (b) (6) discussed these several years ago when this type of event was again permitted, and decided not to approve them. He agreed. (b) (6) October 21, 2008

41. (b) (6) OFDT, with the question that comes in almost every year at this time whether 50/50 raffles (which are really lotteries) can be held as CFC fundraisers. Tickets cost \$1 or \$2, pot split between CFC and winner. Routinely since at least 2004, our office and (b) (6) have said that these are not appropriate at DOJ. CFC regs at 5 CFR 950.602(b), state that this type of 'special fund-raising event' may be held at the discretion of the agency. DOJ has routinely not approved these events. (b) (6) concurred that this was DOJ's position, and emailed (b) (6) who also concurred. (b) (6) advised by email that this was not permitted. (b) (6) October 22, 2008

42. (b) (6) Civil, Hatch Act. (b) (6) emailed with three questions. 1) can you have a political bumper sticker on your car if you park your car in a govt parking lot? *Yes, even if you are further restricted.* 2) Can you wear a political button on your coat at work? *No.* 3) Questions regarding an employee participating in "election protection activities" - email in background file. (b) (6) October 22, 2008.

43. (b) (6) (b) (6), outside writing. (b) (6) sometimes writes lifestyle articles for the magazine "What's Up Annapolis". She receives between \$125-\$250 per article depending on its length. The articles are not related to the Department or her official position in any way. I advised that she may accept the compensation because the writing is unrelated to her official position. I also advised that her position at the Department may be mentioned if they include biographical information about her, but could not be highlighted in anyway - such as including it

in the by-line. (b) (6) October 22, 2008.

44. (b) (6) EOIR, Hatch Act. EOIR employee asked to be part of a focus group on the election for ABC News. Advised it was ok if done in personal capacity. Email in background file. (b) (6) October 23, 2008.

45. (b) (6) NSD, Hatch Act question. An employee at NSD would like to attend a fundraising party her friend is hosting for a candidate running for partisan political office. (b) (6) was planning on sending her the email attached (in log file), but just wanted to make sure it passes since Hatch Act issues can be tricky. I advised (b) (6) that the email is fine, but if he thinks the employee is at all unclear about how restrictive the rules are he may want to call her, too. (b) (6) October 22, 2008

46. (b) (6) OAG, College newspaper article. (b) (6) contacted (b) (6) to help them write an article. (b) (6) graduated in 2000 and it sounds like they are talking to various alumni for this article. She noted that the campus newspaper staff is made up of student workers. As a (b) (6) student, she remembers what it was like trying to get others to participate in projects, etc., and she would love to help out this student by contributing something to the article. She would discuss what she has taken away from her time at (b) (6) (the work program, time management, lifelong friendships, and how the spiritual and patriotic aspects of (b) (6) five-fold mission has shaped her life). She wanted to run it by me for my thoughts. I advised (b) (6) that this is fine - as always, the DOJ aspect should not be the main point but talking about what happened within the general context of her job is fine. (b) (6) October 23, 2008

47. (b) (6) ATR, 205 issue. (b) (6) has a durable financial power of attorney from her and is handling her aunts financial affairs. She is (b) (6) and has (b) (6). She resides in (b) (6) but due to her pension income, is required to file income tax returns. She recently received a letter from the IRS relating to income she may owe for tax year 2006, and the ATR employee will need to communicate with the IRS to try to resolve this tax dispute. The employee would represent her in this matter in respect to filing her amended tax returns as her attorney-in-fact and also representing her before the IRS if they choose to dispute the amended return. (b) (6) looked at 18 USC 205(e) which provides for an exception for representing any person for whom the employee "is serving as guardian, executor, administrator, trustee, or other personal fiduciary.. subject to approval..." (b) (6) also spoke to the ATR employee who said her power of attorney allows her to make legal and financial decisions for her aunt. (b) (6) would like to know if that is enough to qualify her as a personal fiduciary such that ATR's AAG could approve the activity she describes. I advised (b) (6) that we had a similar inquiry not too long ago and concluded that it would be a personal fiduciary within the meaning of the exception. I think this also falls within the exception. I informally ran it by (b) (6) who found nothing in their advice that

contradicted this conclusion. (b) (6) October 23, 2008

48. (b) (6) participation. I sent the following recommendation to (b) (6) for approval: (b) (6) seeks authorization to continue to participate as the counsel of record in (b) (5) two consolidated cases in which the issue is whether the antidumping-duty statute applies to the delivery of low enriched uranium under separate work unit contracts. As (b) (6) and then as (b) (6) reviewed the government's opening brief and reply brief on the merits in these cases. (b) (6) seeks a waiver in order to allow him to continue as counsel of record in these cases. A conflict has arisen because (b) (6), (b) (6) former firm, has filed an amicus brief on behalf of (b) (6). (b) (6) amicus brief was filed between the filing of the government's opening and reply briefs, but (b) (6) did not see the amicus brief when reviewing the government's reply. While at (b) (6), (b) (6) did not represent (b) (6). In addition, (b) (6) wife, (b) (6) is a (b) (6) at (b) (6), but Ms. (b) (6) has not represented (b) (6). As a (b) (6) at (b) (6), Ms. (b) (6) annual salary is predetermined and not dependent on firm revenues. Ms. (b) (6) also may be eligible for a bonus. It is our understanding that a bonus for (b) (6) is based primarily on performance, however, the pool of available funds for a bonus may be influenced by the firm's total revenue. Pursuant to 18 USC 208(a), a federal employee is prohibited from participating personally and substantially in a particular matter in which he has a financial interest unless he obtains a waiver. A waiver may be granted upon a written determination that the financial interest involved "is not so substantial as to be deemed likely to affect the integrity of the service that the government may expect from" the employee. 18 USC 208(b)(1). Given the firm's significant revenues, we expect its earnings based on representations in this case likely will have a minimal impact on the pool of total funds available for non-equity partner bonuses, and even lesser impact, if any, on the amount awarded to (b) (6). While we believe the minimal financial impact on (b) (6) earnings, if any, is sufficient to support a waiver under Section 208, (b) (6) involvement in this case to date, and the Department's interest in his continuing participation, further support granting a waiver in this case. As (b) (6) is (b) (6) you are the official authorized to determine under 18 USC 208 and the impartiality regulation, 5 CFR 2635.502, that the financial interest is not so substantial as to be deemed likely to affect the integrity of (b) (6) performance of his duties, and we agree that this is the circumstance here. A waiver under 18 USC 208 also serves as an impartiality determination under the standards of conduct. (b) (5)

(b) (5)

(b) (5)

(b) (6) approved. (b) (6) October 23, 2008

49. (b) (6), WAGs. (b) (6) emailed (b) (6) asking if she could attend the afternoon sessions of the ABA Criminal Justice Section Fall Conference. She would be attending at no cost, the price of attendance for government employees was listed as \$175. The conference was sponsored by my legal organizations as well as four major law firms. The two sessions in the afternoon involved DOJ topics (sentencing and the Second Chance Act) and the sentencing panel included some DOJ attorneys. (b) (6) would be attending for (b) (6) who normally covers the ABA but was out of the office. I spoke to (b) (6) about the panels and she told me she would be there so she would know what was being put out, as well as gaining additional information on the Second Chance Act. She also believed that (b) (6) had assisted in arranging for the DOJ member of the panel and he had asked her to be there for that reason. I told her it seemed fine for her to attend the two panel sessions. (b) (6) October 24, 2008.

50. (b) (6) CRM - property disposal question. An attorney in CRM asked if he could give binders to a school or charity. Apparently in CRM there is an area where "hundreds and hundreds" of used but "perfectly good" binders are being stored but never reused for anything. Now they are going to be thrown in the trash which is offensive to this CRM attorney and he wants to see if they can be given to a school or charity instead. (b) (6) (b) (5)

(b) (6) anyway - this attorney cannot just start giving them away himself because they are government property and have to be disposed of or dealt with according to proper procedures. I tried to help by giving (b) (6) (from DOJNet) phone numbers for JMD's FASS/property management services, inventory control contacts, and the Department's recycling program coordinator in the hopes that something responsible will be done. She'll try. (b) (6) October 24, 2008

51. (b) (6) ENRD, called with a question relating to an outside activity of (b) (6) the AAG. He wants to serve in a completely personal capacity on an advisory board at the (b) (6) Law School that is seeking to encourage law students to consider careers in public service. (b) (6) is a graduate of (b) (6). He anticipates leaving the Department when this Administration concludes. Between now and the end of January, the advisor board may be holding a meeting (possibly in November) and in connection with the meeting they may circulate professional bios of the board members. (b) (6) said there is a possibility that the board member bios may be posted on a university website. She asked about the use of his title and whether he could use the bio that is currently posted on the DOJ public website and which gives some detail about the Division. I said the use of the title would be permissible if it were a part of his overall professional bio and was not given undue prominence. I suggested he might use a different lead sentence to begin the bio that referred to his interest in and commitment to public service which

would shift the focus away from his current position. (b) (6) thought that was a good approach and was also going to suggest that he reduce the amount of detail describing the mission of ENRD. (b) (6) October 22, 2008

52. (b) (6) ENRD, called with a question about new employee training. She wanted to know if the ethics component of the September Great Hall training would qualify as new employee training. I discussed with (b) (6) and called (b) (6) back and left a message saying that it was not intended to fulfill that requirement. I also sent her an email explaining that the Great Hall training was more general and did not have a Q&A opportunity and told her she could contact (b) (6) to set up training for the employee at one of our DEO monthly ethics training sessions. A copy of the email is in the file. (b) (6) October 22, 2008

53. (b) (6) OIG, (b) (6) called with a question about the CFC. An employee who is a photographer was interested in offering a photograph to other employees who pledged \$25 to the CFC. However, the employee wanted to designate the charity it would go to. (b) (6) asked whether this was permissible under 5 CFR 950.602(c) which states that the donor must be the person who designates the charity. I agreed with her reading of the reg. I discussed with (b) (6) When I called (b) (6) back we discussed other questions such as whether the person does photography as a hobby or has an outside photography business. She was going to advise the employee that as proposed the arrangement was not permissible. She would consider the other question of an outside business if the employee came back with a revised proposal. That may not happen since it appears the employee wanted to be able to designate the charity. A copy of email to (b) (6) with additional detail is in the file. (b) (6) October 22, 2008

54. (b) (6) (b) (6) NSD, Hatch Act question. (b) (6), further restricted as everyone is in NSD, gave copies of his wife's new book to several subordinates and one employee complained to another manager. Book is bio of Michelle Obama. No other details given. The book itself is not a Hatch Act violation; it is not a campaign activity, his wife is a reporter for the Wash Post which as a policy that its reporters may not be actively engaged in partisan activity so she is not an agent of the campaign, and the book is not about the candidate except indirectly. Seems likely the publication was timed to get the most bang for the buck close to the election. We advised that (b) (6) should discuss the matter with the manager to just make sure he is aware that indirect actions can also bump up against the Hatch Act. It may be that these are his friends and he has been talking to them about his wife's book. But as a supervisor he needs to be more sensitive. (b) (6) October 23, 2008

55. (b) (6) (b) (6), leaving DOJ, misuse of position. A USA has accepted a position with a firm but will be staying until January 19 or 20. He wants to announce where he is going. Firm is big firm in his district. No, he should not announce it nor should the firm because it is likely to lead to them trading on his current position while he is still USA. They may not use his

position to promote their business or seek clients, and he may not allow them to. They also may not use his title or position and refer to him as former until after he leaves. Wait till very close to his actual departure. (b) (6) October 23, 2008

56. (b) (6) gift question. Was invited to (b) (6) party at Café Milano celebrating (b) (6) 50th argument before the Supreme Court. This is a WAG, but (b) (6) and (b) (6) have current matters before (b) (6) (they always do given their practice). (b) (6) will find out who else in (b) (6) has been invited; (b) (6) is the former supervisor of a number of them, having served as (b) (6) early in the Bush administration. I will do a WAG determination once I know who else is invited. We know separately that 6000 invitations have gone out and 200 are expected. (b) (6) October 23, 2008

57. (b) (6) (b) (6), (b) (6) called on 10/22/ with a question about recommendations. (b) (6) who used to be with OLA here at Main and who is a non-career SES has been working on a detail in (b) (6) office. (b) (6) is the managing assistant in the office. (b) (6) apparently will be leaving and is looking for a job. (b) (6) had questions about job recommendations. Since he supervises (b) (6) I told him there was no problem in writing letters in an official capacity. But what he wants to know is whether he can affirmatively reach out to people he knows and recommend (b) (6) without (b) (6) asking him to. In particular, he knows an attorney in a white collar practice with (b) (6) that he would like to call on (b) (6) behalf. This attorney defended ITT in a major fraud case that (b) (6) was involved in. There was a guilty plea agreed to on 2 counts with a third claim held suspended for five years. Depending on the performance of the company, this claim might then be dismissed. So (b) (6) wants to know specifically whether there is any problem in him initiating the contact with the (b) (6) attorney. And more generally, he was asking if there was a bright line rule about affirmatively reaching out. Or does every situation need to be assessed on a case by case basis. I discussed with (b) (6) and called (b) (6) back on 10/23/08. Told him that he should not affirmatively reach out to the (b) (6) attorney with a recommendation of (b) (6) for a job in light of the case that was still pending in the office. He could suggest to (b) (6) that (b) (6) contact (b) (6) and he could use (b) (6) name as a reference. Told (b) (6) there was no general bright line rule and that each situation like this would have to be looked at on the basis of its own facts. He said he would follow that advice. (b) (6) October 23, 2008

58. (b) (6) PRAO, Hatch Act question. Asked if she could participate with a non-political organization in voter monitoring activities on election day. (b) (6) is further restricted. No, this particular group is under the umbrella of the Election Protection initiative, which is being closely coordinated with one of the campaigns, so it is not non-partisan. (b) (6) October 25, 2008

59. (b) (6) PAO, seeking and post-employment advice. Went over the seeking rules; being in PAO, most of (b) (6) participation would not be personal and substantial, but we did discuss the (b) (6) cases, because he is detailed to work on these. These are matters (there

are many cases) and it would not be sufficient to recuse from only some cases if he wanted to talk to one of the law firms representing a detainee because the significant issues are the same in all the cases. He could not recuse from some and have that be effective as and disqualification from participation in affecting the others. Discussed using a headhunter which is ok if identity not disclosed to him, but suggested he do a list of firms from which he could not recuse given his obligations here, and advise the headhunter accordingly. Also, he may give his resume to friends to act as intermediary with the same approach. Went over post-employment rules, which are narrower, affecting matters with parties; also bar rules (he is an attorney) that would affect disclosures he may or may not make after he leaves. (b) (6) October 24, 2008

60. (b) (6) JMD, Hatch Act question. (b) (6) contacted me regarding political conversations in the workplace. I advised (b) (6) via email as follows: You had asked me about the level of discussion of politics in the workplace that is permitted under the Hatch Act. The U.S. Office of Special Counsel (OSC) has said that the Hatch Act does not prohibit all discourse by federal employees on political subjects or candidates in federal buildings while on duty, but in fact protects the rights of employees to express their opinions on political subjects. However, partisan political activity is broadly defined as "*activity directed toward the success or failure of a political party, candidate for partisan office, or partisan political group.*" Therefore, expressing opinions has to be balanced against the prohibition on partisan political activity. In addition, the Act also prohibits us from using our official authority or influence for the purpose of affecting or interfering with the results of an election. This has particular importance for supervisors and for employees who work in close contact with contractor employees. We may not use our authority to coerce any person to participate in political activity, and we may not solicit, accept or receive uncompensated volunteer services from a subordinate for any political purpose. Also, we may not solicit or discourage the participation in any political activity of a person who has a matter pending, e.g., a bid on a contract, or anyone who is the subject of an ongoing enforcement action. So, having said all that, let me try to offer some guidelines. It is fine to have discussions about the issues of the day, including political campaigns. Employees may have conversations about the election or election events (such as debates, news stories, etc). However, when discussing or talking about these topics, employees must be careful to not cross the line from "discussion," to promoting a candidate or speaking against a candidate. For example, explaining why "I" am voting for a particular candidate is ok; saying that this is why "you" should vote for that candidate probably crosses the line - the line is a fine one. Some additional considerations: supervisors must be extremely careful about their conversations with or in the presence of subordinates, because even strongly held views about a candidate or views that are forcefully expressed, may be perceived as an attempt to influence when made by a supervisor. Similarly, it is important to be careful around contractor personnel; strong views may be perceived as an attempt to influence if the hearer believes that his or her political views could affect his or her status as a contractor or contract employee. Also, political conversations should not disrupt the workplace or distract from the work of the office. No personal conversation should disrupt the workplace, but there is probably much greater potential for disruption when discussing politics than when discussing other topics such as movies or sports. Loud conversations, or conversations in hallways or other general areas, have much greater potential to

disrupt and also to cross the line into partisan activity - people differ in what they consider to be merely a vigorous airing of views, and what is exhorting others to vote for or against a particular candidate. Since the line is not a bright one and is so easily crossed, it is far better to keep discussions to a minimum, not conduct them in general work areas, and of course not to use excessive work time doing so. Employees with an interest in debating about the candidates should be advised to do so on their lunch hour and not on government property. Also, employees should not use email as a means for these conversations because it is an inappropriate use of government equipment and a potential violation of the Hatch Act. (b) (6) October 25, 2008

61. (b) (6) ODAG, (b) (6) invitation. Follow up to a previous entry dinner in honor of His Excellency (b) (6), Ambassador to the (b) (6) at (b) (6). (b) (6) emailed with a change in venue. Dinner will now be at (b) (6) residence. I asked for the guest list and (b) (6) provided that (b) (6) and his wife would be in attendance. I advised (b) (6) that the (b) (6) may accept the invitation to the dinner at the home of (b) (6), under an exception to the general ban on gifts offered based on official position, that allows acceptance of a social invitation to a meal or entertainment from someone who is not a prohibited source, and where no fee is being charged to any person in attendance. This instance meets the criteria, so it's fine for (b) (6) to go. (b) (6) October 24, 2008

62. (b) (6) OPA, Press event. This email was forwarded for my input by (b) (6). This Monday, the FBI is hosting a press conference to announce the results of Operation Cross Country II, an operation being conducted now through Sunday night as part of the Innocence Lost initiative, which aims to combat child sex trafficking. Based upon the success of Operation Cross Country in June of this year, information was developed by Special Agents and Task Force Officers that led to specific information identifying other underage victims of sex trafficking. (b) (6) and (b) (6) of the Center for Missing and Exploited Children, are speaking at the press conference. FBI has asked (b) (6) to speak at the press conference announcing the results of the Operation, as he did at the announcement in June. Since this is in the normal course of activity for the AAAG, the subject matter is non-politically related and no elected officials will be present at the press conference, we believe it would be allowable for the AAAG to participate. (b) (6) has approved and (b) (6) may be inclined to participate but they wanted to receive our input before giving FBI a final answer. I advised all parties involved that if the press conference will be held in DC I think it's alright. I would have a concern if it is in VA (where NCMEC is headquartered, I believe) given VA as a "battleground" state. (b) (6) October 25, 2008

63. (b) (6) EOUSA, Approval of article. (b) (6) sent for review and approval of the disclaimer language, a draft of an article written by the (b) (6) in C.D. Cal. (relating

to her official duties) for publication in CCH Journal. The disclaimer appears as a footnote on page 8. The article has also been sent to EOUSA's Counsel to the Director and to PRAO for their views. The article is the log file. I advised (b) (6) that the disclaimer was fine. (b) (6) October 27, 2008

64. (b) (6) ODAG, Gifts question. (b) (6) would like to know if the gift exception in 5 CFR §2635.204(e)(1) is strictly limited to spouses. He would like to know if a lawyer in their office may attend a cocktail party hosted by his girlfriend's law firm where his invitation comes from her. The cost should be below the \$20 de minimus too, although he wouldn't be surprised if the per person cost of the event is more than that. I advised (b) (6) that in his situation I would probably use the exception at 2635.204(b), gifts based on a personal relationship since the invitation comes from her. We have read the (e)(1) exception more broadly than spouses on occasion - e.g., to include a fiancée or a firmly established significant other. (b) (6) October 27, 2008

65. (b) (6) CRM, Gift acceptance. (b) (6) has been invited by (b) (6) (b) (6) the (b) (6) of the (b) (6) Alumni Board, to attend the annual Fordham-Stein Prize Dinner in New York City at the Pierre Hotel. She knows (b) (6) through (b) (6), and they have been friends since approx 2000-2001. She also serves on the (b) (6) Alumni Board with (b) (6). (b) (6) is a partner at the law firm (b) (6). This dinner is paid for by Fordham Law School, and it is held each year to present an award to a member of the legal community who exemplifies outstanding standards of professional conduct, promotes advancement of justice, and brings credit to the profession. The recipient this year is Supreme Court Justice Stephen Breyer. The attendees at the dinner are invited by the law school, and include judges on the SDNY bench, faculty etc. (b) (6) has invited her as his guest, and the law school pays for it. (b) (6) has informed her that he has no matters currently pending before the Criminal Division, and she is aware of none. The dinner is Wednesday, October 29. I advised her that it seems fine for her to attend. (b) (6) October 27, 2008

66. (b) (6) (b) (6), Misuse of Government resources. (b) (6) emailed needing (b) (6) to follow up on a particular matter in connection with an attorney, (b) (6) draft FISA article. The version of the draft he received (on August 18) contains a footnote on the first page thanking (b) (6) "for her research assistance and comments." (b) (6) understanding is that (b) (6) was an intern or law clerk in CTS at the time (b) (6) drafted the article. Because (b) (6) wrote the article in his personal capacity, the footnote raises an issue as to whether he may have violated standards of conduct, i.e. misused government resources. (b) (6) has not formed an opinion or reached a conclusion, one way or the other, as to whether there has been a violation, but it is clearly something he has an obligation to look into. (b) (6) and (b) (6) supervisor, and (b) (6) as (b) (6), are equally on notice and have the same obligation. (b) (6) advised (b) (6) that he and (b) (6) looked at the issue of (b) (6) assistance to (b) (6) on his article. (b) (6) served in CTS as one of 10 unpaid summer interns. (b) (6)

was not responsible for supervising her. (b) (6) says that, after talking to (b) (6), he asked if (b) (6) would be willing to assist with the article on her own time. From the perspective of the ethics rules, if (b) (6) did not use official time to work on the article, there is no misuse of Government resources. If (b) (6) did not supervise her, and there is no indication that he pressured her to help, there is no misuse of position. (b) (6) also asked about (b) (6) review of the article. Again (b) (6) advised that there is no supervisor-subordinate relationship between (b) (6) and (b) (6), as the two are in different sections of (b) (6). (b) (6) said that she reviewed the article on her own time over the weekend, and that she gave (b) (6) her comments over lunch. It was concluded that there was no violation. (b) (6) October 27, 2008

67. (b) (6) SEPS, gifts. (b) (6) called with a question regarding widely available discounts. He is getting married and calling for limos. He wants to know if he can ask if the limo companies offer a federal employee discount. I told him he could inquire about the companies' policies, but if they say they do not offer a discount, he could not solicit. He asked if he could ask specifically for a DOJ discount - I told him same rules apply, he can ask if they have a policy and if they do not, he cannot inquire any further. (b) (6) October 27, 2008.

68. (b) (6) (BOP (b) (6)) called with a question about the identifying information that must be provided when someone makes a contribution to a candidate. An (b) (6) made a contribution and listed his name, the U.S. Marshall's Service, his work address, and work phone number. Another employee saw this information on a website and raised the question of whether this was appropriate. I discussed with (b) (6) and researched the FEC regulations and found the applicable reg is 11 CFR 104.7 which is the "best efforts" rule that requires a campaign to make its best efforts to obtain the name, mailing address, occupation, and name of employer. Given the fact that it did not specify what address, it would not be a violation in this case. However, going forward employees should be advised to use their home address. For employer, they may list "U.S. Government" or "Federal Government" and that would be preferable to listing the Department or a component. An earlier inquiry to the FEC confirmed that this would be an acceptable identification of employer. A copy of the regulation is in the file. (b) (6) October 23, 2008.

69. (b) (6) (Office of Public Affairs) called for an ethics debriefing as October 24 would be his last work day in the office. He will continue to be on the payroll, however, for one more pay period until November 7. (b) (6) is not subject to the one-year cooling off period under 207(c). He does not have any arrangement for employment after his government service. He said he was going to take some time off. He may eventually look for work with a defense contractor (BAE) but he has not made any overtures to that company and is not currently seeking employment with that contractor. He said at first that he had not received the email that (b) (6) sent on October 21 that provided information on financial disclosure and the post-employment laws. But when he checked his email as we were talking, he found it. We went over the lifetime ban and stressed the fact that it applies for the life of the specific party matter. We went over the two year ban and discussed in

detail the matters covered in his last year of service and the two year restriction that followed him. We also discussed the prohibitions of 18 U.S.C. 203 and the circumstances under which it would apply. We discussed his obligation to file a termination report no later than 30 days from his last day in service and I suggested that the best day to file would be his last day for which he is paid which will be November 7. A copy of the email sent to him is in the file. (b) (6) October 23, 2008

70. (b) (6) of JMD (b) (6)) called to ask whether a contract employee who is leaving must have an exit ethics briefing. I checked with (b) (6) who said we do not do outbriefings or advice for contract employees. I called (b) (6) back and so informed her. (b) (6) October 24, 2008


71. (b) (6) (JMD) sent an email asking if there was any problem with her husband volunteering to work at the polls on election day. Through an exchange of emails, (b) (6) indicated that he is retired and was never a federal employee. He had asked her because he did not want his political activity to cause a problem for her. I told her he was not subject to the Hatch Act and could volunteer at the polls. I also told her that she would have to be careful if some political activity that he was involved in included her. The email exchange is in the file. (b) (6) October 24, 2008

72. (b) (6) (NSD) sent an email that raised several questions with respect to a GS-15 career attorney who works on some matters related to the transition and wants to send a resume to a transition official in the hopes of getting a new position at DOJ after the election. (b) (6) and I discussed and then we talked to (b) (6) and concurred with his conclusions regarding the following issues: (1) that the restrictions on use of nonpublic information would apply in the context of his job search; (2) that the firm or company that the transition official was with would be a prohibited source; and (3) that the attorney should either recuse himself from further participation in transition matters or discuss his job application with his supervisor. (b) (6) October 24, 2008

73. (b) (6) JMD OSS (Bicentennial Bldg. (b) (6)) called with a question about a going away party to be held this Friday. They want to order pizza and have it in the office with a group of possibly 15 people for a contract employee whose last day is Friday. She is resigning from the company and going to work for another federal contractor that is closer to her home. The group has about 6 contract employees and maybe as many as 12 regular employees. They want to send out a flyer by DOJ email to this group announcing a pizza party in the office (Armands) and requesting a \$10 contribution to pay for the pizza, some drinks, plates etc. from anyone who would like to come. They may also want to have some type of gift basket but (b) (6) did not know whether they were going to buy a gift basket (like a fruit basket) or simply set out a basket and people could fill it with individual gifts. Either way he expected it to be modest in

nature. He also wanted to know if it was alright to send out the announcement using the government email. I discussed with (b) (6) and advised (b) (6) that it was permissible to hold the event and request an amount to cover the cost of the event. It was also permissible to use government email to send out the announcement but it should not be sent by a supervisor. It could be sent by a non-supervisory government employee or by a contract employee. If there was any money left over after the purchase of the pizzas etc., it should not be given to the contract employee in the form of cash but it would be permissible to use the leftover money to buy a Starbucks card, a Barnes & Noble card or some similar gift card. I asked (b) (6) to let me know what was planned for the gift basket. (b) (6) October 28, 2008

74. (b) (6) OSG, Impartiality determination. I emailed (b) (6) the following recommendation: Pursuant to 5 C.F.R. 2635.502, (b) (5)



(b) (5)

(b) (6) approved. (b) (6) October 28, 2008

75. (b) (6) JMD, Hatch Act. (b) (6) would like to know if a DOJ contractor placing a political candidates poster or bumper sticker on the exterior of his/her storage locker in the MJB would constitute a violation of Hatch Act restrictions. I advised (b) (6) that the Hatch Act applies to federal employees, so the Act would not prohibit a non-employee from displaying a poster or bumper sticker on DOJ property. However, (b) (6) advised that as a contract matter, DOJ controls the space which Contractor personnel occupy on DOJ property, and may ban partisan political activity by contractor personnel while they are in DOJ space. We think that contractor personnel should abide by the same rules that govern DOJ. (b) (6) October 27, 2008

76. (b) (6) (b) (6), Interpol: Hatch Act/use of government equipment. Can an employee fax his request for an MD absentee ballot from work? Deadline is midnight. (b) (6) reviewed the application, there was no party affiliation mentioned, and the request was to send the ballot to a residential address, not to a work one. However, (b) (6) expressed his preference to the employee to use a nongovernmental fax machine - there was plenty of personal time before midnight to do so. The employee was amenable to that suggestion. Checked with (b) (6) who was concerned that there might be an effort in the office to highlight the midnight deadline either through discussions or emails, or collective activities going on regarding absentee ballots. Confirmed with (b) (6) that there was not, it was unique to this employee's circumstances. Even though this might be less problematic and nonpartisan, and perhaps a permissible de minimis use of the fax, I discussed with (b) (6) that our office agreed with his preference that the employee use a nongovernmental fax machine to request his absentee ballot. (b) (6) is appreciative of our advice. (b) (6) October 28, 2008

77. (b) (6) NSD, Hatch Act question. After consulting with me yesterday, (b) (6) sent out an email regarding political discussions. This has generated another question, specifically, what parameters are placed on an NSD employee (i.e., an employee with additional Hatch Act restrictions) as they relate to radio call-in shows. (b) (6) thinks that if the employee does not identify where he/she works (apparently on these shows, the person is asked his/her first name and city where he/she lives), then the employee can state his/her reason why he/she is voting for a particular candidate. However, depending on the political bias of the call-in show host (and (b) (6) presumes their employee wants to call in to counter what is being advocated by the host), then the employee could easily cross the line and begin advocating why someone else should vote for the candidate of the employee's choice. If the employee is baited by the host, then (b) (6) thinks the line will be crossed, even if the employee in good (b) (6) never intended to do so. I advised (b) (6) that I think she's right, that it's possible and in some situations likely, that they will cross the line into prohibited partisan political activity. The fact that they are not

identified as a DOJ/NSD employee does not affect the fact that they may not engage in prohibited activity. So, if someone does not believe he or she absolutely can stay within the statute they should not call in to these shows. She will advise the employee. (b) (6) October 28, 2008

78. (b) (6) OIPL, (b) (6), called with a question about signing bonuses and moving allowances. She has an interview for a position as an associate with a law firm in Huntington, WV on November 11, 2008. She will be paying for her own travel expenses to go to the interview. But she wanted to know if it was permissible to accept a signing bonus from the firm and an allowance for moving expenses if she were to receive those payments prior to the time that she leaves government service. I discussed with (b) (6) and called (b) (6) back and told her that those payments could be accepted. She asked about reporting on her termination report. She said she is an SF-278 filer. I said she would have to report the arrangement for employment with the firm and report the bonus and moving allowance. I said the ideal date for filing the report would be her last paid work day for DOJ. She said she would get a copy of the form from (b) (6). (b) (6) October 29, 2008

79. (b) (6) OIPL, (b) (6) called with a question about a gift she received in April 2006. She received a scarf from (b) (6), a person who works as a consultant for victim rights groups and is a prohibited source. (b) (6) said at the time she asked (b) (6) if she could keep the scarf and (b) (6) asked her what was the value of the scarf. (b) (6) has no documentation of any further discussion of the question with (b) (6) and can't recall if she got back to (b) (6) or if (b) (6) gave her any further advice. She did not know whether she still had the scarf or not. I asked her to try to determine the value of the scarf. She called (b) (6) and (b) (6) said it cost her \$5. (b) (6) bought a number of scarves when she was in Vietnam. (b) (6) told (b) (6) that she was aware of the \$20 limit on gifts to federal employees and purposely bought less expensive scarves. Although the exception requires a determination of the market value of the gift, not its cost to the prohibited source, in this case there is a very high probability that the market value of the scarf was less than \$20. I discussed with (b) (6) and advised (b) (6) that the gift issue was resolved. (b) (6) email on the value of the gift is in the file. (b) (6) October 29, 2008

80. (b) (6) (b) (6) participation. (b) (6) contacted me to make sure his acceptance of an invitation to the Thurlow Gordon Lecture at Dartmouth was ok to accept. Given that there will be a change in administration (b) (6) will likely be gone by the time of this lecture. I advised (b) (6) that there is no problem with him accepting now. The fact that the public lecture is free alleviates concern about misuse of his position. If he does leave before the event, we ask that the school use "former" on any materials promoting or publicizing his participation. (b) (6) October 29, 2008

81. (b) (6) CRM, Free attendance at conference.

82. (b) (6) OIPL, seeking employment. (b) (6) had submitted her resume to the National Center for Missing and Exploited Children several months ago, the 60 days without response has

since passed. However, she recalled that while her resume was still active she had spoken on a DOJ panel about trafficking issues and the Innocence Lost program - with which DOJ is partners with NCMEC. She was concerned discussing these issues was a violation. I told her since she was merely speaking about DOJ policy and programs and her speech had no effect on NCMEC, other than perhaps raising awareness of the Innocence Lost program, that it was ok. (b) (6) October 31, 2008.

83. (b) (6) PAO, Interview request. (b) (6), part of the public relations team for the (b) (6) spoke with (b) (6) at the Washington Post who is interested in speaking with (b) (6). He'd like an update from her on any cyber crime investigations she is working on and how she is working with industry organizations like (b) (6). I advised (b) (6) that my reaction is that a joint interview is not desirable for a couple of reasons. First, we do not have a "partnership" or other relationship with (b) (6) but it's still in vogue to portray relationships in that way and I think a joint interview tends to support that kind of portrayal. We the crabby ethics folks have always objected to the characterization as inaccurate and potentially misleading -- we are the government, others are not. DOJ and (b) (6) are organizations with distinct interests, although we have some things very much in common. A joint interview tends to indicate a relationship that doesn't exist, e.g., a partnership. Also, the purpose of the interview would not be to discuss or debate the relationship between DOJ and (b) (6) but I think that is what could happen especially if you have a good reporter asking the right questions. The time for that kind of debate or discussion would not be with the press. So, if we want to cooperate with the article, I recommend we meet with the reporter separately from (b) (6) (b) (6) October 31, 2008

84. (b) (6) Tax, (b) (6) called with a question about advice on ethics issues arising in connection with Transition Team activity. At the DOJ awards ceremony, (b) (6), mentioned to her that a career trial attorney in Tax is interested in serving as a member of the Transition Team with regard to staffing the Tax Division. (b) (6) has an official role in relation to the Transition Team. But this question has not come to her yet. She wanted to know if DEO would be putting out any guidance on dealing with ethics type issues in relation to the Transition. I discussed with (b) (6). Called (b) (6) back and left a message for her that DEO would be putting out a "Q&A" document on this subject. (b) (6) October 30, 2008

85. (b) (6) ENRD, (b) (6), called on 10/28/08 with a post-employment question. A former DOJ attorney is now the General Counsel of an agency of the District of Columbia government that is DC's own environmental agency. While at DOJ she worked personally and substantially on an ongoing case that resulted in a consent decree. She might be dealing with the Washington DC sewer authority and perhaps also deal with Montgomery County, Maryland. (b) (6) has a question about the interpretation of 18 USC 207(a)(3) which purports to "clarify" the restrictions in 207(a)(1) and (a)(2) as they apply respectively to employees of the executive branch and employees of DC. I discussed with (b) (6) and (b) (6) discussed with (b) (6) and obtained an "informal opinion." I advised her that the former employee could deal with other parts of the DC government such as the sewer authority assuming it is not a federal entity. Also

the former employee could contact Montgomery County or state officials. She could work behind the scenes. But she could not contact DOJ, EPA or any other federal agency or appear in federal court. (b) (6) said the employee was checking with the DC Bar about bar rule issues. (b) (6) said this matter would require client consent which in this case would be a decision of the head of ENRD. She opined that it would be rare to give such consent. (b) (6) then tacked on a question about whether locality pay is included in determining whether 207(c) applies. I sent her an email with a reference to 5 CFR 2641.104 which indicates it is not included in rate of basic pay and so a GS-15-10 in DC would not be subject to 207(c). I also said that with respect to the question of the employee now working for DC that she should be careful to ensure that there were no federal employees present if there were a group of people at a meeting. Emails are in the file. (b) (6) October 30, 2008.

86. (b) (6), ODAG, Election night activity. (b) (6) fiancée is an associate counsel in the (b) (6), and has been invited to attend an "election watch" at the Capitol Hilton tomorrow evening, which will be sponsored by the Republican National Committee. It starts at 7:00 p.m. She has asked if he would accompany her. If he did so, it would be strictly as her fiancé, without any reference to his position at DOJ. Since this is a post-election event without any intent to affect anything, it strikes him as unlikely to violate the Attorney General's guidance; on the other hand, it is obviously a partisan event, and the election will still be ongoing in some parts of the country. I advised (b) (6) that the Attorney General's memo of August 4 states that non-career appointees may attend events on the evening of Nov. 4 without further approval (see last sentence), so you he attend. (b) (6) November 3, 2008

87. (b) (6) Records Management: approval to accept waiver of conference fees. AIM (Assoc of Information Managers) She is going to be a speaker on a panel in Philadelphia in March - is it OK to accept the waiver of the fee for the same day she is speaking - she originally thought she would be attending the entire conference and seeking approval to accept waiver of the entire conference fee, but turns out she will only be there the day she is speaking. Does she need approval to accept the one day fee waiver? (b) (6) says it is ok - she is speaking in her official capacity and DOJ is paying her train fare. (b) (6) November 3, 2008

88. (b) (6) ATF, Hatch Act. Does the AG's memo of August 4th prohibit the confidential assistant to their Director, who is a Schedule C, from attending an Obama rally tonight with his girlfriend? Yes, it does. As a Schedule C, he is further restricted as are all political appointees - regardless of grade or title. He can go to a political event tomorrow night, and does not need to seek approval, but not tonight. (b) (6) states he is a public financial disclosure filer because he is a schedule C, but (b) (6) reminded me that confidential assistant is one of the OGE exempted positions for SF278 filers. I did not go into the filing status of the confidential assistant with (b) (6) as he really needed to return this Schedule C's telephone call immediately to tell him he could not attend tonight's rally. (b) (6)) November 3, 2008

89. (b) (6) (b) (6), WAG. I emailed the following to (b) (6) for approval: The (b) (6) has been invited by former SG (b) (6) and his firm, (b) (6), to a

reception at [REDACTED] on Nov. 6 to recognize (b) (6) 50th argument before the Supreme Court. (b) (5)

[REDACTED]

(b) (6) approved. November 4, 2008

90. (b) (6), a research assistant in IGPL who is a Schedule C and works as the intern coordinator in the office called to ask how he should respond to people who inquire if there are any intern positions available. This past semester they did not have any interns. He seemed to be concerned about saying something that would have political overtones. I asked him what they said to people who inquired this past semester. He said they simply told them that there were no intern positions at this time. I suggested he use the same language. (b) (6) November 4, 2008

91. (b) (6) JMD. Hatch Act. (b) (6) reported he had been receiving a number of political calls on his DOJ phone number. He counted 7 in the past few days. He said most were "robocalls" but he had one from the Obama campaign today asking if they could count on his vote. I advised him that if anyone else calls he should tell them it was a federal phone line and they needed to remove the number from their lists. I asked him if he could think of how the campaigns got his phone number and he said maybe from a government email newsletter. I told him to think about whether he might have used his office number for anything (signing up for something, etc) that might have resulted in the campaigns getting the phone number. (b) (6) November 4, 2008.

92. (b) (6) NSD, (b) (6), asked a recusal question regarding a new employee in the Division. (b) (6) is a Victim Outreach Specialist, who works for (b) (6) in the Office of Justice for Victims of Overseas Terrorism (OJVOT). (b) (6) herself is a victim and potentially could be called as a witness in a pending case in the Counterterrorism Section. Aside from not doing work on the case in which she could be a witness, (b) (6) wanted to know if there were other matters (b) (6) should be recused from. I asked her to obtain more background information which she did. (b) (6) was working as a teacher in Indonesia when the incident occurred on August 31, 2002. A convoy of cars was traveling along a road when it was ambushed by the Free Papua Movement or OPM. Her husband was in the front car and was

killed. She was also attacked and was wounded along with 7 other Americans and 3 Indonesians. The case was investigated by the FBI and an indictment against a national of Indonesia was returned by a grand jury in the District of Columbia in July 2006. Subsequently, this individual was tried and convicted in Indonesia and is currently serving a life sentence in an Indonesian prison. The indictment here in the U.S. is still pending and will remain an open matter indefinitely. I discussed with (b) (6) I advised (b) (6) that it would be a good practice to memorialize this matter in a short memo indicating that the employee and/or her supervisor should notify an ethics official if any matter came along that involved OPM. (b) (6) said that she would do that. (b) (6) November 5, 2008.

93. (b) (6) HR, JMD, Hatch Act. (b) (6) called wanting to know if receiving emails with photos or other things about President Elect Obama was a violation of the Hatch Act now that the election is over. I told her it probably wasn't a Hatch Act violation since any photos, stories, etc would not be in support of a partisan election. However, I told her that depending on the quantity and type of emails, it may still not be appropriate to receive these emails at her work address. I discussed the de minimis use rule with her and suggested that if these emails were more personal in nature that she should use a personal email address to receive them. (b) (6) November 2, 2008.

94. (b) (6) a Schedule C employee and SF-278 filer in the OAG, (b) (6), called with a question about the permissibility of accepting a signing bonus from a law firm. She expects to be leaving DOJ near the end of December or no later than January 20, 2009, and she is about to initiate a job search. She had interviewed with some firms prior to September 2008 but she says she does not have any job discussions underway at the moment. She had been a Supreme Court clerk and she says that many law firms have a policy of granting signing bonuses to former clerks. I said that a signing bonus would not raise an issue under 18 USC 209 unless it was intended to compensate her for her current government services as a DOJ employee. A signing bonus because someone had been a Supreme Court clerk would not be a problem. We also discussed some other issues related to searching for a job. She had attended one of the political outbriefings and she felt she had a good understanding of the rules about seeking employment and her recusal obligations. We discussed the acceptability of reimbursement of interview related expenses and moving allowances. We also discussed financial disclosure issues with regard to an arrangement for employment, travel reimbursements, and reporting the signing bonus is she received it prior to her departure. We discussed the ideal date on which to file a termination report, i.e., her last day of paid government service. She would be going to a firm as a salaried employee not a partner, but I reminded her of the 203 restriction. (b) (6) November 6, 2008

95. (b) (6) ENRD (b) (6) called to clear a draft waiver for (b) (6), a trial attorney in the Environmental Enforcement Section. He has been involved for a number of years in a CERCLA case dealing with the Lower Fox River and Green Bay site that involves remediating PCB's in the water. In another case related to the site, Proctor and Gamble has recently been drawn in as a party. (b) (6) owns (b) (6) shares of P&G stock valued at approximately (b) (6), a value only slightly in excess of the \$15,000 exemption. I told (b) (6) this was a good candidate for waiver approval and worked with her on the language of the draft waiver documents. (b) (6) made the suggested revisions to the waiver documents. I reviewed the revised request and authorizing memorandum and all of the requested changes were made. (b) (6) sent an email saying that she had replaced one sentence in the recommendation memorandum which replaced a sentence referring to the employee's dedication and integrity with a sentence describing the review of his work as requested. The draft waiver documents are in the 208(b)(1) waiver file. (b) (6) was going to go forward and consult with OGE as required by regulation. (b) (6) November 6, 2008

96. (b) (6) EOIR, Outside Activities. (b) (6) called regarding (b) (6), an EOIR attorney who is on detail to OLP. (b) (6) had previously approved (b) (6) to be a member of the Immigration and Naturalization Committee of the ABA Administrative Law section. However, (b) (6) recently discovered that Lisa was serving as co-chair of this committee and had co-authored the Immigration section of "ABA Developments in Administrative Law." OLP did not see a problem with the co-authorship but EOIR did. (b) (6) sent a draft email to (b) (6) to our office for review. The email advised that she could not continue to be co-chair and that she should not co-author the article. I revised the email and sent it back to her. Email is in the documentation file. (b) (6) October 31, 2008.

97. (b) (6) OSS, JMD. Post Employment. (b) (6) is leaving OSS and going to DEA. He served as a COTR while at OSS and managed two groups of Kors. He will be a COTR at DEA but it is not the same contract or contractor. I told him since he was not leaving government service, he should not encounter many conflicts. I told him when he retires (he is planning to do so in 4 years) he should probably give us a call to review any restrictions that may still stem from him time at DOJ. (b) (6) November 5, 2008.

98. (b) (6), OIG. Appearance question. (b) (6) has a whistleblower case where an individual is requesting whistle blower protections based on a protected disclosure she made alleging her supervisor had violated 2635.101(b)(14) - the appearance standard. (b) (6) wanted to know if this is a punitive standard - which could have a whistle blowing claim based upon. I talked to (b) (6) and he recalled there being MSPB cases where individuals were punished for violating 2635.101(b)(14) and also gave me some materials from (b) (6) testimony on the Hill regarding the standard. OGE has stated that it is enforceable under the Standards of Conduct. I relayed all of this to (b) (6) (b) (6) November 6, 2008.

99. (b) (6) DEA. Hatch Act. (b) (6) called wanting to know how to refer a violation of the Hatch Act to OSC. An employee at a DEA lab (b) (6) walked into her supervisor's and deputy supervisor's office last week and handed them a printed out email entitled "Just Because He's Black", which listed reasons why individuals should vote for Barack Obama. She told the supervisor she knew that she could not email it to him, so she was handing it to him. The email had been printed out from her government email. I told (b) (6) to pull together all the facts and contact numbers of the pertinent people and send it to us. We would put it together in a memo for referral to OSC. He asked if he should have the employee's email account frozen or copied by IT and after conferring with (b) (6) I told him to go ahead. (b) (6) November 6, 2008.

100. (b) (6) HR JMD. Gift question. (b) (6) called regarding a supervisor who gave a non-supervising employee (not in his chain of command) a \$100 gift card for a job well done. The employee reported it to her supervisor because she was not sure if she could keep it. We advised that it is not against the gift rules because the gift giving employee was superior to the other employee but that the supervisor should be talked to informally and told that this may not be an appropriate gift and that a \$25 gift card may be more appropriate in this situation. It may create the appearance that the supervisor is expecting preferential treatment from the employee in the future. (b) (6) November 6, 2008.

101. (b) (6) ODAG. WAG. (b) (6) was invited to the Federalist Society Lawyers' Conference Annual Dinner on Nov 20 by a personal friend. The friend works at Allston Bird and the table at the dinner has been purchased by Allston Bird. (b) (6) believes he was invited because of his personal relationship with this attorney, as well as because the Attorney General is the featured speaker and his friend thought he would be interested. Conferred with (b) (6) and decided that may be approved as a WAG and prepared a memo for (b) (6)

UPDATE: (b) (6) called today and said he was uncomfortable with the idea of having to worry about this gift for as long as he was at the Department and felt it may be an issue if he went back to being a prosecutor. I explained that as a WAG is was an exception to the gift rules and that it would not create any need for recusal at this time, or in the future. (b) (6) still decided he would rather pay the \$150 entrance fee and attend on his own, instead of taking the gift of attendance from Allston Bird. (b) (6) November 7, 2008.

102. (b) (6) would like to attend the Federalist Society's Lawyers Convention Annual Dinner, a WAG, featuring (b) (6), on November 20, 2008. The Federalist Society, the sponsor itself, has offered to waive the \$150 fee for her attendance at the annual dinner. (b) (6) would like to know if she may accept the waived fee. I advised that I recommended approval and (b) (6) approved. (b) (6) November 7, 2008

103. (b) (6) OVW. Hatch Act. An employee asked (b) (6) if she could display a photo of President Elect Obama and his family. Referencing the OSC Hatch Act workshop at the OGE conference, I advised that it would be ok to display the photo because the President-Elect is

no longer a candidate. The employee should be advised that the picture should not grow into a "shrine" type presentation that may be distracting to other employees and that it may need to be removed once the presidential campaign begins again in three years. (b) (6) November 12, 2008.

104. (b) (6) OARM. Fundraising. (b) (6) had a question regarding a volunteer event next week entitled "Fall into Giving with Give Back Alexandria," which supports the Friends of Alexandria Mental Health Center and the Reading Connection. The event involves a drive for donations of clothing/food/toiletries/books. She wanted to send an email to her office asking if people wanted to donate. I advised that it would be inappropriate to send an email out to everyone, but that if (b) (6) okayed it she may post a flier about the fundraiser in a public location of the office, such as an employee bulletin board or the kitchen/break area. (b) (6) November 12, 2008.

105. (b) (6) (OLC, (b) (6)) called to ask about WAG approval for an upcoming dinner sponsored by the Federalist Society to be held I believe on November 20. He was asking about whether there was a blanket approval for the event. I reviewed prior advice on this event and told (b) (6) that it was still necessary to look at the specific facts as to who was providing the gift of free attendance. He said that was fine and he would just go ahead and follow the regular procedures for WAG approval which may have been for the head of his office to attend. (b) (6) November 7, 2008

106. (b) (6) (DEA, (b) (6)) called to ask if the WAG request he had submitted for the Administrator had been approved so that she could attend a \$35 luncheon at the meeting on Sunday, November 9, 2008, of the International Association of Police Chiefs. I tried to reach (b) (6) and had to leave a voice mail message, but (b) (6) did approve. (b) (6) November 7, 2008

107. (b) (6)) called to ask about the status of the clearance of acceptance of the Avery Award from the Legal Aid Bureau in Chicago by (b) (6). The conflicts review had been completed and the only remaining question concerned the materials announcing and promoting the event. (b) (6) sent the galleys of the invitation letter to the awards dinner and the announcement. The letter contained one sentence indicating that (b) (6) was the recipient of the award. The announcement contained one line indicating (b) (6) was the Avery Award recipient. The materials did not associate (b) (6) with any fundraising activity. The ethics review of these materials was completed on Monday, November 10 and Mr. (b) (6) could then proceed to have the letter and announcement printed. The emails and background material are attached. (b) (6) November 12, 2008

108. (b) (6) (BATF, (b) (6) sent an email with a question about use of position and title. (b) (6), a (b) (6) in the (b) (6) Field Office, sought guidance from (b) (6) in connection with his plans to establish a scholarship at (b) (6) in memory of the (b) (6) students who were murdered in Newark New Jersey. (b) (6) did not believe that he should use his DOJ position or title in connection with the establishment of the scholarship. (b) (6) is a graduate of (b) (6). I agreed that he could not refer to his DOJ position and title in connection with this outside activity. We also discussed that he should not use his title in connection with promotional or fundraising activities and that he could not promote the scholarship in the federal workplace. He could use his relationship as an alumnus as a platform to promote the scholarship. He could say something generic such as that he had a career in law enforcement. But he could not refer specifically to his position as a SAC or to DOJ. We discussed that he would have to keep his DOJ position out of publicity for the scholarship. And that he would have to observe all of the other rules regarding misuse of position in terms of not using government time, resources etc. to promote the scholarship. (b) (6) said that (b) (6) had no involvement in the investigation of the crime which he thought did not involve federal investigators. The email is in the file. (b) (6) November 12, 2008

109. (b) (6) (OVW (b) (6)) called at the end of the day on Friday (11/07) to ask when the new annual ethics training material would be available. I checked with (b) (6) on 11/13 and called back and left a message saying that the training materials would be available soon and would be sent out to the DDAEO's. (b) (6) November 13, 2008

110. (b) (6) (Civil (b) (6)) called to consult on a 502 authorization to permit the (b) (6) to participate in a meeting on November 13, 2008 on a case involving Pfizer. The (b) (6) only learned the day of the meeting that an attorney from Ropes and Gray would be attending. The (b) (6) is a part-time associate in the Boston office of Ropes and Gray where she works in the trusts and estates practice. She has no involvement in the case. (b) (6) sent the draft authorization which I told him looked acceptable. The final sentence said that DEO concurred in the authorization. I discussed the draft authorization with (b) (6) who said it would be okay to include that sentence. I called (b) (6) and said he could do so. The email with the draft authorization is in the file. (b) (6) November 13, 2008.

111. (b) (6) (NSD) called with a question about (b) (6) who is the new Victim Outreach Specialist in the OVT office of NSD. (b) (6) was invited to attend a luncheon on November 14 that would feature the President of Indonesia. (b) (6) had been the victim of a terrorist attack in Indonesia when she was working as a teacher there. The event is being sponsored by the Indonesian Chamber of Commerce Asia Society. She was originally going to attend in a private capacity but NSD determined that they would send her there officially in her role as a Victim Outreach Specialist. NSD would pay for the luncheon ticket of \$100. (b) (6) was calling to ask how (b) (6) could identify herself at the event. Could she say that she was working as a Victim Outreach Specialist with the Department. I said that since she was

participating officially (she was not taking leave to attend) and NSD was in effect sending her to the luncheon, that she could identify herself as an employee of the Department. (b) (6) November 13, 2008

UPDATE: 11/14/08 I discussed with (b) (6) and asked (b) (6) on November 14 if there had been an analysis of the appropriations question of using federal funds to purchase a lunch. (b) (6) said that (b) (6) had put it on her personal credit card and that her supervisor had said NSD would reimburse her. But there had been no analysis under appropriations law. So unless they could determine that such an expenditure was permissible (which was not likely), (b) (6) would attend the lunch as a personal activity and pay for it herself. Emails are in the file. (b) (6)

112. (b) (6) (NSD) called to ask about a brown bag lunch that was going to be held on December 5 that was organized by the National Center for Victims of Crime. (b) (6) did not have all the facts and did not know if anyone else would be there other than people from the National Center and some the Department's Office of Victims of Terrorism. She wanted to know if they could allow the National Center to provide a brown bag lunch in connection with the meeting. We discussed the possibility of using the \$20 exception if the lunches were not expensive. It did not seem that other gift exceptions would be available for this type of event (i.e. WAG). (b) (6) was going to get more information and said she would call if she had additional questions. (b) (6) November 13, 2008

113. (b) (6), OIG, outside practice of law question. One of her attorneys wants to represent her brother in a landlord tenant dispute over rent payment. Uncompensated. Her brother's apartment had a leak issue, and he was told by the property manager to deduct amounts from his rent, unbeknownst to the landlord who objects to receiving reduced rent. The attorney wants to help her brother work it out before the whole situation gets worse (failure to pay rent, etc.) (b) (6) did not know from whom or how to request approval for this outside practice of law. We discussed "in the nature of community service" and its more broad interpretation here at DOJ. Checked with (b) (6) - as long as the useful nature of the service is stated and (b) (6) agree that it is an appropriate matter for a DOJ attorney to be involved in it's OK, and it's not necessary to get DAG approval - the IG's approval is sufficient, with (b) (6) recommendation. Showed (b) (6) on our website where the reg is and a sample approval memo. (b) (6) November 14, 2008

114. (b) (6) ODAG, WAG/Seeking employment question. (b) (6) advised (b) (6) that he has been invited to sit at the Kirkland and Ellis table at the Federalist Society dinner next Thursday, November 20. They've also offered to pay for the cost of the seat (\$150) as a recruiting dinner. The AG is the featured speaker at the dinner. (b) (6) has recused himself from all Kirkland matters so that he could talk to the firm about future employment. Thus far that's amounted to having a cup of coffee (that he paid for himself) with a partner at the firm. (b) (6) would like to know if (b) (6) approves him accepting the invitation to sit at the table and if he may let the firm pay for his seat. I advised (b) (6) that if (b) (6) is seeking employment with the firm and has recused from all matters affecting the firm, the regulations allow him to accept gifts that would otherwise be prohibited, as part of the recruiting process. As long as

(b) (6) does not have a concern about him being seen seated at Kirkland's table, I recommended that (b) (6) approve him to accept the invitation and the gift of free attendance from the firm. (b) (6) November 14, 2008

115. (b) (6) ODAG, Gift acceptance question. (b) (6) received a book, "Welcome Malta to Europe, 360" from the Maltese AG as thanks for work that he participated in concerning Malta's entry into the Visa Waiver Program. If possible (b) (6) would like to keep the book, but needs to know from us whether or not he can. He checked online to see what the purchase price of the book was and it is about \$125 (100 Euros). I advised (b) (6) that the de minimis limit for a gift from a foreign gov't official is \$335, so he may keep the book. (b) (6) November 14, 2008

116. (b) (6) CRT, speaking engagements. (b) (6) called with questions regarding how he goes about approving speaking engagements for (b) (6). He is the alternate DDAEO for (b) (6) and has not done any of this type of request before. I had him send me what he was looking at so I could walk through it with him. We talked about checking for conflicts with the group that was requesting (b) (6) to speak, and then talked about the specifics required if the event were a fundraiser. I directed him to 2635.808(a)(3) for the fundraising language. (b) (6) November 17, 2008.

117. (b) (6) BOP. 1353 travel reimbursement. (b) (6) called regarding a trip to China a member of the executive staff was invited on. He would be speaking at a seminar there and the trip would be paid for by the University of Maryland. Members of the BOP staff have gone the past two years, but this is the first time it is an assistant director, not the director. She needed to know who can approve that. The component head can approve travel for those below them in their own component. (b) (6) November 18, 2008.

118. (b) (6) (b) (6) had a 502 question. An attorney who coordinates a number of Nuclear Regulatory Commission cases has a brother-in-law who is an attorney in the DC office of Entergy, a company that just recently intervened in the cases. (b) (6) was seeking concurrence in their view that under the circumstances of the case, this close personal relationship would not create an appearance of loss of impartiality. The brother-in-law does not work on the cases and the Entergy lawyers working on the cases are in New York. I discussed with (b) (6) and told (b) (6) that we concurred that recusal was not necessary. I asked her to be sure to document their analysis in the file which she said she would do. The emails are in the file. (b) (6) November 17, 2008

119. (b) (6) (b) (6) had a recusal question. (b) (6) the (b) (6), is interviewing with a law firm. The firm has GTMO clients who have sought a review in the DC Circuit of issues arising under the Detainee Treatment Act. The case is (b) (6). The firm is not involved in (b) (6) but is representing the GTMO clients in their habeas petitions in DC District Court. The outcome in (b) (6) could affect the rights of the firms GTMO clients. (b) (6) wants to know if he must be recused from participating in (b) (6). I discussed with (b) (6) and told (b) (6) that there was a question under section 208 to be resolved but that even if

the criminal statute did not apply there would be a serious appearance question and that he should recuse. (b) (6) communicated this to (b) (6) who accepted the analysis. The emails are in the file. (b) (6) November 17, 2008

120. (b) (6) (Personnel, JMD) called with a question about gifts to a superior. She wanted to know if she could give a gift of a \$10 gift card at Corner Bakery to her supervisor on the occasion of the supervisor's birthday. I confirmed that the card could only be used for purchasing merchandise at Corner Bakery and told her that there was a gift exception that permitted gifts to a supervisor valued at \$10 or less on certain occasions such as a birthday. OGE has not viewed gift cards that can only be redeemed for merchandise at the store issuing them as the equivalent of cash. (b) (6) November 18, 2008

121. (b) (6) ODAG, WAG. I emailed the following to (b) (6) The 2008 Federalist Society Annual Dinner will be held at the Marriott Wardman Park on November 20, 2008. (b) (5)

(b) (5) explain the Department's policies to other attendees. Further, he advises that he

approved. (b) (6) November 18, 2008

122. (b) (6), CRS, gifts. (b) (6) asked if a law firm could pay for his travel expenses if he was traveling to an interview. I told him that there was a gift exception for whatever is customary for the firm to pay in this situation, and that may include travel for his spouse. Also advised that if he did accept travel or other benefits, they would have to be reported on his 278. He had another question - his parents hosted a foreign exchange student who is now trying to get his green card. He was having difficulty and asked (b) (6) to assist either through DOJ or other official channels. I told him as a federal employee he is precluded from representing others back to the Federal government. I told him that there may be other restrictions that still apply even after he leaves Federal service but we could talk about those when he knew when he was leaving.

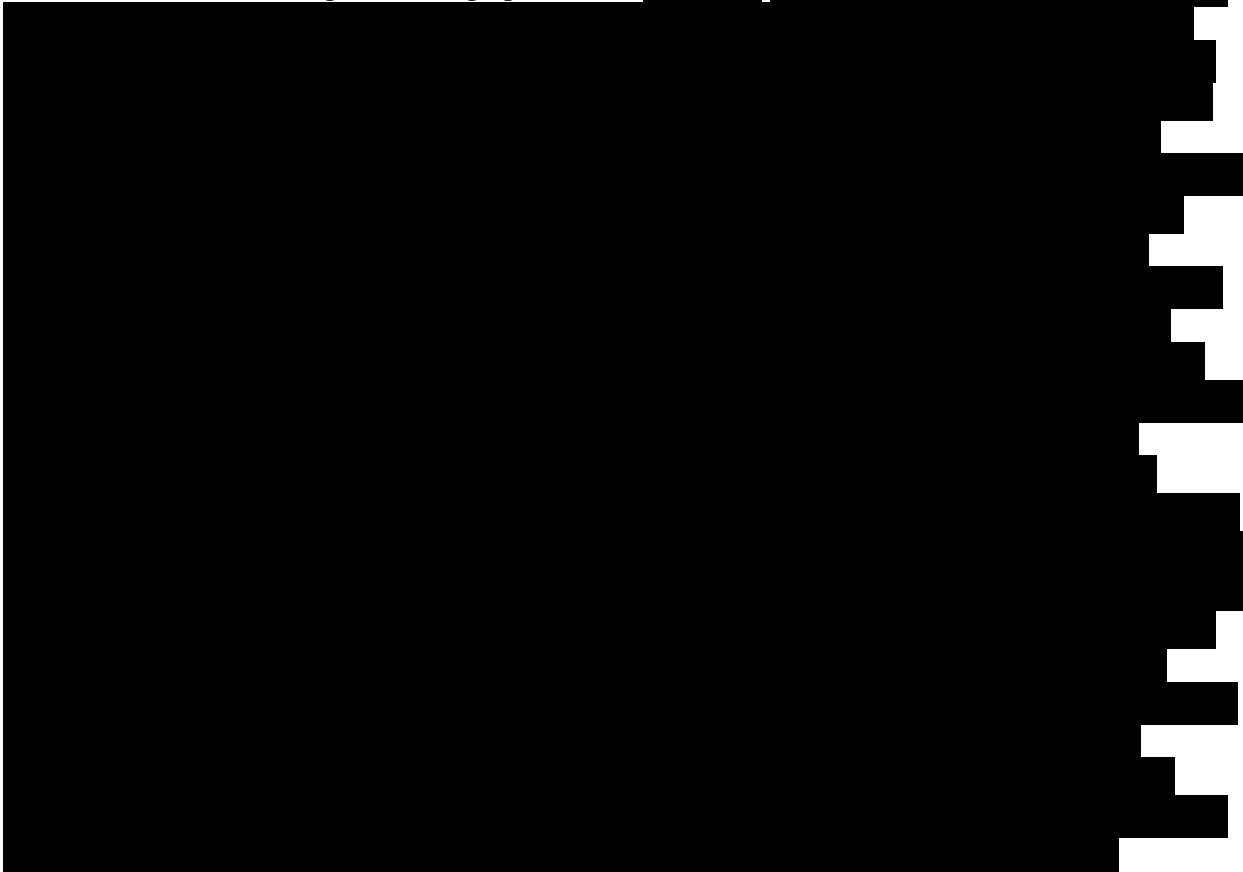
(b) (6) November 19, 2008.

123. (b) (6), FCSC, outside earned income. Can a PAS appointee be a part time adjunct professor at a local law school? No, PASers are prohibited from outside earned income. (b) (6) November 20, 2008

124. (b) (6) OPR, speaking engagement. (b) (6) called with one of his attorneys, (b) (6) who had been asked to speak to a group of students from her alma mater, Carleton College. (b) (6) had been told that someone in the Tax Division had arranged for a conference room for the group to gather in and that there would be someone else speaking to the group. Told (b) (6) that there was not a problem about (b) (6) speaking to the group about her work at DOJ but that he should double check with (b) (6) at Tax to be sure that she is aware of the use issue. (b) (6) November 20, 2008.

125. (b) (6) OSG, 502 determination. I emailed (b) (6) the following email for approval: Assistant to the (b) (6) seeks authorization to continue to participate as the line attorney in (b) (5)

(b) (6) two consolidated cases in which the issue is whether the Army Corps of Engineers properly granted a permit for the discharge of waste material associated with gold-mining operations. (b) (6)



(b) (5)

(b) (6) approved. (b) (6) November 21, 2008

126. (b) (6) (b) (6)) called on November 18 to request approval to attend the upcoming annual dinner being held by the Federalist Society on November 20 at which the Attorney General will speak. The cost of a ticket is \$150. A friend of (b) (6) who he worked with in the past and has known for some time invited him to attend the dinner. She works at (b) (6) and he would sit at the firm's table. He was not certain but believed the firm would be paying for the ticket. Currently, he is not working on any matters that involve (b) (6). I discussed with (b) (6) on November 19, and called (b) (6) back to find out if he expected that there would be any matters that he might be asked to work on between now and January 20, 2009. He said that his work involves the review of civil settlements and a firm like (b) (6) could be involved. But he is not aware of any such matter at this time. (b) (6) forwarded the request to Associate AG (b) (6) who did not approve the request of free attendance but permitted (b) (6) to attend and sit at the (b) (6) table provided that he reimbursed the firm for the ticket. The emails are in the file. (b) (6) November 20, 2008

127. (b) (6) (Civil (b) (6)) had a second question dealing with the detention cases. [See log entry 119 for related question]. (b) (6) wanted to know if he could participate in the moot court preparation with the OSG on the Kiyemba case, another GTMO matter. (b) (6) advised (b) (6) that he should not participate. The emails are in the file. (b) (6) November 21, 2008.

128. (b) (6) of EOUSA had submitted for an ethics review a request by (b) (6) an attorney currently in private practice with a small law firm (apparently in the DC area) who is going to start soon as an AUSA in Utah. (b) (6) had worked on a section 1983 case for a client that has gone to the 4th Circuit on appeal. The United States was not a party and had no direct and substantial interest in the case. (b) (6) was requesting permission under the supplemental regulation to complete a professional obligation by arguing the appeal in the 4th Circuit. The last issue to be resolved concerned the question of payment for his services in arguing the appeal and any collection of fees from the client or the court either by (b) (6) or by his firm. (b) (6)

eventually obtained more detailed information on the fee arrangement which he provided on November 20 in an email. I discussed with (b) (6) and talked to (b) (6) on the phone and sent a follow up email which indicated that (b) (6) could argue the appeal provided that neither (b) (6) nor the law firm would received any compensation from any source including the court for the time and services that (b) (6) provided on the appeal after he leaves the law firm. (b) (6) could be paid for past work that he has done and could receive a share of the 20% contingent fee again based on work done prior to his departure from the firm. The firm could be paid for the work that it did in connection with the appeal just as moot court preparation. The emails are in the file. (b) (6) November 21, 2008

129. (b) (6) (NSD (b) (6)) had a question about the CFC. She wanted to know whether certain types of promotional activities were permissible. She also wondered whether there was a person within DOJ who oversaw CFC activities. I discussed with (b) (6). Called (b) (6) and gave her the name and number of (b) (6) in JMD (b) (6). She said she would run the questions by him initially and if there were any issues that still needed to be resolved, she would get back to us. Some of the ideas were non-starters such as using 4 hours of administrative leave as a prize. The emails are in the file. (b) (6) November 21, 2008.

130. (b) (6) (NSD) called with an outside activity question. (b) (6) is on the project committee of the Friends of Sierra Leone.. The committee decides who gets funding for a project. (b) (6) wants to attend the next day. I discussed with (b) (6) and advised (b) (6) that (b) (6) could probably attend. However, she should not participate in funding requests from organizations that might subsequently come before her at NSD as it would require recusal. Also (b) (6) needs to be advised about fundraising rules and about representing an outside organization before the United States. The emails are in the file which provide more background. (b) (6) November 21, 2008.

131. (b) (6) originally called on November 6, 2008 with a question about use of government email. She wanted to know if she could use the DOJ email to communicate about a job with Pepsi. The email exchange with Pepsi occurred about a year ago. She said that an email she sent using her personal account bounced. She was trying to set up an interview so she used her government email that one time. She said (b) (6) had said it was permitted under the de minimis use policy. I had originally told (b) (6) that I was not certain that such a use was permitted. However, after discussing with (b) (6), I called (b) (6) back on November 24, 2008 and told her that such limited use would be permissible. She also raised a second question as to whether an employee is required to be recused if she is seeking employment with another executive branch agency, such as the Election Assistance Commission. I said the statute and regulation did not require recusal because the United States is not a "person" within the meaning of the applicable laws and rules. I said that State and local governments, however, would trigger a recusal obligation. However, I advised that it would be something to discuss with an ethics

official for some guidance on whether it would be appropriate to work on a matter that involved the federal agency you were looking for a job with. She was not looking for a job with a federal agency and she ended up accepting a job with a law firm in Huntington, WV, her home town.

(b) (6) November 24, 2008

132. (b) (6) (NSD) with a question as to whether NSD employees could allow the National Center for Victims of Crime to bring in a lunch during a meeting. The meeting is being held at NCVC offices at their request and will deal with victims issues. NSD has done a conflicts check which is negative. The value of the lunch per individual is expected to be less than \$20. I discussed with (b) (6) and called (b) (6) and followed up with an email advising that the NSD employees could use the \$20 exception to accept such a working lunch. The NSD employees need to track any other similar lunches that they might receive from the same source in order to ensure that they do not exceed the \$50 annual limit. The emails are in the file. (b) (6) November 24, 2008.

133. (b) (6) [?] from JMD called with a gift question. She wanted to know if their small office (about 5 employees) could pool their resources and buy a "fun" gift for their supervisor. She said it was for no special occasion. She said when this came up someone told her that they could not pool funds for a gift like that. I told her that group gifts could only be given on special, infrequent occasions such as a retirement or the supervisor moving on to a completely separate office. I told her modest individual gifts of \$10 or less could be given on an occasion when gifts are traditionally given or exchanged. But that there was no exception that would allow employees to contribute to a group gift on no occasion at all. (b) (6) November 24, 2008

134. (b) (6) (EEO, JMD) sent an email asking if she could attend Avue's Subscriber Community Event. Attendance would include a lunch, free parking etc. I sent (b) (6) an email reply indicating that if Avue is a contractor she cannot accept free attendance unless all of the requirements of the widely attended gathering exception are met. I outlined what they were and said if she wanted to seek approval she should let me know and I would provide more details on what was required. (b) (6) replied later in the day and indicated that she would not be attending the Avue event. Subsequently, a number of other employees received similar invitations and were advised by (b) (6) that the gift prohibitions were applicable and were advised as to what would be required in terms of approval before an employee could attend. Relevant emails are in the file. (b) (6) November 24, 2008

135. (b) (6) NSD. Holiday parties. (b) (6) emailed asking about a holiday party in the FIRS office. They want to have a holiday pot luck with a \$10 grab bag gift and wanted to know if they could include the contract employees who are in their office. I told (b) (6) that contractors can

attend social functions only in their personal capacity and not in a paid status. They may participate (bring and eat) in the pot luck but they could not be invited to participate in the gift exchange because this would be soliciting contractors for gifts. (b) (6) November 25, 2008.

136. (b) (6) OARM. Volunteering in personal capacity. (b) (6) emailed asking if she could work on the leadership team for "Give Back Alexandria" and help put together their fundraiser this year. I told her that I saw no problem with her working with the local group but that she had to follow certain restrictions including; no use of title or official position, no use of government resources and no fundraising within the office. (b) (6) November 25, 2008.

137. (b) (6) ENRD. Conflict of Interest. (b) (6) called regarding an attorney who is working on a Clean Water Act oil spill case. The defendant is Explorer Pipe Line. The attorney owns \$22000 in stock in Chevron. Chevron, through Chevron Pipeline, owns 16% of Explorer Pipe Line. I advised (b) (6) that there was a conflict and she should probably seek a waiver if the attorney were going to keep working on the case or sell stock so that her holdings were below \$15000. (b) (6) questioned whether a waiver would be appropriate because she felt she had been told that they should not ask for any more waivers. I discussed with (b) (6) and she said that the issue had been that they should not be using waivers to allow their employees to consistently have holdings that pose financial conflicts. In this case, if this is the only holding that may be a conflict, then a waiver is a possibility. I explained to (b) (6) and she seemed to understand. (b) (6) November 25, 2008.

138. (b) (6) CRT, use of official position. (b) (6) called with a paralegal who had recently traveled on official DOJ business. While on travel, she had been instructed by a FBI agent to park her car in a government lot. She parked her car there and it was towed. The towing company/impound lot will not release the car without her paying the fee unless she can show she was there on official government business. They asked for a letter from her supervisor on DOJ letterhead stating that she was at this location for official DOJ business. I advised that since the letter would only confirm that she was on official business and not there in a personal capacity, it would be ok to use the letterhead and official title. (b) (6) November 25, 2008.

139. (b) (6) (NSD) sent an email about an off-site retreat that OVT is planning for next week. He wanted to know if there were any potential ethics issues. I discussed with (b) (6) and sent him an email saying that we concurred in his view that the off-site did not raise ethics concerns. The email is in the file. (b) (6) November 25, 2008

140. (b) (6) called with a conflict question. Earlier this year she worked on a project to send out fact sheets to organizations that her office deals with providing information on the background of Administration nominees for federal judgeships. They were sent to groups like the Federalist Society, the Heritage Foundation, the ACLU etc. After two of the nominees had been confirmed as federal judges, (b) (6) encouraged the judges to talk to (b) (6) about a federal clerkship. She interviewed with the two judges but did not get a position. There was a

third judge who already had a clerk and so that did not develop. (b) (6) wanted to know if she had a conflict when she interviewed with the judges. I said that based on the timing alone there was not a conflict since the informational work she had done in connection with the nominations was completed before there was any contact with the judges about a possible clerkship. (b) (6)
November 26, 2008

141. (b) (6) JMD, Holiday Event contributions. The Controller staff is organizing the JMD Holiday Event but one of the issues that has come up, is the best way to handle the collection of the money for the event. The plan is for the SESers and the GS-15s to kick in for the food and beverages, so that the majority of JMD staff does not have to make a contribution and they can actually just come to the event and not have to worry about making a monetary contribution or even bringing in anything for a change. As always, (b) (6) is cautious about personally collecting the money, given her position, and would prefer that one of her staff be the point of contact (like the person in charge of their internal controls and audit) to receive the money directly from JMD Staff Directors. The staff has drafted a message that she attached to her email. I advised (b) (6) that the main restrictions are that any donations and the amount must be voluntary, although it's fine to suggest a donation amount. Supervisors should not solicit and should not collect the \$\$\$. I agreed, checks are cumbersome - who would they be made out to who. She would have to go with cash. I also advised that it's ok to have staff directors give their contributions to (b) (6) (or someone else on the staff) but staff directors should not be soliciting or collecting the \$\$\$ from their own subordinates - so she needs to have that piece handled differently - perhaps the POC in each office could collect the \$\$\$, or it too could be given directly to her or to someone on her staff. If the POC collects the \$\$\$ and seals it in an envelope, it's fine for the staff directors to bring it to the JMD full staff meeting on Dec. 5. They may want to tweak language a bit to say something like, "As you know, there are no official party funds in the government, so to help defray the costs of this JMD event, we are requesting that each Staff Director and their Senior Executive Staff contribute \$100.00 each towards this event. In addition, we are asking that each GS-15 staff member provide a \$20.00 donation for this event. Whether an employee chooses to donate and the amount an employee chooses to donate is voluntary. Etc...." (b) (6) November 26, 2008

142. (b) (6), JMD, Holiday Event & CFC Contribution (related to entry above). I suggested that (b) (6) check with (b) (6) on the language they're using in the invites and flyers for the JMD Holiday Event. For decorations, they will feature a holiday centerpiece competition among the JMD Staffs with a raffle to benefit the CFC. They will sell raffle tickets for \$1 each during the event. All of the proceeds will be donated to the CFC. I advised (b) (6) that there is specific language that they need to include when raising funds to be contributed to the CFC. (b) (6) advised (b) (6) that when hosting a CFC fund raising event, the following statement should be included in any announcements (i.e., flyers, posters, email, etc.) about the event: "Contributions will be donated to the CFC undesignated Fund unless otherwise requested by the contributor." This statement should be announced at the event as well. He suggested that she include this statement at the bottom of the JMD Holiday Event flyer. CFC pledge cards should also be made available at the event for those individuals wanting to have their

contributions go to a specific CFC charity. (b) (6) November 26, 2008

143. (b) (6) (COPS) called with seeking employment and post-employment questions for (b) (6). He received the materials on these areas that (b) (6) sent and he had some follow up questions. He is planning to retire around January 19 or 20, 2009. He is planning to form a corporation with his spouse and go into the lobbying/consulting business. He wanted to know if there were any restrictions about talking to potential clients before he leaves to try to set up some retainers. He would not be talking to grantees or anyone who might be doing business with COPS between now and his retirement. I discussed with (b) (6). I asked (b) (6) who he might be talking to and she said Motorola, Lockheed, and TASER. I said he needs to be sure there is nothing in COPS that involves these companies and that once he reaches out to them as a possible client, he would need to be recused if something did come into the office involving that company. He also needs to be sure he does not take advantage of nonpublic information or otherwise use his position to identify and solicit potential clients. Also after he has left government service, he wanted to know whether he could deal with Congress and seek earmarks for specific programs such as to combat meth. Could he seek an earmark for COPS. He is subject to the one year cooling off period with respect to COPS and the rest of Justice that is not a separate component. I said he could not have any contact with COPS but he could contact the Hill about earmarks. But he would have to be careful that his contacts with the Hill were not communicated to DOJ employees. If he has specific questions about whether something might relate to a matter that he worked on or that was under his official responsibility, he should check back with ethics officials, i.e., (b) (6). He should not contact other DOJ employees during the one year cooling off period. He also had questions about records. He has kept a TASER file which includes materials from conferences, news clippings, etc. He wanted to know what he could keep, what was a record etc. I gave (b) (6) (b) (6) name to contact regarding the records questions. (b) (6) November 26, 2008

144. (b) (6) CRM, Attorney testimony. A couple of years ago, an attorney currently working in the Civil Rights Division was detailed to the Criminal Division (Domestic Security Section) where he worked on a case, (b) (5). The case resulted in the defendant pleading guilty to encouraging between 25 and 99 foreign students to reside in the U.S., knowing that the presence of those students in the U.S. would be illegal. The defendant admitted that he took money from the students to register them at a university then sold the students school credits they needed to appear to maintain their F-1 Student visa status. According to the attorney, in building the case, the government had an extremely difficult time locating student witnesses. It did eventually locate witnesses but by the time the case came to trial only one witness was present and available to testify to details on behalf of the U.S. against the defendant. All of the other students who the government was counting on to assist the government and testify at trial were allowed to voluntarily depart the U.S. after they had been arrested for being out of F-1 status. The one witness who remained in the U.S. willing to assist the prosecution was (b) (6). Without (b) (6) as a witness, the case against (b) (6) would have fallen apart. (b) (6) is currently subject to deportation proceedings. He was arrested by ICE at the beginning of the investigation for being out of status, but his immigration hearing was repeatedly continued because of the need

for him in this case. The DOJ attorney who handled the (b) (6) case would like to testify at (b) (6) hearing and inform the Immigration Court of the level of cooperation that (b) (6) gave to the U.S. Alternatively, he would write a letter to the court on (b) (6) behalf. The attorney would like the Immigration Court to allow (b) (6) to voluntarily depart the U.S., the same as DHS did for those witnesses who did not assist the government. For whatever reason, unknown to the DOJ attorney, the DHS attorney handling the case will not allow (b) (6) to voluntarily depart. The attorney states that in testifying or writing the letter he will not reveal any information that is not already public, but he would testify as to opinions he formed about (b) (6) based on information he learned while representing the U.S. I advised (b) (6) that I do not think he can write this unless he receives approval to write it in his official capacity, and I agree with the limitations she notes on what he may say. Frankly, we don't know what else DHS knows or why they have taken the position they have regarding deportation. And I think he should ask his supervisors what other parts of DOJ should review the letter and concur. (b) (6) November 26, 2008

145. (b) (6) (NSD) sent an email on November 21, 2008 with draft language for a recusal for (b) (6) from matters involving the Free Papua Movement. She asked for comment and asked who should convey the recusal to (b) (6) and her supervisor. I consulted with (b) (6). I sent (b) (6) an email with some revised language for the recusal and said she could convey the recusal. The emails are in the file. (b) (6) November 26, 2008

146. (b) (6), reference question. (b) (6) has been asked by the general counsel of an agency with whom he has worked to be a reference for his efforts to obtain a nomination for a state supreme court position. Specifically, (b) (6) has been asked to call two members of the state nominations committee to talk about his relationship with the general counsel in connection with litigation DOJ (and OSG) has handled concerning the agency. I advised (b) (6) that it's fine with the usual caveats: it is his individual personal recommendation, and no disclosures of client confidences. (b) (6) December 1, 2008

147. (b) (6) COPS, (b) (6) attendance at political event. (b) (6) emailed to seek approval for (b) (6) the (b) (6), to attend an evening reception in support of Virginia Attorney General Bob McDonnell with Special Guest John Ashcroft. The event will take place on December 3, 2008, at (b) (6). The event is being organized by the McDonnell for Governor organization, and hosted by (b) (6)

(b) (6) would like to purchase tickets to the event. His attendance will be passive, not active. (b) (6) will not give a speech or otherwise be introduced formally. He will not be listed as a donor on any materials, or receive any special recognition at the event. I recommended for (b) (6) to approve. (b) (6) approved. (b) (6) December 1, 2008

148. (b) (6) NSD, financial conflict. (b) (6) emailed regarding an attorney whose husband is a partner at a law firm who has begun to represent Guantanamo Bay detainees. The attorney does not work on detainee cases and her husband does corporate law for this firm. The attorney wanted to be sure she did not have a conflict. I told (b) (6) that unless she was working personally and substantially on the matter, there would be no conflict. He said that she had no involvement with the detainee cases at all. We felt that there was no conflict but told (b) (6) to make sure the attorney let him or her supervisor know if there was a change in the facts. (b) (6) December 1, 2008.

149. (b) (6) PAO, post employment. Today was (b) (6)'s last day, she is going to (b) (6). She is a schedule C. (b) (6) spoke with her regarding her termination report and I talked to her about post government employment restrictions, including the ban on any projects that she worked on personally and substantially and the two year ban. (b) (6) asked if the ban would still apply if she wanted to come back to government work and I advised that she should call our office if/when she had more fact specifics since each situation may be different. She will be sending in her final financial disclosure report, which (b) (6) emailed to her. (b) (6) December 2, 2008.

150. (b) (6) CRS, political activity. (b) (6) is a schedule C employee and called to see if he and the Director of CRS could attend the RNC brown bag lunch on December 3. The luncheon was to discuss the "reform and revitalization" of the RNC, including topics such as the upcoming race for RNC chair, GOP leadership developments on the Hill and "issue battles" in Congress. I talked to (b) (6) about it and we agreed that they may attend in their personal capacity so long as lunch was not provided by the RNC and they were there only in their personal capacity. I also talked to (b) (6) about receiving the email on his work address and suggested he have future emails be sent to a personal address. (b) (6) December 3, 2008,.

151. (b) (6) (JMD Budget) called with a question about holiday parties. He wanted to know if contract employees could be invited to contribute to holiday party gift exchanges. I told him that contract employees should not be solicited for this activity. However, they could attend the holiday party. (b) (6) December 2, 2008

152. (b) (6) (CRT) had a question about ethics requirements for departing employees. (b) (6) is a PAS (but may not be in the Executive Level pay series) whose last day is Friday, December 5. He wanted to know what he needed to do before he left. I told him he needed to file his SF-278 termination report and have it cover up to his last work day, which is December 5. As to post-employment restrictions, I told him that if he is in the EL series, he is restricted for one year from making any communication with the intent to influence back to the entire Department. If he is not in the EL series, then the restriction applies to communications back to

his entire Division, i.e., CRT. He indicated he was going to work on his report. He wanted to know where to file his report. I said he should file it with his DDAEO. I contacted (b) (6) who is an ethics official in CRT ((b) (6) was out of the office) and asked him to reach out to (b) (6) to help him with his termination report. I sent (b) (6) an email with some background information. (b) (6) began in the covered position in November 2007 and served less than 60 days in that position in 2007. He filed a new entrant report but was not required to file an annual report for 2007 in May 2008. His termination report should cover the period from his new entrant report to his last day. (b) (6) will have to fill out Schedule B and he should report any arrangement for employment on Schedule C. The emails are in the file. (b) (6) December 2, 2008.

153. (b) (6) (JMD, OCIO) asked me to call (b) (6) to discuss a CFC question that came up in their office. I called (b) (6) who was out of the office but spoke to (b) (6). She said the CFC fundraising activity is a cookbook that would be sold for \$5 with the entire proceeds to go to the CFC. The cookbook would be produced in house. They had 100 ready to be assembled using DOJ paper, dividers, and plastic spines. The goal was to sell 200 copies. It would be promoted within OCIO but would be open to anyone in DOJ who wanted to buy one. I told (b) (6) there were appropriations questions to be resolved, as well as questions regarding the use of government materials and equipment, and said I would get back to her or, if it was the next day, to (b) (6). Subsequently, (b) (6) called from home to try to resolve the questions immediately as it turned out that they wanted to be able to complete the production on December 2 so that they could sell the cook books at "Taste of Mexico" events on December 3 (in Rockville) and December 4 (in DC). (b) (6) said the cookbooks were about 100 pages long but in half sheets so that each book used 50 sheets of paper. She had already purchased some supplies with her own funds at Staples. She had asked (b) (6) about using government funds to buy an additional 100 spines at \$8 per 25 spines. She thought this could be done with working capital funds which are obtained through charges that OCIO makes for services it provides. She said that she thought (b) (6) had cleared this issue of using government funds with (b) (6) some years ago and that it had been determined that modest expenditures were permissible. She also recalled that both JMD and BOP had used sales of cookbooks to raise money for CFC in the past. She wanted to be able to go ahead and assemble the 100 today and make another 100. I discussed with (b) (6) and called (b) (6) back and said they needed to run the government funds question by (b) (6) again. (b) (6) set up a conference call with herself, (b) (6) recalled that he had done a memo some years ago but he wanted to look at the memo again before he opined on this question. (b) (6) said he would fax the memo. Subsequently, (b) (6) called me and said he had discussed this question with (b) (6) as a matter of policy did not want any government funds spent on this. I discussed with (b) (6) and then called (b) (6) back to tell her they could not spend government funds. If they wanted to spend their own money on supplies to finish the cookbook production, they could but that was strictly a matter of their own choice. (b) (6) indicated she would do that as the amount was not significant. I also discussed with (b) (6) the requirement to give people who were buying the cookbook the option of designating a particular charity if they wished. She said they

had forms for that. Nevertheless, I encouraged her to talk to (b) (6) about the designation question and she said she would do that. In addition to selling the cookbooks for \$5 at the Taste of Mexico events there was a \$5 admission charge for a ticket to the Taste of Mexico. Subsequently, I had a call from (b) (6) who also works on the CFC. She had a question about the charity designation and I referred her to (b) (6) and gave her his phone number. She said she would call him. At the end of the day, in a conversation with (b) (6) I told him what the resolution was and he said that the issue had come up last week and he had asked them then to check with OGC and DEO. (b) (6) did fax a memo dated December 10, 1996 which dealt with the question of whether appropriated funds could be used to purchase trinkets of negligible value to be given to keyworkers and decorative items such as balloons and banners, and refreshments for CFC events. The memo concluded that such funds could be legally used in connection with the CFC "if the manager of an appropriation reasonably finds these CFC-related expenses to be 'necessary' to further the purposes of the appropriation." In sum, government funds would not be used to produce the additional cookbooks; the 100 ready for assembly cookbooks could be assembled; supplies could be purchased to complete an additional 100 cookbooks using personal funds and only on a strictly voluntary basis; the designation option would be made available to anyone who purchased a cookbook. The OGC opinion is in the file. (b) (6) December 2, 2008

154. (b) (6) originally called on November 7, 2008 with questions about an upcoming DOJ Cyber Security Conference to be held in January 2009. (b) (6) identified himself as working in the IT security section of OCIO of JMD. He explained that it was a 2 day conference that would be held in the Ronald Reagan Building. It would be free to attendees. They anticipated an audience of about 400 most of whom would be DOJ employees although there might be attendees from other agencies. The conference administration would be handled by Federal Business Council, Inc. (FBC) which had a no-cost contract with OCIO. FBC would charge a fee to vendors who would present their products and services in an expo. They were about to set up a website which would enable people to register. Various "sponsors" would pick up the cost of meals, break refreshments, and an evening social with alcohol. (b) (6) wanted to know if it was permissible for vendors to "sponsor" a lunch, break refreshments, or a networking social. I told (b) (6) we would have to sort out various ethics issues including the issue of whether contractors could provide free meals and refreshments. (b) (6) said he would send the agenda and a conference description for our review. Later that day (November 7) (b) (6) sent an email with two documents attached: the threads and sessions and the purpose and attendee statement. Subsequently, on November 12, 2008, (b) (6) sent updated versions of the threads and purpose documents and a copy of the contract dated August 14, 2008. I called (b) (6) on November 13 to discuss the conference website. On November 14, 2008, (b) (6) sent a link to the DOJ website on the conference. The website was under construction and was not publicly available yet. FBC, however, was advertising the conference on its own website. I discussed with (b) (6) who had some questions about the project. I sent the questions to (b) (6) on November 14 and he answered them in a reply email. On November 24, 2008, I had a call from (b) (6). He said they were planning to say no to the proposal to have vendors sponsor meals.

(b) (6) said that (b) (6) office had cleared the contract. Later on November 24, 2008, (b) (6) called. He said that they had decided not to have sponsored meals because (b) (6) was concerned about a perception problem. But (b) (6) said they were still thinking about vendors providing giveaway items such as a zipper binder. I discussed further with (b) (6) who said we needed to have a conference call with (b) (6). I told (b) (6) we had serious concerns about the conference as planned and set up the call. On December 1, 2008, (b) (6) and I had a conference call with (b) (6), (b) (6), (b) (6) (cell phone (b) (6)), and (b) (6). We discussed the concerns we had with regard to links between websites, use of the DOJ seal and logo, advertising and marketing, meals and refreshments and giveaways. (b) (6) and (b) (6) explained the background. They were aware of other agencies who had conducted similar events. The planning for the conference had started about a year ago. (b) (6) works for Northrop Grumman and is a contract employee who was brought in to run DOJ training such as DOJ Learn. He also keeps track of measurement of training. (b) (6) explained our objections to various planned aspects of the conference. They said that there would be no sponsored meals or refreshments. There is a food court at Ronald Reagan and it is convenient for attendees to get lunches and refreshments in the food court. (b) (6) said the event could be structured so that there was a "firewall", i.e., a strict separation between the conference and the conference program and the exhibitors and the expo tables or stations and vendor refreshments. There would be no corporate logos or banners inside the conference area. The exhibitors would be in a hall area and be physically separate. Anyone with access to the building could visit with the exhibitors, receive any giveaways they might have, and partake of any refreshments they might offer. (b) (6) said he would discuss this approach with FBC and we could talk again at 12:30 on December 2 in another conference call. At the December 2 conference call (b) (6) said that FBC was amenable to the arrangement we had discussed, i.e., separation of the events. FBC had encountered similar issues in connection with a DHS event they were involved in in Baltimore. OCIO will meet with FBC next week to resolve our concerns. In essence, there would now be two distinct events: a DOJ Cyber Security Conference for registered attendees and a Security Expo in the Exhibit Hall for anyone with access to the building. Signage will be kept separate. The conference program guide will not list any companies. FBC will clean up the website. And for the time being they would suspend any announcements of the conference. I would look through the materials we had for review and discuss any other concerns with (b) (6). I looked over the materials and called (b) (6) later in the afternoon. We discussed some other issues such as a reference to "industry partners" in the Who Should Attend description and (b) (6) said they would take that out. I asked (b) (6) if he could raise with FBC when he talks with them next week the question of endorsements. We would prefer that exhibitors not advertise or imply that the Department approves, endorses or recommends any particular product or service. I told him that another company, NCSI, has such a provision in their standard contract. He was interested in looking at the provision and I gave him the website information. He said he would raise the endorsement concern with FBC next week. Emails and other background information including website material, the contract and GAO opinions on no-cost contracts are in the file. (b) (6) December 2, 2008. . UPDATE: on December 5, 2008 I sent (b) (6) an email asking him if he was clear about the resolution we were seeking of the issues connected to the cyber security conference. (b) (6) sent a reply saying he was comfortable going forward and would call if he

needed anything else. He was going to explore the possibility of documenting the changes in the arrangements for the conference by amending the contract or by letter. This email is in the file.

155. (b) (6) CIV, 502 Waiver. (b) (6) sent a draft 502 waiver for (b) (6) to participate in suit filed against DOJ by individuals who believe they were denied positions in the AG Honors program or as Summer law clerks, due to improper political considerations. I concurred in recommending authorization. (b) (6) called to discuss and decided against authorizing (b) (6) to participate. (b) (6) December 3, 2008

156. (b) (6) OAG, Professional Development Seminar. Two of their contacts in the Presidential Personnel Office at the White House have offered to give a Professional Development Seminar to their Schedule C's at DOJ. (b) (6) thinks this is a really nice gesture and would be happy to coordinate the briefing, but she wanted to get my thoughts before moving forward. She attached a pdf copy of what the seminar would entail, although it doesn't sound like there would be any handouts distributed. I advised (b) (6) that this sounds fine and very helpful. As she and I discussed, the presenter should note that there are ethics rules that limit who a current employee may contact about prospective employment, so any individual employee should check with his or her ethics official if they are not aware of these rules. Also, all DOJ political appointees remain subject to the further restricted rules of the Hatch Act while serving in Schedule C positions, which is different than for White House staff. (b) (6) December 3, 2008

157. (b) (6) CRM, various issues.

1) Conflicts/Waivers. At her annual training session people got really fixated on the issue of conflicts and third party subpoenas and were aghast that there may be a conflict when they issue a third party subpoena for records in a case to a company in which they might own stock (e.g. Verizon). Those who weren't flabbergasted indicated that sometimes what they've done is have another attorney in the office sign the subpoena. (b) (6) and I talked about what OGE has taught at their recent training sessions that the attorney would have to consider the conflict - if they own > \$15K of stock and needed to issue a subpoena, even if it's for records (only) with no further involvement of the third party in the matter - it may be appropriate for them to come to (b) (6) to seek a .208 waiver from the CH. (b) (6) and I thought that was a more effective remedy than having another attorney issue the subpoena because they weren't completely recusing from the matter, only from the individual subpoena. (b) (6) would then consult with us on the waiver request.

2) Gift to DOJ - she has worked with (b) (6) on a gift from West Publishing of bound sets of volumes of opinions to OSI. She is preparing a memo to the gift fund committee to seek approval for gift acceptance by OSI - however the facts have now changed: West is proposing to give to DOJ 3 bound sets - one to be kept by OSI, one to be presented by the AG to the Holocaust Museum, and another to be presented by the AG to the Simon Weisenthal Center at a ceremonial event. Does this change what (b) (6) has to do? Yes - these new facts make it necessary for (b) (6) to summarize for (b) (6) not only the issues for DOJ gift acceptance of one set of volumes, but also the AG's involvement in the ceremony and re-gifting, so that as ethics

official for the AG, (b) (6) can determine appropriateness. Why isn't West just giving the volumes to the Holocaust Museum and the SWC themselves at the ceremony? Seems like a possible misuse of the AG's position. (b) (6) does not know. (b) (6) must further seek (b) (6) advice/approval for these new issues. (b) (6) asked - is there a central place in DOJ to check for contractors or prohibited sources of gifts? No - ethics officials for components vet gift conflicts for their component - there is no centralized place for all of DOJ. In this instance, West obviously has a contract with DOJ so why would she need to check something like that? Anyway, (b) (6) is the AG's ethics official (and that of JMD who administers the West Publishing contract) so she needs to get (b) (6) to look at the appropriateness of the AG's involvement here, and of the whole re-gifting proposal, in addition to the gift acceptance in general from West Publishing. (b) (6) December 3, 2008

158. (b) (6) of Civil sent an email asking whether SL employees were further restricted. I called and talked to her and learned that the question had arisen during a ethics training session that day. I said that that category of employee is not listed as further restricted in the regulation as are SES and ALJ's. I discussed with (b) (6) and called (b) (6) back and said that she would still need to determine if an employee in Civil was on detail from a component like NSD or CRM whose employees are further restricted. In that case, the employee on detail would be further restricted. (b) (6) December 3, 2008.

159. (b) (6) NSD, teaching. (b) (6) called with a teaching request from an employee who is working on one of the Guantanamo prosecutions. For the duration of the case, he is detailed to the Department of Defense, which is where he worked until he was hired as a DOJ employee. Discussed with (b) (6) who was concerned with the subject of the class being the same as his official duties. Researched in OGE opinions and the Fed Reg comments and did not find any restrictions. Called (b) (6) at OGE who said the only restrictions on subject matter would be nonpublic information. I advised (b) (6) of this and discussed with him some of the pitfalls the employee needed to be aware of because of the background and knowledge he had and the sensitive nature of the subject. Email in file. (b) (6) December 4, 2008.

160. (b) (6) CRT ethic official - holiday gift question re: in kind collections. Summarized the rules for him incl what he has to do to obtain CH approval for his employee's request for a toy collection. (b) (6) December 4, 2008

161. (b) (6), Bureau of Justice Statistics, received what he describes as an "award" of a \$35 silver cup from a grantee as his monitoring of a grant program is winding up. Referred him to OJP's ethics officials for analysis as to whether he can keep it under the gift rules (it is more than \$20), or alternatively whether he can keep it as a bona fide award. (b) (6) December 5, 2008

162. (b) (6) called with a question about seeking employment within DOJ. She is in the OSG as a Bristow Fellow. She is a full time government employee but her fellowship ends in July 2008. She wanted to know what, if any restrictions might apply to her

job search within DOJ as she is interested in staying on in DOJ after her fellowship is over. She also wanted to know who the ethics official for OSG was. I spoke with her again on December 1 and said the DEO was the ethics office for OSG and the other SMO's. She clarified that she is not interested in political appointment but is interested in a career position. On December 1, I discussed with (b) (6) who said that there were no restrictions on seeking a job within DOJ through the formal job application process such as through USA Jobs or by following up on attorney vacancies posted on the DOJ intranet site. There is a concern, however, about a personal conflict if she were seeing a job in a component and was at the same time working on a matter in OSG that involved that component. In that case, she should deal with the personal conflict by informing her supervisor that she was involved in informal job discussions with the component. The email to (b) (6) is in the file. (b) (6) December 5, 2008

163. (b) (6) (b) (6) called originally on 11/21/08 to see if we had any information regarding an old outside employment request form that INS had used when it was part of DOJ. (b) (6) subsequently sent the form G-843 (06-14-85) by email. He noted that the copy of the form that they have does not have a Privacy Act notice on it. He was trying to confirm whether the form as they have it is complete. I checked the forms library on the DOJ Intranet and could not find the form. I discussed this question with (b) (6) who posts forms on the DOJ net but she was not aware of it. I discussed with (b) (6) and she and I checked the files but could find it. I discussed with (b) (6) on 12/5 and she did not recognize the form. I called (b) (6) back on 12/5 and told him that we had searched and inquired but could not confirm one way or the other whether the form as he had it was complete. (b) (6) thanked us for our efforts. His email and the form are in the file. (b) (6) December 5, 2008

164. (b) (6) called to check on the status of a Hatch Act referral to OSC. He had a call yesterday from a staffer for Congressman Roscoe Bartlett asking what the status was. I checked with (b) (6) and there has been no word back from OSC on the matter. I called (b) (6) back and told him we had not heard anything. I said OSC's normal procedure is to inform agencies of the disposition of referrals. Right now OSC is handling a high volume of Hatch Act cases and it may be awhile before we hear back from them. I said he could call us to check on status if he gets another inquiry from the Congressman's staffer in the future. (b) (6) December 5, 2008

165. (b) (6) sent an email asking a question about an NSD employee who formerly worked for Oracle and is now a research specialist with NSD. He has been invited to opt in to a class action against Oracle, his former employer. The employee currently is not working on anything involving Oracle. Oracle's connection to DOJ is that the Department may buy its software. I discussed with (b) (6) and called (b) (6) back and said that if something were to come along involving Oracle, NSD should make a 502 determination. It is highly likely that his interest as a member of the class in a lawsuit against Oracle would not be such a significant interest that he would be disqualified from working on the matter. Nevertheless, there should be

a written determination under 502. They would not need to do the 502 determination now unless it was reasonably foreseeable that something would be coming along that would involve Oracle. I also discussed with (b) (6) the memorandum that Eric Holder issued on January 3, 2000 involving the Doe litigation on behalf of a class of DOJ employees. I offered to fax the memo to him but he said he would find it. I told him there might have been an evolution in the views of PRAO on this issue since that memorandum but that it does provide an example of a 502 determination. He said he would advise the employee along the lines we discussed. (b) (6) email is in the file. (b) (6) December 5, 2008

166. (b) (6) (b) (6) called with a question about attendance at an annual law firm dinner. A law firm that does a lot of business with Civil Rights has invited a number of attorneys from the division to attend the dinner. Last year attendance for a few CRT attorneys was authorized by (b) (6) under the WAG rule. This year the firm invited more attorneys from CRT including a section chief. And this year (b) (6) did not approve attendance under the WAG. She thought the number of people attending was high and that whatever benefit the government obtained from attending they received last year. The firm currently has ongoing litigation involving CRT. In some cases the interests are aligned with the government and in other cases not aligned. (b) (6) now has a question from the section chief who wants to attend on the basis of paying his own way. He would pay \$100 to attend. I discussed the appearance issue that was separate and apart from the gift acceptance issue. (b) (6) wanted to know who made the appearance call. I discussed with (b) (6) and called (b) (6) back and said the agency designee would be the component head or someone like a deputy AG to whom the authority to make the determination was delegated. It would not be the Deputy DAEO and it would be above the level of a section chief. (b) (6) said the dinner would be attended by 1500-200 people and would possibly include rights groups, clients, other law firms, and government people from other federal agencies. I said that although such a group is more diverse than simply the law firm we would nevertheless support a determination made by CRT management that its employees should not attend on appearance grounds even if they paid. (b) (6) December 5, 2008

167. Call from upset CRT employee who, after reading the holiday gift memo, wanted to revisit (b) (6) and (b) (6) decision not to approve their holiday gift exchange game last year. Apparently the office has a lot of contractor employees and (b) (6) determination was focused on that. (b) (6) email last year indicated that their plans were too problematic for him to approve - The employee wanted to engage in lengthy arguments of various definitions of "soliciting" contractors for the gift game - I referred him to (b) (6) and (b) (6). Told him that contractor employees were prohibited sources of gifts to government employees and that our office would not "overrule" a determination by CRT's ethics officials as to the appropriate way for an office of CRT employees to apply an exception to the gift ban - or the appropriateness of their holiday party game plans. CRT's ethics officials are familiar with CRT's mission, the contractors, and what is appropriate for them. Suggested they revise their party plans to specifically address Karl's concerns from last year, and ask him and (b) (6) again this year if what they would

like to do is appropriate. Perhaps they could have some kind of a gift game as long as contractors were not included, and all gifts were under \$10. He complained that everything was fine for 15 years until the ethics folks got in on it - I commiserated, although not all that convincingly, that we ethics folks tend to do that sometimes. (b) (6) December 8, 2008

168. (b) (6) Acquisition, gift. (b) (6) is responsible for ensuring that the acquisition workforce receives the proper training to meet certification requirements mandated by the Office of Federal Procurement Policy. As a result, she often receives offers from vendors offering DOJ workforce free seats in their classes under progress. This is done to get feedback on the proposed course. Attendees do get credit for attendance, however. She received a similar offer from ESI for 2 employees out of the 500 member acquisition workforce to participate in a new course offering to help them refine the course. The offer of free attendance was sent to all government agencies, though only two employees from each agency could attend. ESI would not use any advertising or other publication describing the class as being "developed by the Government" or "approved by Federal employees" or in any way implying endorsement of the class by ESI. While ESI is a prohibited source, I spoke to (b) (6) and she felt that it was not really a gift since ESI would be getting something in return (feedback on the class to help better develop it before using it on a paying crowd.) Told (b) (6) that it would be ok to send two people so long as the endorsement was not an issue, which she assured me it would not be. (b) (6) December 5, 2008.

169. (b) (6) FCSC, post-employment advice. (b) (6) December 4, 2008

170. (b) (6) OSG, Gifts question. For a Christmas gift to a secretary, (b) (6) would like to know if the lawyers can give a collective present of a gift card and, whether collectively or individually, can a lawyer give more than \$10? I advised (b) (6) that yes, a group gift to her is fine, and individual lawyers may spend more than \$10 for an individual gift or a group gift to her - the restrictions would prohibit their secretary from giving a gift over \$10 or joining in a group gift to her supervisors or to employees who receive higher salaries than her. (b) (6) December 5, 2008

171. (b) (6) OSG, Gifts question. (b) (6) has been given tickets to the Opening Night of Shakespeare's *Twelfth Night* on Monday, December 8, 2008 at Sidney Harman Hall. I asked (b) (6) if he knew why he was invited and he advised that last year, he was asked to be an advocate in the Shakespeare Theatre's annual mock trial, where he argued against Ted Olson. That event is an annual affair for the members of the Lawyer's Committee for the Shakespeare Theatre. He did the mock trial in his personal capacity, without compensation. After that, (b) (6) who is the special events coordinator for the Theatre, added him to her list of people she invites when she wants to fill the Theatre for an opening night. In return for being a participant in the Shakespeare Theatre's mock trial, (b) (6) offers him tickets to see plays when she needs bodies to give the appearance of a full house. I advised (b) (6) that it sounded fine and no further approval was needed. (b) (6) December 5, 2008

172. (b) (6) OASG, seeking employment. (b) (6) laid out 4 categories of matters in which

he has participated actively, all related to the suits against the US and telecomms for their participation in allegedly unlawful surveillance. Advised that he would need to recuse from all matters in all 4 categories were he to discuss future employment with any of the firms involved in categories 1 and 2. Those firms are not involved in categories 3&4 but the issues and information is too related to distinguish. (b) (6) December 8, 2008

173. (b) (6) OAG, (b) (6) attendance at a WAG. I sent the following email to (b) (6) for approval: (b) (6) (b) (5)

[REDACTED]

(b) (6) approved.
(b) (6) December 8, 2008

174. (b) (6) ODAG, gift question, was invited to holiday party by friend who is senior VP for gov't relations for national assoc of broadcasters. He has known her for 12-plus years but has not been invited to the party before. Don't think this meets the personal exception test since NAB is a prohibited source, and she is not personally paying, but if he wants to call her and ask who she invited and on what basis I would consider that further. He is not working on anything with NAB now and unlikely to before Jan. 20. Alternative is to find out who and how many are invited and articulate the Department's interest in him attending and we could seek WAG approval. (b) (6) December 8, 2008

175. (b) (6) FBI, stock waiver issue for (b) (6). (b) (6) has inherited a number of stocks from his parents, some of which, when combined with his previous holdings, exceed \$15K, but are less than the \$15K cap on waiver he received when initially appointed. I sought and received (b) (6) concurrence to treat 4 stocks as covered by the 25K waiver. (b) (6) December 8, 2008

176. (b) (6) OSC, Hatch Act. Ms. (b) (6) is the attorney from the Hatch Act section assigned to the Donna Horne case (see entry #99, counsel 4-08) referred from this office. She called looking for time and attendance information for (b) (6), I referred her to Ms. (b) (6) direct supervisor. She also was looking to review the emails that had been preserved by the IT staff at DEA - I gave her (b) (6) number at DEA who handled the IT request and preservation of emails. Her number is (b) (6) if we have any questions for her. (b) (6) December 8, 2008.

177. (b) (6) a Senior Auditor with the Election Assistance Commission (EAC), called with an ethics question. She called because (b) (6) the Inspector General at the EAC, asked her to call the Justice Department Ethics Office. (b) (6) had been in the Office of Audits at the IG Office at Interior for a period of time when I was there, and I asked her if (b) (6) had asked her to call me. She said no, he just asked her to call the DOJ Ethics Office. Her question involved a person who had been the General Counsel at the EAC whose appointment expired last month. She was hired to be the IG Counsel. Now some members of the commission are questioning this and they have also gotten an inquiry from the Hill. I said that DOJ Ethics Office would not provide advice in this situation and suggested she contact either (b) (6) a desk officer or attorney at OGE. I gave her a contact number at OGE. I said this was an appearance question but that she should get the ethics advice either from her own ethics official or from OGE. (b) (6) December 9, 2008

178. (b) (6) OLC, 207 question. A DAAG in one of the litigating divisions has been appointed acting AAG. She is a noncareer SES who is paid below the pay threshold (currently \$148,953) for senior employees who are subject to the 1 year ban in 207c. I asked (b) (6) if she is subject to the 1 year ban because she is serving (performing the duties?) as acting AAG, an Executive Level position that is subject to the 1 year ban. I don't think so, based on the reasoning we used as to whether (b) (6) was subject to 207d when he was appointed acting AG, but asked (b) (6) to let me know if I'm missing something. (b) (6) thinks that the reasoning of the advice to (b) (6) not only would apply, but would be strengthened by regulatory developments in the last year. When (b) (6) & I advised (b) (6) OGE hadn't yet issued its final interpretive rule on section 207. We noted that the existing rule provided that a "senior employee" (and in (b) (6) case a "very senior employee") included someone "detailed" to such a position. We nonetheless concluded that (b) (6) service as Acting AG wasn't a "detail" within the meaning of the rule and didn't bring him within section 207(d). At that time, OGE had said in its proposed rule that it believed the language about a "detailed" employee was unjustified, but the final rule was still pending. Now, OGE has issued a regulation that omits the language. See 5 C.F.R. 2641.104. So it would seem to (b) (6) that the situation is even clearer than when we advised (b) (6) (b) (6) December 9, 2008

179. (b) (6) OLA, Gifts question. A question has arisen whether OLA can use funds to purchase plaques to give to their political appointees who will be leaving with the end of this Administration. They regularly give these plaques to departing employees, but (b) (6) does not recall that they have given them at the end of the Administration. They gave (b) (6) a plaque when he left OLA for ODAG. I advised (b) (6) to check with (b) (6) for advice. (b) (6) advised (b) (6) that they do not believe OLA can use appropriated funds to buy gifts for political appointees upon their departure. In general, "appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law." 31 U.S.C. § 1301(a). With respect to gifts, "appropriated funds may not be used for personal gifts, unless, of course, there is specific statutory authority." Government Accountability Office, *Principles of Federal Appropriations Law* (3d ed. 2004) 4-155. There are situations where an employee

retires or leaves the Department and appropriated funds are used to give the employee an honorary award such as a plaque. The rationale for the use of appropriated funds in these cases is that the awards are being made pursuant to the Government Incentive Awards Act, which allows an agency to "pay a cash award to, and incur necessary expense for the honorary recognition of, an employee" (5 U.S.C. § 4503). We cannot rely on this provision here, however, because there is a statutory prohibition on politically appointed officers receiving any type of award during an election period, which will run until January 20, 2009. 5 U.S.C. § 4508. Since they cannot justify the plaques as "awards" they do not see how they can be purchased with appropriated funds. (b) (6) December 10, 2008

180. (b) (6) NSD, 208 conflict. (b) (6) emailed regarding (b) (6) a trial attorney in NSD, Counterterrorism, who has been asked to be the trustee of a family trust. He asked if there were any publications on the ethics of taking such a position. I directed her to the OLC opinion - *Application of 18 USC 208 to Trustees of a Private Trust*, OLC Opinion Nov. 2, 2001 or the two DAEO-grams, 01-029 and 02-008. I advised her that if he was only the trustee of this family trust and not a beneficiary, there was not a personal financial interest, but an organizational interest imputed to him. Therefore a 208 conflict analysis would have to be done for each holding of the trust to be sure there were no conflicts with matters he was working on personally and substantially. I also advised that if he was a financial disclosure reporter, he would have to report the trust on Schedule D. If he was also a beneficiary, there would be a personal financial interest that may cause a conflict and the underlying holdings of the trust would have to be reported on schedule A. (b) (6) December 11, 2008.

181. (b) (6) of the FBI (b) (6) called with a Hatch Act question. She wore a button that bore the images of Martin Luther King and Barack Obama with the dates of King's speech and Obama's nomination on it. Her supervisor told her that she could not wear that button at work. (b) (6) is a 33 year career employee of the FBI. I researched the recent OSC memo on wearing buttons in the workplace which concluded that do so now did not violate the Hatch Act because the election was over. I sent (b) (6) an email with the OSC memo attached and also gave her the contact number for the FBI ethics office for future reference if she had other ethics questions. The email and a fax sent by (b) (6) with a picture of the button are in the file. (b) (6) December 10, 2008

182. (b) (6) of the Civil Rights Division called to see if someone in our office could substitute for (b) (6) to do ethics training this week. (b) (6) was able to rearrange his schedule and will do the training. (b) (6) December 10, 2008

183. (b) (6) in the alternative dispute resolution office called with a question about

recommendations. A person that she met while participating in a professional activity in her official capacity is a member of a university faculty. The person is up for tenure and has submitted a law review article for evaluation. Part of that process is peer assessment. She asked (b) (6) if she would write a letter on her behalf to the university giving her opinion of the quality of the article. (b) (6) has reviewed the article on her own time and has drafted a letter. She wanted to know if she could put it on DOJ letterhead. I said there were two circumstances under which she could use letterhead. One of them, namely recommending someone for federal employment, is not applicable here. The second one involves writing a recommendation that is based on personal knowledge of the ability of a person with whom she has dealt in the course of federal employment. I told (b) (6) that in this case it does not seem that there has been enough of a working relationship to qualify. She agreed that she did not know the person that well personally. It was more of an assessment of the scholarly quality of the article. So I told her she should not use DOJ stationary, but she could refer to her official position in the body of the letter. She was fine with that. (b) (6) December 10, 2008.

184. (b) (6) (Civil Rights Division (b) (6) had a WAG question. Someone who is a supervisor in the Division and a career employee has been invited to attend a holiday reception that will be hosted by an Association whose members have immigration law practices and will be held at the offices of Fulbright & Jaworski. F&J has a very small immigration practice. (b) (6) wanted to know the extent to which he had to canvas to check out conflicts. I said he should do it for the entire Division. We discussed who within Civil Rights could make the determination and the three areas that needed to be analyzed: (1) is it a WAG, (2) are there any conflict concerns, and (3) does the Division have an interest in having the employee attend. (b) (6) December 10, 2008

185. (b) (6) (EOUSA (b) (6) called with a question about Department policy on briefing departing employees on their post-employment obligations. The question arose because an EARS team is looking at U.S. Attorneys office. I discussed with (b) (6) I called (b) (6) back and said that Department policy does not mandate a briefing on post-employment restrictions but we certainly consider that to be a best practice. (b) (6) said that that was his understanding of the policy. (b) (6) December 10, 2008

186. (b) (6) (Criminal Division) called with a question about seeking a noncareer job in the new Administration. A career attorney in the Public Integrity Division is interested in exploring possible noncareer positions in the new Administration. He went on the Transition website to put in his resume but did not complete the process because he was concerned that it might mean that he would have to recuse from a class of cases. (b) (6) wanted to know if there was any ethics guidance on this and other Transition related issues. I told her we were still planning to distribute some guidance once we got it. (b) (6) contacted OGE and apparently they do not have any guidance of these issues. (b) (6) December 11, 2008

187. (b) (6) (Civil Division) called with a recusal question. The (b) (6) or appellate, (b) (6) wants to participate in the formulation of a response to a request from OMB for a legal opinion on a provision in a bill currently pending in the House to bail out the Big Three Detroit automakers. The provision in the bill would give any government loan priority over even existing loans. OMB wants Civil's opinion as to whether this provision raises a "takings" issue. The potential conflict arises because Cohn who is a noncareer employee and will be leaving in January is looking for jobs with large law firms in DC. Those law firms may or may not be lobbying the Congress on this legislation on behalf of clients. The question would be whether there would be a conflict if Cohn participated personally and substantially in the preparation of the Civil Division's response which in turn affected OMB's statement of position on the legislation on behalf of the Administration which affected the bill which affected the client of a law firm with which he was negotiating for employment. I said this was a very attenuated chain of causation. However, putting aside the question of whether 208 was implicated, was there a real need for him to participate in the formulation of the Civil Division's response that would offset any potential appearance concern (assuming there was no 208 concern). (b) (6) did not seem to think that his involvement was critical but he wants to be involved in everything. She did not have all of the facts to do a 208 analysis. For example, she did not know what firms he was negotiating with or whether those firms were involved in the legislation. There is no further input needed from our office at this point. (b) (6) December 11, 2008

188. (b) (6) (Tax) sent an email asking a question as to whether an attorney in the Division could serve as a character witness on behalf of his brother-in-law who was charged with assault in a state court in Ohio. There are no federal charges. I discussed with (b) (6) and replied that he could serve as a character witness provided that he affirmatively ensured that the brother-in-law's defense counsel did not make improper use of his status as a DOJ attorney and that he was careful to limit his role to that of a character witness and not offer opinions on the merits of the issues in the case. The email exchange is in the file. (b) (6) December 11, 2008

189. (b) (6) Management and Planning, post employment brief. Ms. (b) (6) called to see if she needed a post employment ethics brief because she is retiring on Jan 3. (She is taking leave starting next week until her retirement date.) I discussed with her about her plans after retiring and she said she does not plan on working at all. I told her at this time there would be no concern of conflicts if she is not going to work, but that she should call us if she decides to go back to work at any time so we can be sure that there is no conflicts. (b) (6) December 12, 2008.

190. (b) (6) in OCIO called with a holiday party question. They are planning a party that will include contract employees and regular employees. They are planning a pot luck lunch and they also want to have a white elephant gift exchange. Originally, they were putting a \$20 limit to the white elephant gift but they reduced that to \$10. She asked if contractors could participate in the white elephant gift exchange. I said they could not. The contractors could bring in food to

be shared. Also the person sending out the announcements should be someone other than a supervisor. She said that she had sent the announcements out and she was not a supervisor. Also they had originally invited contractors to participate in the gift exchange but she said she would send out an announcement and correct that. (b) (6) December 12, 2008

191. (b) (6) (b) (6) and (cell phone (b) (6)) called to discuss complaints about the conduct of a prison warden at (b) (6). The warden is (b) (6). (b) (6) is a case manager and president of union local (b) (6). (b) (6) said that he has complained to the Office of the Director of BOP and to the BOP internal affairs officer. He received an email from the internal affairs officer that simply thanked him for communicating. He has received no other responses to his complaints. He wanted to know where he could go in DOJ outside of BOP. The complaints against the warden allege various abuses of power, including retaliation, discrimination, abusive language, and anti-union statements. This conduct has allegedly been going on for some time and there has been arbitration in the past on various issues. I discussed with (b) (6) and called him back and gave him the hotline number of the IG Office and told him that the IG has jurisdiction over this type of matter. He said he would call the IG office. (b) (6) December 12, 2008

192. (b) (6) OCIO, post government employment. Mr. (b) (6) called with post government employment questions. He is looking to retire from the government soon and considering positions with private sector contractors. He has worked as a COTR and a contracting officer while at OCIO. I advised him of the "seeking employment" restrictions and he asked if he could discuss employment with a contractor who has a contract with DOJ, but that he has no involvement with currently. I told him that would be ok, so long as he is completely uninvolved - which included supervising employees who were involved in the contract. I discussed the post employment restrictions with him and sent him the link to the DEO website so he could read the restrictions there. I advised that he may call us at anytime with questions regarding his employment at DOJ, even after he retires and encouraged him to do so once he had more facts - such as which contractor he may be working for - so that we can provide a more accurate briefing for him. (b) (6) December 15, 2008.

193. (b) (6) ODAG, Gift question. A friend of (b) (6) from law school has invited him to go to the Wizards game tomorrow. The friend's law firm gave him several tickets to the game, face value \$125 each. The tickets are usually reserved for clients, but no partners wanted them, so he was given them to use as he wanted. (b) (6) is not working on or aware of any cases involving him or his law firm. He would like to know if it is okay for him to accept. I advised (b) (6) that it is ok if his friend could invite anyone he wanted which was how it sounded. (b) (6) December 8, 2008

194. (b) (6) CRM, multiple gift questions. (b) (6) (b) (6), CRM, would like to present a picture, signed by a former official US Army photographer who memorialized the Nuremberg trials, to the AG. Background: shortly after (b) (6) took office, the press reported that he had, as is customary, selected the portrait of one of his predecessors to be displayed in his office, and that the portrait he chose was that of Attorney General (later Supreme Court Justice) Robert H. Jackson. Those media reports were the cause of a lot of positive comment inside OSI -- where two photographs of Justice Jackson hang in the conference room, in honor of his achievements in bringing Nazi and other Axis war criminals to justice after WWII, particularly (but not only) at Nuremberg. One of the two Jackson photos shows him at the podium inside Courtroom 600 in Nuremberg's Palace of Justice during the trial before the International Military Tribunal, with former Criminal Division special assistant (b) (6) seated behind him. The photo is unusual in that it is in color; the vast majority of the photography (and all filming, we understand) at Nuremberg was done in black-and-white. In recent years, (b) (6) has come to know (b) (6), who took that photo in the course of performing his official duties as a U.S. Army photographer assigned to the trial. His Nuremberg photos have had a number of exhibitions here and in Germany, and a series of them can be seen in the permanent exhibition of the Robert H. Jackson Center (Jamestown, NY). Over the past summer, (b) (6), who is 89 years old and lives in Massachusetts with his wife of 60 years, came through Washington en route to his granddaughter's law school graduation at the (b) (6). His medical situation is somewhat precarious, but he made the trip, and he paid a very memorable visit to OSI with his wife, his daughter, and his son-in-law. When (b) (6) learned that (b) (6) and family would be visiting, he had in mind the fact that the AG was touring the Department's sections and offices and thus expected that the AG would eventually reach OSI. Anticipating the AG's visit and hoping to provide him with a small memento of same, (b) (6) asked (b) (6) if he would be willing to inscribe a copy of his color Nuremberg photo of Robert Jackson to the AG, explaining that AG Mukasey is an admirer of Jackson (as is (b) (6) is one of the "Nurembergers" (as the rapidly dwindling group of trial staff veterans call themselves) who has devoted much time and effort to preserving the Nuremberg legacy. He was delighted to do it, and he wrote a personal inscription to the AG on an 8 x 10 color print of the photo. (b) (6) framed the photo in a simple frame. (Note: It cost him \$3.99 plus tax to print the photo, which is a U.S. Govt photo, and he found the frame on sale. No taxpayer funds were expended for either purchase). (b) (6) can't easily return to present the photo to the AG, but (b) (6) hoped to give it to the AG when he visited OSI. (b) (6) feels it would be ideal if the photo could be presented to the AG under the portrait of Justice Jackson, a DOJ photographer takes a photo of the presentation (with the painting of Jackson "in frame"), and then a print of that photo is mailed to (b) (6). (b) (6) advised that the gift to the AG although slightly over the \$10 limit would still be de minimis. A possible suggestion was made to give the gift after the AG is out of office.. (b) (6) also advised that the gift to (b) (6) was fine. I advised that I agreed with (b) (6) analysis; I also told (b) (6) that I thought this could fit under the exception for special, infrequent events given the unusual confluence of events and past and future here. (b) (6) December 12, 2008

195. (b) (6), ASG, post-employment questions. Went over the effect of the post-emp bans on ASG, specifically in light of his serving in 2 positions during his last year of service, ASG since April 2008, and USA for Connecticut, until April 2008. Lifetime ban applies per usual; 2 year ban will apply to all matters pending in USAO/CN as of April 1, 2008, but not to matters that arise in the district after that. Ban will run for these cases for two years following Jan. 20, 2009 (so, through Jan. 20, 2011). Also, 2-year ban will cover all matters pending in any of the components that report to the ASG, and any matter in OASG in which he did not participate personally and substantially, as of January 20, 2009. This ban will run for 2 years, so until Jan. 20, 2011. The one-year ban of 207© covers the whole Department and will run through Jan. 20, 2009. The 2-year and one year bans allow him to work behind the scenes, advise clients, as long as no one else makes communications to DOJ/Executive branch that are intended to be attributed to him. He may represent clients before the SEC as long as no attributions are made to him in any communications to DOJ by anyone else (if there is a criminal investigation as well as an SEC investigation open). (b) (6) December 16, 2008

196. (b) (6) ATF, misuse of position specifically use of official letterhead. An ATF official asked about using official letterhead to write a recommendation for a former ATF official who is being considered for appointment as US Marshal. Eleanor felt this was different from run of the mill references and recommendations, and I agreed. This has arisen in the past and we've advised the individual to use personal letterhead. The regulations may technically allow it, but we have found it is confusing and can be interpreted as an "official" recommendation of the agency's which is not worth the grief. (b) (6) December 16, 2008

197. (b) (6) OLA, asked what the office could do for departing officials (see (b) (6) advice re use of appropriated funds for gifts/awards for them). Can have a farewell party and bring in or collect nominal contributions for food in the office; can take collections for going away gifts, with usual rules that all contributions must be voluntary and no supervisors may solicit subordinates. Also, a Senator-elect contacted her for advice on ethics issues; either Senate ethics committee or Senate counsel advises Members, not us. Senate ethics committee referred him to (b) (6) (!) She will contact Senate counsel to kick it back to them. Also, Can OLA official write reference on DOJ letterhead from someone they know outside. No. Also, (b) (6) is now an elder in her Presbyterian church, which means she has decision making authority; she has been to the "legal committee" up to now, which doesn't give legal advice but which decides when to go to retained counsel at Wilmer Hale. She asked if she needs any specific approval for this, or has to disclose it on her 278. (b) (6) December 16, 2008

198. (b) (6) OVW, with post-emp issues we discussed last week concerning OVW director and her possible participation in performing under OVW grants. (b) (6) December 16, 2008

199. (b) (6) ODAG, speaking. (b) (6) is participating on a panel at the NIH Annual Summit on Dec 17, 2008. This was approved by the DAG. He has been asked to sign a waiver allowing the panel to be videotaped and wanted to know if he could sign it. I asked him if he knew how it the taping was going to be used and he wasn't sure. The waiver said it would be simulcast on the NIH website and taped. I told him if it was going to be made available to people who may be interested in the summit but could not be there and any cost associated with buying the tape was only to recoup production costs related to the summit, that it would be ok. I told him to be sure they would not be advertising it using his name in any featured manner - it would be ok if it was in a list of participants if his participation was somehow highlighted and used to advertise the video, then it would be a problem. He was attending a speakers' reception on Dec 16 and would double check these issues and call me back if he thought any of what we discussed would be an issue or if he had any more questions. (b) (6) December 17, 2008

200. (b) (6) NSD, gifts/conflicts. (b) (6) called regarding the (b) (6). FIRS reviews US companies' foreign investments to ensure they are consistent with the US agreements. He is recently (b) (6). He has a life long friend who he vacations with, children play together, go to ball games together, etc. His friend is a lobbyist for Verizon. (b) (6) wanted to know if they could continue socializing. I said because of the long personal relationship that predated his appointment (b) (6) and the socializing is not based on either of their professional positions but their personal relationship that they could continue to socialize. I advised, however, that because of their long standing relationship, we should look at whether it is a conflict (b) (6) to work on matters involving Verizon. (b) (6) is going to get more information about the friend's position at Verizon and we will talk again about whether we think a waiver might work in this situation. (b) (6) December 17, 2008.

201. (b) (6) JMD Finance Staff: holiday lunch gift question. He is taking out his employees for holiday lunch. Can he also include and pay for the lunch of his 2 contractor employees? Checked with (b) (6) - yes, he can. (b) (6) December 17, 2008

202. (b) (6), (b) (6) for NDIC - holiday collections. A nonsupervisory employee passes around a hat to collect cash for the office cleaning crew, then divvies up the cash equally, presenting it in envelopes for the holiday. OK? Checked w/ (b) (6) yes with usual collection cautions - nonsupervisory and voluntary as to whether and how much to contribute. (b) (6) December 17, 2008

203. (b) (6) (ODAG) called with a question that had come to him from a U.S. Attorney's Office. He said that a U.S. Attorney is invited to give a speech (which he would do in his official capacity) on the subject of safe childhood at an dinner event sponsored by an organization with an interest in the issue. The event will also be a fundraiser for the organization. He could be a

keynote speaker or he might simply make some remarks. (b) (6) wanted to confirm his understanding that giving the speech to this group would be permissible as long as he did not support any fundraising aspect of the event. I said that as long as it has been determined that this is an appropriate forum for an official speech, he could give the speech, but would have to avoid any expression of support of the organization's fundraising effort. I asked when this event was going to occur and (b) (6) was not sure. He said he thought he should get EOUSA ethics officials involved and so he was going to contact them to discuss this question including related issues such as how the USA's speaking could be listed on announcements of the event, etc. (b) (6)
December 16, 2008

204. (b) (6) (NSD (b) (6)) had sent an email regarding an escrow account that (b) (6) would receive some distribution from once the liability issues covered by the escrow account were resolved. I discussed with (b) (6) and called (b) (6) on December 16 and left a message addressing the questions she had regarding recusal, Touhy regs, and whether the payment would raise any issues under 18 U.S.C. 203. I followed the voice mail with an email message. I concurred that he should be recused from the parties involved in the escrow, namely Veritas/Athena and CACI. There was no 203 issue raised because the escrow account was established before he became a federal employee. He will consult (b) (6) in the Civil Division regarding any Touhy aspects. Additional background is contained in (b) (6) incoming email. The emails are in the file. (b) (6) December 16, 2008

205. (b) (6) (b) (6)) called for an ethics briefing on December 16, his last day of work at DOJ. He has a job with (b) (6) doing patent litigation. He will be paid on a salary basis. He is the (b) (6) in the (b) (6) office where he has been since September 18, 2006. However, in 2008 he served in two other components of DOJ. He was in the (b) (6) from February 4, 2008 to July 10, 2008. And he has been in the (b) (6) from July 28 to the present. We discussed his termination report. He is not ready to file it on his last day. I said he had 30 days from his last day that he is paid at DOJ to submit the report. I reminded him of the \$200 late filing fee. I told him he would have to report his arrangement for employment with the law firm on Schedule C. We discussed the post employment restrictions - the permanent ban, the two year ban, the one year ban - and 203. We discussed the fact that the one year ban applied to him with respect to each of the components he had worked in this year. I said I would send a color coded chart that explains the one year ban and he gave me his home address. I also said I would send him by email a side by side comparison chart that compared 207 restrictions and the bar rules. I sent (b) (6) several emails throughout the day. I sent the side by side chart. I sent him an email with the citations to the 207 regulation. I sent him an additional email making clear that he had a one year restriction with respect to all three offices he served in. And at the end of the day, I asked him to confirm that his annual salary was at or greater than \$148,953. He replied that it was. One data base indicated his salary was \$159,300. On December 17, 2008, I sent a follow up letter with the color coded chart. A copy of the emails and the letter are in the file. (b) (6) December 17, 2008

206. (b) (6) (CRT, (b) (6)) called with a recusal question that (b) (6) asked him. (b) (6) nomination has gone up to the Hill but she has not had a hearing so there is little likelihood that she would be confirmed before this Administration concludes. In connection with her nomination she is aware that constituents in the Korean American community have submitted endorsement letters to the Hill. She has not seen those letters. There is a Fair Lending investigation in the Division that involves a Korean American owned bank and a Korean American owned car dealership in Los Angeles. She does not have any association or connection to these businesses. She does not know if these businesses submitted letters in connection with her nomination. Her question is does she have a recusal obligation based on the possibility that either or both of these companies might have submitted letters to the Hill. Does she need authorization in order to be able to participate in this case. (b) (6) did not believe that these facts triggered a recusal obligation. I discussed with (b) (6) and told (b) (6) that we concurred in his view. The mere possibility that they might have written letters is not sufficient to require a consideration of an appearance of a loss of impartiality. Nor does she have any duty to inquire to see if they did submit letters. She can participate in the case. (b) (6) December 17, 2008

207. (b) (6) & (b) (6), JMD, post-employment advice. (b) (6) and (b) (6) asked about the procurement integrity post-employment ban. I advised that The paragraphs below describe those positions which are covered by the post-employment ban contained in the Procurement Integrity Act which essentially bars a former official from going to work for the successful contractor for a contract above \$10 million. If (b) (6) serves as the program or deputy program manager for part of the credit card program, he would be covered by this ban. Please let me know - now or later - if you have any questions. A former official is prohibited from accepting compensation from a contractor within a period of one year after such official served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement for a contract in excess of \$10 million. The above restriction also applies to a former official who served as program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10 million. It applies to a former official who made a decision to award a contract, subcontract, modification, task order, or delivery order; to establish overhead or other rates for a contract; to approve issuance of a contract payment or payments; or to pay or settle a claim in excess of \$10 million. 48 CFR 3.104-3(d)

208. (b) (6), post - employment questions. (b) (6) emailed (b) (6) regarding a post-employment restriction question. (b) (6) left the department in June and has a chance to argue a case, in which the government is a party next June. (b) (6) understanding is that his one-year ban on appearing before the Department precludes him from appearing on the briefs, but not from working on the case, and that as long as the argument date is after the one-

year anniversary of his separation date, he can argue the case. Assuming his understanding is correct, his questions are: 1) is there a problem if before the separation he files the required notice of appearance form for the argument, which he understands would be served on the department; and 2) could one of his partners mention the possibility of him being able to argue the case as a reason for the government to agree to their motion for an extension of time for their brief (they are on the same side as the government) or is the mention of his name in that context a problem? (b) (6) forwarded me the question. I advised (b) (6) that his basic understanding concerning the one-year ban is correct, viz., that the one-year ban on appearing before the Department precludes him from appearing on the briefs, but not from working on the case, and that as long as the argument date is after the one-year anniversary of his separation date, he may argue the case. (b) (5) (b) (5)

[REDACTED]

Therefore, his partners should not disclose his participation in the case until after his one-year ban has run. With respect to the first question, whether he may file the required notice of appearance form for the argument within one year of leaving, depends on whether the communication - which is served on the Department - is made with the intent to influence. For example, it would constitute a prohibited communication if the intent was that subsequent communications concerning the case, even if made by someone else, be attributed to (b) (6) (b) (6) December 16, 2008

209. (b) (6) travel question. A warden will be on personal travel to the Dominican Republic and has received an invitation from the director of national prisons there to be a key note speaker. Is there a "country clearance" he would need in order to travel there and give a speech? His supervisor supports him speaking. (b) (6) asked me to refer him to JMD's Finance/travel office - referred him to (b) (6) (b) (6) December 17, 2008

210. (b) (6) Attendance question. The (b) (6) just received an invitation to for a holiday reception on Monday, December 22. The Federalist Society has invited 250 people, and have budgeted \$20 per person. I advised (b) (6) that since this falls within the de minimis of \$20, if the (b) (6) is going alone (without (b) (6)) no additional approvals are needed. If (b) (6) is going, we will need to seek approval under the WAG exception, so let me know if she is attending. (b) (6) confirmed that she will not be attending. (b) (6) December 18, 2008

211. (b) (6) with financial disclosure procedural questions. Answered them. (b) (6) December 18, 2008

212. (b) (6) EOUST, endorsement question. (b) (6) was asked to provide comments regarding an outside attorney for a website called Chambers and Partners. Supposedly the comments were to be anonymous and the website is akin to Zegats for restaurants. (b) (6) reviewed and said it was not permitted by the regs; it is primarily marketing, we are not permitted to help private citizens find counsel, and it was an endorsement. (b) (6) December 18, 2008

213. (b) (6) gift question. Their (b) (6) each received an Indian Star quilt as gifts from (b) (6). Insulting to return them. Difficult to value, but over \$20, so the employees cannot keep them. (b) (6) thinks they are worth between \$50 and \$100 each. I tried to help him with some valuation research - b/t \$50 and \$100 seems right. (b) (6) is going to accept one for display on the wall (under \$150, with component head acceptance) - but does not think that all three would be worth under \$150 so they would have to go to the gift fund committee to accept all three - but - they do not really wish to keep 3 quilts for display. How to excess the other two? Told (b) (6) that last year I was told by property management that they've assigned each component a property manager who will accept such unwanted gifts, and determine if they are to be used in the Department, if not, excess them to GSA. I do not know who would be assigned to (b) (6) but gave (b) (6) all the contacts in JMD management that I knew about property management for a start. OJP is still thinking through their options but likely will excess two of the blankets in this manner. Past log entries about gifts of blankets from Indian Tribes are consistent with this. (b) (6) December 18, 2008

214. (b) (6) (JMD) contractor identification issue. I sent (b) (6) an email indicating we were continuing to gather information on this issue and would be getting back to him to discuss good practices for dealing with this issue going forward. (b) (6) December 17, 2008

215. (b) (6) (Antitrust, (b) (6)) called with a question related to the Bernard Madoff alleged fraud. (b) (6) is an attorney in Antitrust who is the (b) (6) for the Division. Training is his exclusive area of responsibility. Sometime within the last week he became the (b) (6). The suit is a class action and alleges that the plaintiff and others lost about \$250 million on investments that (b) (6) placed with Madoff's company. The case was filed in Los Angeles federal court. (b) (6) did not believe that there was any problem in (b) (6) filing the suit and litigating the claim. We discussed various recusal scenarios but none seemed likely since his sole responsibility is internal training in the Division. I discussed with (b) (6) and called (b) (6) back and said that he should caution (b) (6) to not publicize his employment with DOJ and, to the extent it is in his control, identify himself only in his status as a private party litigant. A story in the Los Angeles Times on December 17 only identified him as "(b) (6) of (b) (6)", (b) (6) agreed but said that reporters or others might be able to discover his employment through research. The news article is in the file. (b) (6) December 18, 2008

216. (b) (6) (b) (6) (b) (6)) called on 12/18/08 with a recusal question that arises from the fact that her husband works for a law firm that is representing the respondent in a case that (b) (6) is scheduled to argue (b) (6). We made a recommendation to (b) (6) that he determine under 502 that she could continue to participate in the case. (b) (6) approved on 12/18. I called and sent an email to (b) (6) on 12/19/08 to tell her that her continued participation had been approved. The email string follows here and a copy of the email string is in the file. (b) (6) December 19, 2008 I sent (b) (6) the following email and he approved: **From:** (b) (6)
Sent: Friday, December 19, 2008 9:09 AM
To: (b) (6)
Subject: FW: Request for Authorization to Continue Participation in Case

(b) (6)

(b) (5)

Pursuant to 5 C.F.R. 2635.502, an employee must take appropriate steps to avoid an appearance of loss of impartiality in the performance of her official duties. Under this section, an employee should disclose a potential conflict to the appropriate Department official and seek a determination as to whether she should be disqualified from participating in a particular matter if she considers that a reasonable person with knowledge of the relevant facts would question her impartiality. Where an employee knows that a person with whom she has a "covered relationship" is or represents a party to the matter, she should not participate in the matter without informing an agency official and receiving authorization to participate. (b) (5)

An employee may be authorized to participate in a matter if the agency designee determines that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's operations and programs. As discussed in her email, (b) (5)

Under the Department's Order on Ethics Procedure, you are responsible for making such determinations for Ms. (b) (6) with the concurrence of an ethics official. It is within your discretion to determine that the interest of the Government in Ms. (b) (6) participation in this matter outweighs any concern that the integrity of the agency's operations or programs will be questioned. (b) (5)

[REDACTED]

(b) (6)

(b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I have advised Mr. (b) (6) my direct supervisor on the case, of the situation. (b) (5)

[REDACTED]

Please let me know if you need any additional information.

Thanks,

(b) (6)

(b) (6)

United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

(b) (6)

217. (b) (6) (BOP, (b) (6)) had sent an email asking a question about a proposal by BOP employees to have a Toastmasters chapter at BOP. The employees had previously been turned down but had subsequently found a webpage for a Toastmasters club on the NIST government website. (b) (6) included the NIST website and an OPM letter that was in effect a kind of approval of Toastmasters in the federal workplace. (b) (6) wanted to know whether this violates GSA rules against solicitation in Government space (41 C.F.R. 102-74.410) because Toastmasters clubs solicit dues at their meetings. Subsequently, I worked with (b) (6) on this issue. I also discussed with (b) (6). I did not research interpretations of the GSA rules but did find that there are Toastmasters chapters in virtually every agency of the executive branch, including GSA. I told (b) (6) that it would appear that merely asking for dues from members or prospective members is not seen as a form of "soliciting alms" within the meaning of the GSA rule. (b) (6) asked whether allowing a chapter at BOP could be seen as an endorsement of Toastmasters. I said that simply granting an employee group's request to use government space would not in itself be an endorsement of that group. (b) (6) also asked whether allowing Toastmaster's to use space could be seen as preferential treatment. He was concerned that BOP would be criticized if it allowed Toastmasters in and denied other groups, such as Weight Watchers. I advised (b) (6) by email that I thought the agency would not be subject to this criticism for several reasons. First, OPM has in effect approved Toastmasters as an activity that can develop valuable public speaking skills that could be useful to all employees in their work. This would distinguish it from other groups. Finally, (b) (6) wanted to know if BOP could have a policy of not allowing any outside group to use its space. I sent (b) (6) email advice saying he would have to take this issue up with his own BOP general counsel's office. The emails, GSA reg, OPM letter, and NIST website page are in the file. (b) (6) December 19, 2008

218. (b) (6) (b) (6) called with a post-employment question. She is the (b) (6) in (b) (6). She is in a non-career SES position and will be leaving at the end of this Administration. She is looking for a job and one law firm asked her what post-employment restrictions she was subject to. In particular, she wanted to know whether she was subject to the one-year cooling off period. I told her that restriction would be triggered if her annual salary was at or above \$148,953. She said her current salary was

(b) (6). I said in that case the one year restriction did not apply to her. I followed up with an email to her on 12/19. The email is in the file. (b) (6) December 19, 2008

219. (b) (6) (b) (6) had a question regarding a payment of expenses under section 1353. On October 29, 2008, (b) (6) sent an email that described the background of the question. An attorney in the Counter Terrorism Section (CTS) traveled to a conference in Vienna in July 2008. His travel was approved in advance under 1353. The UN paid directly for the airfare in the amount of \$1,869.44. While he was at the conference, the UN gave him a check for 800 Euros to cover 75% of his other travel related expenses. He cashed the check in July. The regulations under 1353 do not permit the employee to accept money in that fashion from the non-federal source. (b) (6) wanted to know what we would suggest as a solution to the problem. The best solution would be to: (1) have the attorney write a check back to the UN for 800 Euros; (2) have the UN write a check to DOJ for 800 Euros; and (3) have the attorney voucher to the Department for reimbursement of his expenses. (b) (6) was not sure that the UN would agree to do this. I checked with (b) (6) on November 12 and he was still working on it. I left a voice mail message on December 1 asking for an update and sent an email. (b) (6) replied saying CTS was still working on it. On December 5, I talked with (b) (6) and he said the attorney had contacted the UN and they had agreed to accept his repayment. But they were still checking to see if the UN would then reimburse the Department. On December 17, I sent (b) (6) an email asking for an update. He replied on December 18, that everything had been worked out although it may take some time to get the money moved around. However, on December 19, (b) (6) sent another message saying the UN would not reimburse DOJ. So the resolution will be that the attorney repays 800 Euros to the UN and DOJ picks up the costs (other than airfare) of the trip. Emails are in the file. (b) (6) December 19, 2008

220. (b) (6) (b) (6), gift issue. Follow up to #217. (b) (6) called for (b) (6) who was out of the office. Wanted to know if the attorney could just repay the DOJ for the expenses, instead of paying the UN. Conferred with (b) (6) who agreed that it would not work because the attorney would still be accepting an improper gift from the UN. Advised (b) (6) and told him (b) (6) would be back on Monday if he had further questions. (b) (6) December 22, 2008.

221. (b) (6) CIV, 502 issue. (b) (6) emailed with a memo that he wanted me to review. I concurred with (b) (6) determination. The memo is in the log file. (b) (6) December 22, 2008

222. (b) (6) (CRT) - wanted to double check on a gift issue/WAG. A briefing on global information systems from a contractor to take place at Verizon Center on January 6th- followed by a networking session during the Caps game with dinner. All in sky box. The host, (b) (6) asks that government employees pay \$40 each to attend. (b) (6) wonders if that takes it away from the gift rules prohibition because the employee is paying fair market value. Inquiries to the host resulted in a response that they cannot place a value on it because it is not being offered to the general public. (b) (6) thinks they took the value of the cheapest Caps ticket (\$25) and added \$15 for a dinner, and

that is how they arrived at government employees paying their way to attend the game and the dinner session. We discussed concerns: Fair market value is the face value of a skybox/like ticket. Price of dinner is what it would cost to have dinner at the catering Verizon Center restaurant. (b) (6) and I thought that it would be over the gift rule exception of \$20. Employee may not pay the difference to bring it under \$20. We also discussed WAG-type concerns -who else would be there, is it more vendor marketing than true networking/information gathering, would there be appearance concerns. (b) (6) talked to her employee who agreed that \$40 does not cover the fair market value of a Caps game and dinner in a skybox, and she advised her employee that he could attend the briefing session, but not the game/dinner/networking session. (b) (6) December 23, 2008

223. (b) (6) OCIO - 1353 question. OCIO has paid several thousand dollars for an employee to attend some "computer hacking" training here in DC (assumably to fight against it) - turns out it was for Inauguration week and the trainer has gotten booted from their lodgings and cannot find reasonable replacement lodging. Vendor offers to pay for the employee to come to their training session in Orlando that week instead - airfare and lodging in kind, and, if DOJ does not approve M&IE (\$49 per day in Orlando - she would be there for 5 days) then he would reimburse the Department for that, too. I explained how 1353 works to (b) (6) and cautioned against the employee accepting anything directly. (b) (6) is going to fill out the 1353 travel form, discuss it with (b) (6) for approval, and then send the travel memo to us for our recommendation and approval by (b) (6) (b) (6) December 23, 2008

224. (b) (6) JMD/PSS, Outside employment/203/205. He has a personal friend with a Professional Services Contracting business who has approached him about becoming involved with his company, and working with his company (for compensation) "to get on GSA's schedule." Currently his friend's company does consulting work for DOD only. I explained the problems with that from an ethics standpoint including .203, .205, and 2635.801-803. Also discussed the flat prohibition on federal employees owning companies that do business with the federal government. He appreciated the advice, and will not pursue this outside employment arrangement. (b) (6) December 23, 2008

225. (b) (6) had a follow up question regarding the application of 207(c). She is a non-career SES and her current salary is below the dollar threshold that would trigger 207(c). She wanted to know what the effect of a salary increase in 2009 would be. I told her the new threshold in 2009 would be \$153,105. If her annual salary for 2009 is less than that amount, then she would not be subject to the one-year cooling off period. (b) (6) December 29, 2008

226. (b) (6) (JMD, SEPS) called with a gift question. An employee had made an extra effort in providing a service for the JFCU. In appreciation of the employee's effort, JFCU gave him a \$25 gift card for Best Buy. The employee has asked if he may keep it. I told Everett the gift rules

apply in this situation and the employee cannot keep the card unless there is an applicable gift exception. The only exception appears to be the \$20 exception and the card exceeds it. So he would have to return it. Everett said that is what he expected the answer to be and would so instruct the employee. (b) (6) December 29, 2008

227. (b) (6) in JMD sent an email asking for general guidance on permissible fundraising activities for the CFC. I called and he was not in. I sent an email giving him references to the regulation and the name of our CFC person, (b) (6) The email is in the file. (b) (6) December 19, 2008

228. (b) (6) OIPL, post government employment brief. (b) (6) called for his ethics briefing because he is preparing to leave the Department. He is going to DOD and will still be workign for the government. He had close involvement with many private organizations while at DOJ but says he will not have any interactions with these groups in his new position. He has not worked on any contract matters while at DOJ. I advised him that the restrictions would come into play if he were leaving the government and advised that he should give us a call to discuss restrictions relating back to his work at DOJ when he left the government. (b) (6) December 29, 2008.

229. (b) (6) NSD, gifts. (b) (6) called with a question regarding gifts between employees, specifically between a supervisor and subordinate. An employee is complaining that they are restricted from giving a gift to a supervisor who they have "had a personal relationship with" for 20 years and who now happens to be their supervisor. I conferred with (b) (6) and she agreed that the ban is pretty strict. Told (b) (6) that she can ask more questions of the employee - are they really personal friends outside the office or simply co-workers who have become friendly through the years? Do they attend other family events for each other (children's birthdays, weddings, etc). I advised that this office strictly interprets the no supervisor/subordinate gift rule and has almost never found a relationship that reaches the level of an exception. (b) (6) December 29, 2008.

230. (b) (6) Acquisition, gift question. Follow up to entry #168. ESI asked (b) (6) to sign a letter acknowledging her awareness of the discounts offered to federal employees. (b) (6) said all federal agencies are sent this letter and there is no requirements or restrictions attached to the discounts. I told her signing the letter to state that she is aware of the discounts would not be an issue so long as she is not agreeing to any other terms. The letter is in the background file with (b) (6) email. (b) (6) December 30, 2008.

231. (b) (6) (b) (6) Outside teaching. AAG (b) (6) approved outside employment of (b) (6) for a teaching position. Approval is in outside employment file. (b) (6) December 30, 2008

232. (b) (6) (Tax) called with a question as to whether an attorney could contribute to a group retirement gift for a judge that the attorney had clerked for. (b) (6) initial recommendation was that the attorney should refrain from participating. However, the very same question had come up in EOUSA and EOUSA had advised its attorneys that participation was permissible. (b) (6) discussed the question with (b) (6) and advised that our office concurred in EOUSA's view. (b) (6) was fine with that conclusion. The emails are in the file. (b) (6) December 30, 2008

233. (b) (6) OLA, Speaking question. An employee contacted (b) (6) about a speaking opportunity. During the employee's previous employment, she was invited to be a member of the Annenberg Speakers Bureau. Having accepted this invitation, it basically means that she is a federal government representative who speaks to college and graduate school students to encourage them to pursue government careers. This is completely uncompensated, but it is something that the employee feels benefits the government and helps students find their way. On Wednesday, November 28 they are having a small, informal brown bag lunch with some student interns spending a semester in DC through The Washington Center who are focused on business and law careers in government. They are having a GSA representative speak and have requested that the employee attend to speak about working for the government from a lawyer's perspective. (b) (6) asked if I thought it would be permissible and I agreed, with component head approval. (b) (6) December 31, 2008

234. (b) (6) CRM, seeking employment questions. See entry for January 1, 2009.

235. (b) (6) Pro Bono program, approval to participate in ABA teleseminar. Both (b) (6) and I recommended that ODAG approve (b) (6) to serve as the principal presenter for a teleseminar on pro bono for government attys being planned by the ABA Litigation section's committee on pro bono. See log file for approval memo. (b) (6) Dec. 31, 2008

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DEO Counsel Log, First Quarter, 2009 (January 1- March 31, 2009)

1. (b) (6) OCIO, 1353 travel. (b) (6) an IT specialist at OCIO, was scheduled to attend training provided by the Hacker's Academy in Washington DC. The training was scheduled for Jan 16-19 and the Department had already paid the \$1850 tuition fee. Because of a lack of availability of training space or lodging due to the Inauguration that same weekend, the Hacker's Academy cancelled the DC training. They offered to allow those who were scheduled to attend the DC training to attend the same class scheduled for the same time at their headquarters in Florida. The Hacker's Academy offered to pay for the airfare and hotel for those attending since they had canceled the local class. (b) (6) does not recommend or make decisions regarding IT training vendors in her official duties. There are other Federal employees effected by the cancellation who were offered the same travel benefits. The Department will pay any M&IE. I conferred with (b) (6) and it was decided that because there were extreme circumstances due to the Inauguration, we would recommend acceptance of the travel benefits from the private vendor. (LE) January 2, 2009.
2. (b) (6) USTO, Hatch Act. (b) (6) called regarding a career SES employee who wanted to attend the swearing in ceremony of a new senator. The senator and the employee previously worked together and have a relationship completely separate from the employee's official position. I advised that the swearing in is not a political event because it is not promoting the success or failure of one candidate over another. She asked if he could take pictures with the Senator and I said so long as any interaction was done in his personal capacity that would be fine. He can display the photo in his office if he has a personal relationship with the new senator. (b) (6) January 2, 2009.
3. (b) (6) CRM, (cont'd from 12/31) question on seeking employment. He is presently discussing/negotiating with a company that may be a competitor with the subjects of a proposed disposition under review by CRM for violations of the Foreign Corrupt Practices Act. Under proposed disposition, very large fine would be assessed against KBR, but Halloburtin, which owned KBR at the time of the conduct at issue, would pay most of the fine and be indemnified for matters discovered going forward. I concluded, see regs, that the fact that the potential employer is an competitor in the industry does not meet requirements for direct and predictable effect on its financial interest; confirmed that potential employer had no involvement in the conduct at issues and that the settlement would not affect it in a distinct or special way. However, given size of the fine, I have concerns about appearance of his participation. Advised that he should not participate in the disposition; he had reached same conclusion after further consideration. (b) (6) January 2, 2009
4. (b) (6) CRM, appearance issue. Under a proposed disposition in CRM, 3 persons have been recommended by the subject company as qualified to serve as monitors. The one that the DOJ attorneys feel is more qualified is the mother-in-law of a section attorney. Atty is a line atty and did not participate in this case, but does participate in other similar investigations. (b) (6) felt that there should be a compelling reason why she and not one of the other 2 should be selected to

overcome the appearance. I agreed, and she also will advise them to go back and determine if atty and his wife have any joint financial interest with wife's mother. (b) (6) January 5, 2009

5. (b) (6) (CRS (b) (6) sent an email requesting advice on a recommendation question. An employee wants to write a letter of reference for a personal friend who is a "candidate" for US Marshall for Maine. The employee did not work with the friend in government. Can he use official letterhead and his title? I discussed with (b) (6) and called (b) (6). Told him the employee could use official letterhead and his position because the person was seeking a federal position. However, it should be clear in the letter that it is a personal reference based on the personal friendship and does not express any view of the Department on the friend's "candidacy" for a political appointment. I suggested to (b) (6) that he review the letter in draft and he said that he would do that. The incoming email is in the file. (b) (6) January 5, 2009

6. (b) (6) ODAG, with questions on his term 278. (b) (6) January 5, 2009

7. (b) (6) OASG, ASG gift question.

8. (b) (6), gift question. (b) (6) hosted a meeting with the (b) (6) (b) (6) earlier this year. Provided as a gift (from (b) (6)) was a letter opener that was presented to the Secretary General. (b) (6) has received a silk tie by Ireland designer (b) (6). The tie has Celtic artwork from celebrated manuscripts of the middle ages with a classic contemporary pattern. I advised (b) (6) that we have verified that the cost of the tie is well below the allowable limit of \$335 for gifts from foreign governments, so the (b) (6) may keep the tie. (b) (6) January 6, 2009

9. (b) (6) DEA, outside activities/official capacity. DEA would like (b) (6) to be approved to continue serving on the Board of Directors of the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB). Based on the Holder memo and the 1998 OLC opinion, it is appropriate for (b) (6) to sit on the board of this private organization because it is of "great interest" to the Department and meets the "standard setting" body requirement of the OLC opinion. Prepared a memo for (b) (6) signature for the DAG to approve. (b) (6) January 6, 2009.

10. (b) (6) EOUSA, 207 (c) question. (b) (6) wanted to make sure that my change in "senior" employee pay threshold email did not mean to imply that this does not apply to their USAs and AUSAs who earn above the basic pay threshold. I advised (b) (6) that He was correct, except for the wrinkles that apply to their folks. If the basic pay (not including locality) for their supervisory AUSA's is \$153,105 or more, they will be covered by the ban. However, it would only restrict them from communicating with their former district (or districts if they served in more than one district at the senior level pay during their last year), and with EOUSA. Also, if they are detailed to a non-USA position such as ADAG, however, they will also be barred from contact with all those parts of DOJ that are NOT designated separate. If they are detailed to a separate component, they would be restricted from that component as well as their district and EOUSA.

The USA's, who are PAS but not Executive Level, would be restricted from communicating with their district(s) and with EOUSA for the one year. Same rules as above if they are on detail. I also advised that none of their line AUSA's should be covered by the ban - if they seem to be I asked him to call me, that would be wrong and I'd have to figure out what I was not explaining properly. (b) (6) January 6, 2009

11. (b) (6) Policy and Planning Staff, contractor/502 issues. (b) (6) approached (b) (6) at NET with concerns because he was a former contractor with (b) (6) who is now working alongside employees of that contractor as an IT Specialist for OCIO. He was concerned this was a conflict and mentioned he had been approached to be the COTR on this contract. I called to follow up with (b) (6) and talked to him about his position. He is a subject matter expert (SME) in infrastructure who reports directly to the Chief Architect. He is the functional lead on a number of projects. In these projects he may interact with his former employer, such as to ask for graphics from the SME on graphics. He may also be on a project where a contract employee (from his former contractor) is the functional lead. He does not have any supervisory role over the contract employees, he does not review their performance or monitor their work or contract completion. He expressed frustration that he had gone through the HR "vetting" process and had never been told that his past employment with the contractor may be an issue in his new position. I told him that he could not hold any supervisory position involving the contractor and if his position changed at all he should call us back for further advice. (b) (6) January 7, 2009.

12. (b) (6) (OARM, (b) (6)) called with a question about a contract employee. The person had been a regular employee and then retired. The person was hired back on a contract basis to do background investigations. When the person reached the \$25K cap, they stopped working for OARM. Subsequently, the person went to work for (b) (6) who had a contract with EOUSA to do background investigations and they used this person. The person then left GD. Now OARM would like to hire her again as a contract employee to do background investigations and review background investigations. OARM did not think this raised any ethics issues but called to make sure they were not missing something. I told (b) (6) that contract employees are not subject to the conflicts laws and administrative standards. Again hiring the person as a contract employee does not in itself raise any ethics issues. I discussed with (b) (6) and called (b) (6) back and said that the contract employee should not work on any matter that might affect (b) (6). For example, the employee should not have any role in recommending or deciding whether GE would get a contract. (b) (6) said that the employee would not have that type of responsibility but she would advise the employee not to participate in a matter involving (b) (6). (b) (6) January 6, 2009

13. (b) (6) (ENRD) sent a political activity question by email. A career SES employee wants to volunteer in his personal capacity to work on the Presidential inauguration ceremonies. (b) (6) wanted to know if this presented any problems in terms of the Hatch Act. She reviewed the OSC opinion which had advised that wearing political buttons after an election was permissible. She reasoned that similarly the inaugural activity was post-election and was not prohibited if done as a personal activity. I sent her an email advising that I agreed with her

conclusion that volunteering to work on inauguration ceremonies was permissible. (b) (6) January 6, 2009.

14. (b) (6) (CRT, (b) (6) had a question about the "Sharing Neutrals" program, an interagency collaborative ADR program. Persons who participate do so in their official capacity as a collateral duty. (b) (6) wanted to know if this presented any ethics issues. I asked (b) (6) for additional information on the program. She indicated that the Bureau of Prisons and the FBI have participated. I discussed with (b) (6) and talked again with (b) (6). I told him there were no objections to participation from an ethics perspective except that an employee should probably not serve as a neutral for a component of another Department if there were a sensitive CRT matter pending there. (b) (6) agreed with that concern. Otherwise it is essentially a management decision as to whether it can accommodate an employee's wish to participate in the program. An email with some background information is in the file. (b) (6) January 6, 2009

15. (b) (6) (CRT) had a question regarding the processing of (b) (6) termination report. (b) (6) is a PAS. I told (b) (6) to have (b) (6) submit the form to him. He would review and sign as the other reviewer. Then send it to DEO for review. (b) (6) said he was so advise (b) (6) (b) (6) January 6, 2009

16. (b) (6) called to request an extension of time to file his termination report. His financial planner who has information and would also assist him is located in San Francisco. Also (b) (6) will be having a minor medical procedure in January. He thought a 30 day extension was automatic. I said extensions were not automatic and that he needed to make a request in writing and explain why he needs the extension. The amount of time granted depends on the circumstances of the request. I told him we would agree to an extension till February 6 which is a month from today but only an additional 3 weeks from when the report was due. I told (b) (6) to send me an email as soon as possible because we would have to review it and make a recommendation to the AAG. He said he would do it as soon as he got home. (b) (6) January 6, 2009

17. (b) (6) OCIO, letter of recommendation. (b) (6) called to ask if he could write a letter of recommendation for a former contract employee who was applying for a federal job with another agency. I told him that he could and could use his official title/position if he had personally supervised this employee's work and had personal knowledge of his work. (b) (6) said he did. The letter would be for a specific position, not a general letter. (b) (6) January 7, 2009.

18. (b) (6), FCSC, Outside practice by SGE. I emailed (b) (6) the following for approval: (b) (6), (b) (5)

(b) (5)

[REDACTED]

(b) (5)

[REDACTED]

(b) (6) approved. (b) (6) January 8, 2009

19. (b) (6), USMS, Use of DOJ letterhead. (b) (6) den emailed after viewing the 2008-2009 Transition DVD supplied to him by the Department. He has re-applied for his position with the transition team and has assembled a package that he needs to send to the transition team and their Congressional delegation. He will be using his own postage and paying for all FedEx expenses. He would like to know if he may use US Marshals Service letterhead for the cover letter and use USMS envelopes for US Postal Service mailing? I advised that the use of letterhead and Department envelopes is limited to official business or when specifically authorized. Applying for a position is considered personal, and there is no authorization to use letterhead or items such as envelopes (or postage). So, he should use personal letterhead and also supply envelopes along with postage, as he planned. (b) (6) January 8, 2009

20. (b) (6) ODAG, gift question. May a prospective employer pay for travel in connection with an interview? Yes, as long as you are recused from participating in any matter affecting them, and be sure to report it on termination 278 if over \$335 de minimis. (b) (6)

January 9, 2009

21. (b) (6) OASG, post-employment. Did telephone debriefing with (b) (6) who has not been seeking employment but will be going to Argentina for 4-6 months. Went over the lifetime, 2-year and 1-year bans, (he is a senior employee) and sent over the color-coded chart again. He has the post-employment summaries and materials and attended the transition outbriefing. (b) (6)
January 9, 2009

22. (b) (6) (follow up to item 16) sent an email dated 01/07/09 requesting an extension of time to file his termination report. On 01/08/09 I forwarded his request with a recommendation that it be approved to (b) (6). (b) (6) approved the request on 01/08/09. I sent (b) (6) an email notifying him that his request was approved. He has until February 6, 2009 to file his termination report. His email, our recommendation, and my email back to (b) (6) are in the file. (b) (6) January 8, 2009 **Update** (b) (6) He is sending it today, 1/30/2009 - he will fax it and mail it. I told him only receipt of the original will toll the due date so he may wish to consider hand-delivery or FedEx rather than US Postal mail. He might. He asked whom he should contact regarding payment of his unused leave, and I told him I would feel the most comfortable referring him to (b) (6) OASG's Office Manager for further direction on HR matters. (b) (6)
January 30, 2009

23. (b) (6) (TAX, (b) (6)) called with a question about a possible ethical violation. An employee of a court reporter service has made a delivery and then apparently attempted to solicit business for his company from staff in the office. A section chief stopped the solicitation and asked him to leave. On the way out, he left an envelope for the office manager who is a regular employee and handles procurement matters. After he left, it was discovered that the envelope contained 4 tickets to Caps games and 4 tickets to Georgetown games. (b) (6) was asking what our suggestion would be as to the next step she should take in this situation. She wanted to know at what point, for example, they should contact the OIG. I discussed with (b) (6) and called (b) (6) back. I suggested that she call (b) (6) in OIG and explain the facts to her and get a read as to whether they should refer to OIG immediately or try to obtain some additional information to explain why the tickets were left for the office manager. (b) (6) thought that was a good approach. Subsequently, she sent a copy of the email she sent to (b) (6) describing the incident. Apparently, the value of the tickets could be as much as \$1,000. A copy of the email which contains greater detail about the incident is in the file. (b) (6) January 8, 2009

24. (b) (6) ((b) (6)) called with a gifts between employees question. The staff of the (b) (6) (about 20 people) wanted to organize a going away event for the (b) (6). People are going to bring in food for an event in the office to be held next week. They also want to give him a gift. They are thinking of an engraved silver plate that would cost around \$200. She wanted to know if they could seek contributions from the staff for the gift. I told her that the gift rules permit a gift of this type on special infrequent occasions such as this that end the supervisor-

subordinate relationship. I told her that they could organize this event and ask for contributions subject to the following guidelines. Contributions must be voluntary. They should not suggest a specific amount. A non-supervisor should do the organizing and asking for contributions. (b) (6) asked if there was any limit to the voluntary amount that a person could contribute. She wondered if \$20 would be permissible. I said there was no specific limit on the amount of an individual contribution but it should be reasonable. Also there was no specific limit on the value of the gift except that the gift should be reasonable and appropriate to the occasion. I said a \$200 silver plate was certainly reasonable in this case. (b) (6) January 9, 2009

25. (b) (6) (ENRD, (b) (6) had a gift question. Her original question which she asked by email on 12/16/08 was whether an employee could accept a "scholarship" from the Court of Federal Claims Bar Association (CFCBA) that would pay for the employee's expenses to attend the annual CFCBA bench and bar judicial conferences. Although they are calling it a "scholarship" it is essentially a program to pay the conference fees and travel related expenses of an employee who could not afford to go on their own. One of the managers of ENRD is a past president of CFCBA and in his capacity as a CFCPB member who is working on establishing this program he was asking for advice on ethics issues so the program could be structured in a way that would not cause ethics problems. There were some communications back and forth with (b) (6) to obtain additional information about the program and the membership of CFCBA. The first issue that we discussed was the applicability of the gift rules. (b) (6) thought that the rule prohibiting gifts given because of official position applied because an applicant/employee would be identifying him or herself as a DOJ employee when they applied and they would be going to the conference in their official capacity. However, the program would be offered by CFCBA to anyone who was a member. People from the private bar, from non-profit organizations, from academia, from elsewhere in government could apply. So the offer/invitation to apply was not being extended because someone worked at DOJ but because they were a member of CFCBA who could meet the need qualification. As described, it did not seem to be an offer that was extended for or because of a DOJ employee's official position. The second question was whether CFCBA was a prohibited source. (b) (6) (b) (5)

(b) (6) But it really depends on the membership. If a majority of the members are prohibited sources, then the organization is a prohibited source. For example, some speciality practice bar groups are made up overwhelmingly of lawyers and firms who practice before a particular agency. (b) (6) checked on membership and said that about 40% of the 600 members are government employees. Considering that others could come from academia and non-profit, it is possible that a majority are not prohibited sources. But I encouraged (b) (6) to explore this issue further to see exactly what the composition of the membership was. It would be useful because if CFCBA is not a prohibited source, then the gift rules would not apply. The question is somewhat further complicated by the fact that the gift rules are limited by the component designations. The next issue that we discussed was the Selection Committee. I raised the concern that someone sitting on the committee who was a prohibited source with respect to a DOJ scholarship applicant might be in a position to grant the scholarship. The situation would be particularly sensitive if there was current litigation in which

the attorney on the committee was representing a party. (b) (6) said there were not be a gift issue because the money would not be coming from the prohibited source but from CFCBA (assuming it is not a prohibited source). I said there is still a very bad appearance under those facts. We discussed the possibility of having the committee have a sufficient number of member so that in that circumstance the prohibited source individual could recuse from the scholarship decision. (b) (6) said she would convey this to the manager. We also discussed the question of the source of funding for the scholarship. (b) (6) said that it would come from general operating funds of the CFCBA. We discussed whether or not there could be special sponsors and whether law firms that might have a large practice in this area might make special contributions. (b) (6) said it was unlikely that there could be special sponsors as this might cause problems for the judges who were members. We also discussed what authorities might be used to accept the scholarship if the gift rules did apply. We discussed the WAG exception. This might be used if the conference were local. But it could not be used if the conference were out of town because travel expenses are not included in the gift of free attendance. We discussed the use of section 1353 authority if the conference were out of town. CFCBA as a non-federal source could pay for an employee to attend. But it seems anomalous to do this through a scholarship program since under section 1353 the gift of travel expenses is not to the individual employee but to the agency. (b) (6) said she would convey all of this to the manager who is meeting next week with the CFCBA to try to finalize the planned scholarship program. The email exchanges are in the file. (b) (6) January 9, 2009

26. (b) (6) Public Affairs, post government ethics brief. (b) (6) called for her post government ethics brief. She is a schedule C who handled the press events for the Department. She is looking for work and hoping to stay in the government but is not sure if that will work out, so she may look at the private sector. She had no interactions with contractors or supervision over contract employees. I discussed with her some of the restrictions that may be involved if she worked in the private sector but advised that once she had a better idea where she might end up to give us a call. I also discussed when her financial disclosure form was due and she was aware of the dates. (b) (6) January 12, 2009.

27. (b) (6) COPS, post government employment. (b) (6) called seeking info on post government employment restrictions for the (b) (6). I sent her the updated seeking employment and post government restrictions outlines as well as a color coded chart with the restrictions for senior employees. She said she needed to write a memo for the Director and would forward that one to me when complete for review. (b) (6) January 12, 2009.

28. (b) (6), Former Pardon Attorney, 207 question. (b) (6) emailed with two questions. The first question was do I agree that the ban he is under pursuant to 18 USC 207(c) does not preclude him from making a representation to the White House on behalf of a client? I.e., an employee in the OWHC is not "an employee of the department or agency in which" he served within one year before my employment with DOJ terminated. I advised that I agree that generally 207 (c) does not bar contacts with the WH; the additional consideration, though, is that if any representations he makes to the WH are communicated with attribution to him, to

officials at DOJ who he is not permitted to contact directly, that could be an indirect, prohibited contact. So, for example, if the OWHC contacts OPA and discusses his representations on behalf of his client, and attributes them to him (or if it is known that he is representing this client so the attribution is implied), that could fall within the ban. Second question is he still barred from contacting OPA, in which he last served on 1/4/08, although he retired from DOJ on 6/27/08? He knows he is barred from contacting ODAG, JMD, and OFDT until 6/28/09, but has his bar on contacting OPA expired? I advised him that no, the bar remains in place; the restriction applies for one year after he leaves DOJ, to any component in which he served as a senior employee during his last year of service. So, even though he left OPA in January of 2008, the ban will run through his last day at DOJ, for OPA as well as the other offices that fall within the one-year bar for him. (b) (6) January 12, 2009

29. (b) (6), gifts. (b) (6) called to find out if her office could give a gift to their supervisor whose wife just had a baby. I advised her that while gifts from subordinates to supervisors are normally prohibited, that infrequent special occasions such as this qualify as an exception. I told her a collection may be taken by a non-supervisory employee but that it must be completely voluntary for anyone to participate. Lists should be kept only for bookkeeping reasons. I told her there was no money limit per se but that the gift should be appropriate in value to the number of people participating and the type of occasion. She said they had a lot of contractors in their office and I advised that they could not ask the contractors for donations to the gift. (b) (6) January 12, 2009.

30. (b) (6) Teaching question. I sent (b) (6) confirmation by email of my earlier verbal advice that she may teach Federal Courts, for pay, at George Mason law school this semester. The course began on January 7, 2009. I also reminded her that she may not be identified with her DOJ title or affiliation except as part of and when not given any greater prominence than other general biographical information. (b) (6) January 13, 2009

31. (b) (6), CFC raffle. As part of their raffle for CFC, the staff asked if they could raffle off a "Be (b) (6) Staff Director for the Day". On the surface, (b) (6) would see this more as a type of shadowing assignment, and would not actually let the candidate actually do anything official, such as discipline actions, sign memos, etc. Her concern is about using that position as a basis for monetary gain for the CFC. I advised (b) (6) that I would advise against it. (b) (6) January 13, 2008

32. (b) (6) Civil, Financial Disclosure. (b) (6) is the primary trustee of his father's irrevocable trust, as well as a beneficiary. He also receives a discretionary income from the trust each year. He wanted to know if and how he needed to report this on his OGE 450. I advised that the position of trustee must be reported on Sched D. Any income he receives as trustee for the trust must be reported on Sched A. Because he is a beneficiary, the underlying assets of the trust and the income of the trust must be reported on Sched A. (b) (6) January 13, 2009.

33. (b) (6) AUSA Brooklyn, NY, training. (b) (6) called looking for hypotheticals to use in

training. I sent him a copy of the hypos used for new employee training and (b) (6) directed him to . <http://10.173.2.12/jmd/ethics/training-materials.php> (b) (6) January 13, 2009.

34. (b) (6) PAO, ethics briefing. (b) (6) is the director of PAO and a Schedule C employee. He is leaving January 17 and beginning a career position at the (b) (6) in the (b) (6). Because he is remaining in the Department, there is no "post government" to be concerned with but I advised that he should be aware of any conflicts that may arise between contacts he had in his prior position and in his new position. Told him to contact an ethics official if he found any overlap or was concerned about anything in the new position, or if he leaves that position. (b) (6) January 13, 2009.

35. (b) (6) JMD library, outside employment. (b) (6) is currently a GS7 Library Technician. She requested permission to accept outside employment performing research for (b) (6) an author of historical nonfiction. The new book she would be working on is going to be a biography of Dr. Kate Waller Barrett (1857 - 1925), a prominent Baltimore woman who founded the Crittenton Homes for unwed mothers, and was active in immigration reform and prostitution "surveys" from 1900 through 1925 which studies the slavery aspects of prostitution. She will be asked to find archival newspaper articles about the Crittenton Homes in Baltimore, and articles about speeches made by Dr. Barrett. Because of the subject matter, time period and parties involved, the research is not related to her work at JMD. I advised that she did not need component head approval but that this was a fact specific determination and she should be aware that any future similar requests would still need ethics review. I also advised her on the standards of conduct restrictions - use of title/position, use of government resources, etc. (b) (6) January 13, 2009.

36. (b) (6) NSD, speaking event. An attorney in NSD asked (b) (6) if there would be a problem with speaking on a panel of government attorneys at George Washington Law School to law students. The topic would be generally careers with the federal government and the panel would be made up of attorneys from various agencies. There is no compensation involved. Conferred with (b) (6) and then advised (b) (6) we saw no issue with the attorney's participation. (b) (6) January 13, 2009.

37. (b) (6) ATR, award presentation. One of their section chiefs has won the Beatrice Rosenberg award from the DC Bar. The DC Bar has offered her a table for ten at the presentation and she would like to invite some Division people to sit with her. I advised (b) (6) that it is ok as long as none are her supervisors. (b) (6) January 14, 2008

38. (b) (6) , Post-employment advice. (b) (6) emailed to ask if he may take on the pro bono representation of an AUSA (not from (b) (6)) on an OPR matter. I advised (b) (6) that as an initial matter, he is barred from any contacts with his former district, (b) (6) and with EOUSA, during the one year period after he left DOJ. He is not barred from contacts with OPR or with USAO's other than (b) (6) as long as no other post-employment ban applies

(e.g., it cannot be a matter in which he participated while with DOJ or which was pending under his official supervision during his last year with DOJ, and it cannot be a matter about which he has client confidences). However, he also may violate the statute through indirect communications by himself or others that he is barred from making contact directly. For example, if representations made by him to OPR are communicated, with attribution to him, to EOUSA, that would potentially violate the one-year ban. Even the fact of his representation should not be disclosed to EOUSA before his one-year ban is up. Therefore, he may undertake the representation as long as no communications made to EOUSA are attributed to him, and his participation is not disclosed to EOUSA, until his one-year ban has expired. (b) (6) January 14, 2008

39. (b) (6) OSG, Post employment question. (b) (6) is the outgoing (b) (6). They have four deputies including him who divide responsibility for the cases in the office by subject matter, and as principal deputy he also has some additional responsibilities. In terms of the two-year ban on working on matters within his responsibility, it seems to him like the ban should apply to cases within the subject matters he was responsible for, but not to other cases that other deputies are responsible for. The counter argument would be that, because he is the principal deputy, the two-year ban should apply (for him but not other deputies) to all matters within the office. He is comfortable saying that, as a factual matter, cases within the other deputies' dockets are not within his official responsibility. Indeed, he does not even know about many of the cases within their dockets, much less work on them or have any responsibility for them. I advised (b) (6) that if that is the way that responsibilities are assigned among the deputies, I would agree that not everything in OSG is within his official responsibility. I confirmed this with (b) (6) and (b) (6) agreed. (b) (6) January 14, 2009

40. (b) (6) CRT, gift question. (b) (6) Deputy Chief of the Housing and Civil Enforcement Section was invited to attend inaugural events through her husband's work on the Hill. (b) (6) was doing a conflicts check on the law firm sponsoring one of the events but thought it was ok since the gift was based on her personal relationship (her spouse) not her official position. Asked if she needed to do a conflict check on all of the sponsors of the ball - I told her no because they were not giving the attorney anything - someone else had purchased the tickets and were giving them to her. (b) (6) January 15, 2009.

UPDATE: (b) (6) emailed again saying the inaugural event was sponsored by Google/YouTube and the Leadership Conference on Civil Rights (LCCR). The LCCR was the leading sponsor on the National Commission on Fair Housing and Equal Opportunity, a report that was critical fo the current administration's fair housing enforcement. (b) (6) was heavily involved in drafting the division's response to the questions from Commission, but she does not believe that they were considered for the report because of the late submission. Conferred with (b) (6) and (b) (6) and we agreed that because the gift of attendance at the event is because of her husband, not her official position, she does not have a conflict with the group. Email in file. (b) (6) January 16, 2009.

41. (b) (6) OIPL, post government ethics. (b) (6) is director of OIPL and a noncareer, SES appointee. She had no interaction with contractors while she was at the government but she worked as the public liaison with private organizations and the Department. I discussed with her the various bans and sent her a copy of the org chart. She is not sure where she will be working next but I advised her that if she had a more fact specific question once she narrowed her job search she could call back here. (b) (6) January 15, 2009.

42. (b) (6), (b) (6), Outside employment request. (b) (6) contacted me due to receiving a request from two (b) (6) employees wanting to engage in outside business. They are IT Specialist and wish to do contract work, unrelated to their DOJ work, for commercial businesses. (b) (6) has no concerns with the basic issues of the request. His issue is – Employee #1 is the first line supervisor of employee #2. They propose to establish a business partnership – jointly owned by the two of them. Employee #1 supervises 6 government employees, including #2. The following is attached to Employee #2's request by the supervisor: "I am acknowledging Mr. #2's request to pursue outside employment. I am not signing the memorandum in approval of the request, and I am removing myself from the decision process. Mr. #2 and I would like to work together-outside of our government employment-to pursue business opportunities. These requests have been documented in two separate memorandums. The outside business relationship between Mr. #2 and I can be further clarified if necessary." (b) (6) has informally asked the two employees to restructure their plans – to pursue such work independently, but not form a business relationship. So far there have been no changes. (b) (6) doesn't think he can in good conscious say this proposal will not at least raise a significant appearance issue under §2635.502. I advised (b) (6) that I was in complete agreement that they should not have a joint business activity. (b) (6) January 15, 2009

43. (b) (6) ENRD, post govt employment questions. (b) (6) emailed with questions regarding accepting fees from a matter before the Department and the two year ban. I emailed back a full response which is in the file. (b) (6) January 15, 2009.

44. (b) (6) CRT, transition team. (b) (6) will be participating on the team that will prepare DOJ presidential nominees for their confirmation hearings. Andrews intention is to work from his current office next week, January 12th. He is not sure whether he will be working from Main Justice as of the 20th, or whether he'll remain in his current work space. He wanted to make sure that it is ethically permissible for him to use his office space and work on the DOJ presidential nominations in his official capacity as a lawyer for the Department. I advised (b) (6) that yes, his supervisors may assign him to perform this work as part of his official duties, which means he may use his office and Department resources as he may for official assignments generally. We also spoke about fact that the transition team members are not Federal officials, and that does restrict what information he may disclose to them. I also advised that he should seek further guidance concerning this from DOJ officials who have specific responsibility to work with the transition team. Had discussed this with him on 1/7. (b) (6)

January 15, 2009

45. (b) (6) ENRD, nondisclosure agreements. (b) (6) emailed asking for us to prepare a non-disclosure agreement for a departing political appointee who wants to take certain non-public documents with him. I advised her there was a process for those documents to be released and that it was all handled by Records Management. I advised she could talk to (b) (6) but that at this date, it may not happen. (b) (6) January 16, 2009.

46. (b) (6) (CRM, (b) (6)) called with a recommendation question. (b) (6) the head of , has been asked by former Representative (b) (6) (who is now of counsel to a law firm and does not have any matters pending with DOJ) to provide a letter of recommendation. She is applying for the Anne Frank Award which carries a \$1,000 stipend. She wants to list the head of OSI as a "supporting sponsor" (the language on the application form) and have (b) (6) write a letter on her behalf on official letterhead. (b) (6) had substantial interaction and experience dealing with her in the past in connection with (b) (6) issues. That interaction was in connection with his federal employment. The form asks for the names of two "sponsors" and accompanying letters. (b) (6) wanted to know if he can allow his name to be used on the application form and can he write a letter on DOJ letterhead. (b) (6) just received the question and the application is due today. Although the form uses the word "sponsor", this is essentially a letter of recommendation. The rule allows character references and would apply in this situation. Moreover, (b) (6) did deal with her in the past in the course of his federal employment. Nevertheless, the word sponsor carries connotations of official endorsement that are of concern. (b) (6) was also sensitive to the connotations of "sponsor". I discussed with (b) (6) I told (b) (6) that (b) (6) could write the letter and use DOJ letterhead. However, he cannot suggest that his letter is an official DOJ endorsement. It would be better if he struck out the term supporting sponsor on the application form. Another alternative would be to simply provide another letter of recommendation for the award separate and apart from the sponsor letter that could be included in the application. It must be clear, however, that he does not speak for DOJ. (b) (6) agreed with this approach and said she would pass this advice on to (b) (6) (b) (6) January 15, 2009

47. (b) (6) (ATF, (b) (6)) called on January 13 with a gift question. As he then understood the facts, the (b) (7)(E) tickets to the (b) (7)(E) field office. (b) (7)(E) were providing security (b) (7)(E) (b) (7)(E) The tickets were about \$250 each. (b) (6) wanted to know if the (b) (6), who gets LEAP pay, could accept the tickets because she would be there to "monitor" operations. I discussed with (b) (6) She could only do this if she were assigned by her superior to work at (b) (7)(E) and if she were actually supervising (b) (7)(E). Mere "monitoring" was not enough. Subsequently, (b) (6) sent an email on January 15 that completely changed the facts. The tickets were not being offered (b) (7)(E) as a gift. She could buy the tickets for their face

value. I discussed with (b) (6) the question of whether the printed ticket price was the value to use for market value as opposed to a ticket service or a scalper as these would be tickets in high demand. (b) (6) said use the standard of the rule which is face value. I so advised (b) (6). He said she was planning to buy 2 tickets so that she and her husband could attend. She would be there strictly as a spectator. (b) (6) January 15, 2009

48. (b) (6) (ATF) had a quick question about whether an employee who does intelligence work could become a contractor doing similar work for other federal agencies. I said aside from the many ethics issues that would need to be considered, there is the hurdle posed by the FAR regulation on employees contracting with the government. I said to (b) (6) that it is rare that an employee can meet the FAR standard which also requires special approval by a senior official. (b) (6) January 15, 2009

49. (b) (6) (NSD, (b) (6)) had a question about the chart dealing with the application of the one year cooling off period. She was seeking confirmation of her reading of the chart. As she saw it, the head of NSD, as a PAS, was barred from the entire Department. However, the Deputy who was not a PAS was only barred from the offices coded in blue. I said that was a correct reading of the chart. She was about to give a briefing that day. (b) (6) January 16, 2009

50. (b) (6) (Office of Information and Privacy) called with a question about an employee doing contract work for another federal agency. A DOJ employee who is a trained EEO investigator wants to contract with other federal agencies to do EEO investigations. She would operate the business as a sole proprietor. (b) (6) said that she had dealt with this issue when she was at the FBI and they had told her an employee could not do this. I said the FAR regulation makes this very difficult. She was aware of the FAR but wanted to know if it would apply in this situation. I said that it would. (b) (6) January 16, 2009

51. (b) (6) called with a question about the one year cooling off restriction. He had been in an SES position with the BOP. In May 2004, he retired from that position. He came back as a rehired annuitant and worked from September 2005 to August 3, 2008 as a GS-15, Step 10 employee. He wanted to know if the one year cooling off period applied. I said that it did not apply to a GS-15, Step 10. (b) (6) January 16, 2009

52. (b) (6) AUSA NY, outside employment. (b) (6) emailed with a question regarding the restrictions on outside employment - both the practice of law and employment unrelated to the law. I identified 5 CFR 3801.106 as the restriction and told him to read that over and let me know if he still had questions. (b) (6) January 21, 2009

53. (b) (6) NSD, potential conflict of interest. An employee of the (b) (6)

(b) (6) has received a letter regarding a business dealing between a U.S. company and (b) (6) company. He has not opened the letter because he is concerned he may need to recuse himself. Here are the basic facts: The employee's wife works for a public relations company who has (b) (4)

[REDACTED]

No waiver is needed but encouraged (b) (6) to keep a record of our discussion in case there were any questions regarding the employee's involvement. (b) (6) January 22, 2009.

54. (b) (6) Pro Bono. (b) (6) emailed regarding an attorney who is working on a pro bono case that is about to reach settlement. Because of the many parties involved and the need to wait on agreements from all sides, the want to be able to hold their client's portion of the settlement in escrow until the final agreement is reached but they were concerned that there may be a problem with holding a client's funds in escrow as a Department attorney. We saw no conflict for the Department if they chose to hold their client's funds in escrow and we encouraged the attorneys to review the bar rules for this kind of action. (b) (6) January 22, 2009.

55. (b) (6) OCIO, Use of gov't resources. An employee in OCIO agreed to sponsor the next Federal Executive Hispanic Career Advancement Summit planning meeting at DOJ. This committee is made up by at least 30 government agencies. Their goal is to educate upper level Hispanic government employees preparing for and seeking SES appointments. The summit is held once a year. This year in will be on September 17, 2009. The planning meeting that the employee agreed to host is scheduled for February 19, 2009 from 9:00am to 12:30PM. To facilitate members that can not attend, but still wish to participate, other Government Agencies allowed teleconferencing. The employee was not aware that there was a cost associated with this service. The employee is asking for (b) (6) s approval to charge this service cost to OSS. The cost is very nominal. I asked if there was an official DOJ group associated with the summit, the employee advised yes, through the EEO staff. The employee is trying to show that OSS is an active participant. I advised (b) (6) that it was fine. (b) (6) January 23, 2009

56. (b) (6) CRM, Transition question. A Criminal Division attorney was contacted by the transition team to interview for a position in the new Administration. The person wants to know if he is asked to participate in meetings or interviews concerning an appointment, does he need to take leave to do so now that the new Administration is in office? When he went on interviews with the transition team prior to Tuesday, he did take leave. (b) (6) is not sure if this is for a DOJ position or a White House position. She also wanted to know if he can discuss his work freely with the exception of sensitive material such as grand jury info, classified info, tax info. I advised (b) (6) that yes, he should take leave. I think he has to be more careful - and not disclose any client confidences - especially if anyone he is interviewing with is not a federal official. I think most should be by now, but maybe not. (b) (6) January 22, 2009

57. (b) (6) PRAO, Endorsement issue. (b) (6) has asked (b) (6) to write letters of support for its grant requests. (b) (6) assumes she is not permitted to do so because it is fundraising. I advised her that she was correct because it was an endorsement. (b) (6) January 26, 2009

58. (b) (6) EOUSA, writing. (b) (6) emailed the office with an article written by two AUSAs from the (b) (6). The article was for a (b) (6) on Motor Vehicle Law. The topic was the Federal Tort Claims Act. I reviewed the article and the biographical information from previous additions. Told (b) (6) that so long as an adequate disclaimer stating that the article may not reflect the official views of the Department, that the titles of the AUSAs were not misused in any way (advertising the deskbook, etc) and that the bios do not highlight their official titles more than any other biographical information, our office had no objection. (b) (6) January 26, 2009.

59. (b) (6) ENRD, letter of recommendation. (b) (6) called to find out if he could write a letter of recommendation on DOJ letterhead for a colleague from his former firm who was applying for federal employment. I told him so long as the letter is based on personal experience and his colleague was applying for federal work, it was appropriate to use DOJ letterhead and his official position. (b) (6) January 26, 2009.

60. (b) (6) JMD, leave policies. (b) (6) called to find out if there were ethical limitations on giving on bereavement leave to employees. I advised him to look at the HR website as well as contacting HR. (b) (6) January 26, 2009.

61. (b) (6) ITSS/OCIO, post government employment. (b) (6) called for a post government employment advice. Upon talking to (b) (6) I discovered he was a contract employee and going to work at the Department of Defense. I advised him that he was not subject to our ethics regulations but that he should check with his contractor to determine what regulations they follow. (b) (6) January 26, 2009.

62. (b) (6) ODAG, 502 waiver. (b) (6) was asked to assist OSG in a review of the

litigation position in the case of (b) (5), et al. (b) (6) has authorized her to assist OSG with this matter, subject to the waiver determination. (b) (6) husband works for the (b) (6) who had filed an amicus brief in the case but her husband had not worked on the matter. We prepared a 502 waiver which was approved by (b) (6). Email appears in the file. (b) (6) January 26, 2009.

63. (b) (6) Civil, outside activities. Continued consultation with (b) (6) regarding outside activities involving her previous work with adoption issues. She had sent us a list of examples of the sort of work in which she would like to be involved. Her examples list and response email is in the file. (b) (6) January 26, 2009.

64. (b) (6) ATR, Misuse of position Issue. (b) (6) forwarded an email that their (b) (6) received last week. It references an antitrust book that a lawyer in the UK is writing and that he would like (b) (6) to write a foreword for the book. (b) (6) would like to know if a foreword for such a book would constitute an endorsement under 702 and if this was permissible. She is aware that one of the Examples under 702 says no book reviews. I advised (b) (6) that it is indeed an endorsement if he was identified with title or position. The only way he could do it is if his position with DOJ was not mentioned anywhere - meaning the publishers would have to agree not to mention it in any materials related to the book. He could be identified as an antitrust practitioner but nothing more specific than that. (b) (6) January 26, 2009

65. (b) (6) HR, said one of the new noncareer SES appointees does not currently hold an active license to practice law; is completing CLE requirements and then state in which employee was licensed will presumably reinstate active status. (b) (6) sent copy of memo that OPR issued in Dec. to HR/OARM noting the statutory requirement to meet the licensing requirement in order to pay an employee as an atty, and the requirement that all attorneys should be fully qualified to perform the duties of the position on the day they arrive. I told (b) (6) that since this is the first pay period of this individual's employment, if they could reassign employee into a non-attorney position I thought it would be lawful to pay the employee although obviously not as a lawyer. (b) (6) asked if a referral to OPR was necessary, but I don't think so. OPR's memo makes clear that any duplicity on the part of an atty as to his or her status is grounds for investigation, but this individual did not sign the bar certification form that the individual held an active license, but notified DOJ that of inactive status and why, so I see no need for any referral. (b) (6) January 28, 2009 (b) (6) said the individual would be temporarily assigned to a non -atty position in an office other than the one to which the employee will be permanently assigned. I thought this was a good idea, I see no other issues except to ensure that the individual knows that he or she may not hold himself/herself out as an atty until active status is achieved. Jan. 29, 2009

66. (b) (6) financial disclosure. (b) (6) called with questions regarding his SF 278. Wanted to know if a same sex partner meets the definition of spouse. I told him for this form it did not but he should be aware that for 502 conflicts his partner would meet the definition. He had a question regarding the (b) (6) defined benefit plan and I advised him

based on (b) (6) interactions with (b) (6). He also wanted to know how to report the \$5000 compensation since he had worked at (b) (6) during the reporting period, I told him he needed to report any clients for whom he provided more than \$5000 in legal services at the firm during reporting period. (b) (6) January 28, 2009.

67. (b) (6), potential conflict. Mr. (b) (6) wife is being considered for (b) (6) for (b) (6). This will be above him in (b) (6)'s chain of command - he is a trial attorney in the (b) (6), has been for 10 years. He really does not wish to leave the division. Should his wife be appointed, how can it work? She can of course be recused from matters he is working on, but she will have oversight of the management of the division, and thus his managers. What measures can be put in place? He has applied for a detail to the Hill, but has not heard a decision from Senator Feingold's office. He could apply for a detail to a US Attorneys office, but does not really wish to. Besides, applying for and perhaps being granted a detail after his wife is appointed (which he thinks is likely to be soon) could create appearance problems of their own. I advised Mr. (b) (6) about the restrictions the nepotism statute and the conflict of financial interests statute would place on his wife if she were in this supervisory role. I told him there is no per se prohibitions of this sort of working relationship but that it would be up to management as to how they wished to handle it. I told him a (non-punitive) involuntary transfer may become the best option. He can still pursue a detail after his wife takes on the supervisory role but she cannot take part in making calls or trying to arrange the detail. Email is in the file. (b) (6) January 28, 2009.

68. (b) (6) Civil, conflict. (b) (6) called regarding an attorney who is working on the Guantanamo Bay cases. The New York Times is trying to intervene on a number of these cases to gain access to information the government has not released. The attorney's sister works for the NY Times but on the business side and has nothing to do with the paper's actions in this matter. Consulted with (b) (6) and decided that there was no conflict. His sister does not meet the definition for a financial conflict of interest and she is not working on this particular matter. Even if she was covered under the financial conflict statute, there is no predictable financial impact on her based on the result of this case. (b) (6) January 28, 2009.

69. (b) (6) Crim, 278 question. IF someone is new to the department and just filed their new entrant form, do they have to do an annual as well? Yes, unless they were with the Department for less than 60 days in calendar year. (b) (6) January 28, 2009.

70. (b) (6) ODAG, Gift acceptance. (b) (6) wanted to give (b) (6) a farewell gift. I advised (b) (6) that this was fine. (See notes in log file) (b) (6) January 30, 2009

71. (b) (6) OCIO, jury duty question. Can (b) (6) keep the \$30 check she received for jury duty? Based on the many past log entries addressing this, I advised (b) (6) and (b) (6) has advised (b) (6) by email, that as long as the funds are for reimbursement of expenses such as parking, mileage and meals, she may keep it. If it is for compensation, however, she must turn it

over to the government who has compensated her already. (b) (6) advised (b) (6) by email. She is to confirm with the jurisdiction (she lives in VA, he's not exactly sure where) whether it is for compensation or for reimbursement of expenses and contact us if needed. (b) (6) January 30, 2009

72. (b) (6) CRT, conflict. (b) (6) emailed this ethics question involving whether Mr. (b) (6) must be recused from this CRT matter - where his wife from whom he is separated, although they have joint financial interests, works for (b) (6) and (b) (6) is going to file an amicus brief. Apparently there was past work done by (b) (6) for Mr. (b) (6) determining .208 recusals and analyzing her compensation. (b) (6) will have Mr. (b) (6) find the prior email traffic and send it to her. Prior emails between Mr. (b) (6) and (b) (6) showed that (b) (6) sets up a firewall between their employees when there is a conflict to ensure that no income from the conflicted matter is given to the conflicted employee. (b) (6) wife was not involved in the amicus brief at all. Because of the income shield, there was no 208 conflict. Because his wife would not be working on the matter at all, there was no objection to preparing a 502 waiver. (b) (6) January 30, 2009.

73. (b) (6), DRM, conference attendance. (b) (6) was invited to speak at the Digital Government Institute conference on electronic records management. The event was open to all government employees at no cost. (b) (6) would be speaking on a panel regarding electronic discovery with someone from Lockheed Martin. Determined that if she was speaking in her official capacity, there would not be a problem. (b) (6) January 30, 2009.

74. (b) (6) ODAG, DAG Gift acceptance. (b) (6) received a piece of crystal from (b) (6) has been appraised by Weschler's with a value of \$150 - \$200. (b) (6) does not want to keep this gift, and would like to contribute to the Department. (b) (6) would like to know who to report this gift to. I advised (b) (6) to call (b) (6) in OAG on the process, and that FASS handles the disposition of foreign gifts "accepted on behalf of the Department." (b) (6) February 2, 2009

75. (b) (6) private attorney, outside activities. (b) (6) is a private attorney from Omaha who called regarding the restrictions on outside activities for PAS employees, such as US Marshals. Specifically he was asking about participation in such activities as the local school board. He had contacted the ethics officials at the UMS first and was told that outside activities such as he mentioned would require Department approval for PAS employees. He had called our office to confirm that. I emailed him back that this was correct and that anyone who was being considered for such a position would be able to discuss the potential restrictions with an ethics official. (b) (6) February 2, 2009.

76. (b) (6) NSD, foreign gifts. (b) (6) emailed with a question about foreign gift reporting. The website says, "All government agencies are required to submit an annual report to the Secretary of State concerning gifts, including certain travel received from foreign

governments. Each year, the Justice Management Division distributes a memorandum asking employees to report such gifts." Does this mean that all employees receive this memo from JMD? Or, does JMD go to each division and then it is on the division to further ask for their employees whether they recd such a gift? Can you explain the process to me? I told her our office does not collect this info but referred her to (b) (6) in Property Management who was listed as the foreign gifts contact. (b) (6) February 2, 2009.

77. (b) (6) ODAG, had questions regarding the disclosure of 2 clients on her 278 based on request from client to former firm not to disclose the fact of the representation; neither are litigation matters. Explained that the criteria to relieve the reporting requirement is fairly strict, and (b) (6) emailed her with the information. (b) (6) February 3, 2009

78. (b) (6) ODAG, recusal issue involving number of very similar Guantanamo cases and (b) (6) Went through fact that we would have to analyze under .502 and probably seek a waiver from OMB, or at least determine that we didn't need one, and asked him to send me description of how the various matters were distinguishable from one another and the overarching legal issues. He felt given time constraints it would be best if someone else handled. I agreed. (b) (6) February 3, 2009

79. (b) (6), incoming to OASG, from (b) (6), said the firm wants to give a farewell for both him and (b) (6) on 2/17; (b) (6) would not be here yet, but that (b) (6) likely would. Partners and (b) (6) clients would be invited. Told him the presence of clients is what concerns us, it appears to be a "look who the firm has at Justice" and we would advise against it, at least for (b) (6). He said he would advise the firm not to include clients. Learned a little later that this what they are doing. (b) (6) and I then changed our advice to (b) (6) in OSG, who had been invited and was at (b) (6) several years ago and considers them both friends, and said she could attend. (b) (6) February 3, 2009

80. (b) (6) post-employment briefing. I met with (b) (6), his last day in the office, and gave him advice on the post-employment restrictions: lifetime ban, 2-year official responsibility ban, once year cooling off period, and one year ban on representing or aiding or advising foreign entities, and went over sec. 203. Gave him OGE 2004 summary, PRAO memo, 10/08 DEO post-emp chart, DEO Summary of post-emp rules of 10/08, text of 18 USC 207. Advised him to contact us with any questions anytime. (b) (6) February 3, 2009

81. (b) (6) JMD, SF 278. Tina wanted to know if she had to disclose inheritance received on her financial disclosure form. I told her it was an exception and did not need to be listed, so long as it was a one time thing, not a trust instrument. (b) (6) February 4, 2009.

82. (b) (6) (b) (6) (b) (6), is on leave from the (b) (6) while she serves as the (b) (6). In April, the (b) (6) and the (b) (6) and (b) (6) will be sponsoring

the "9th Annual Jerry Lee Crime Prevention Symposium". (b) (6) has actively participated in this Symposium for the past eight years while at the (b) (6). The OJP AAG has for years been a moderator of a panel held at the conclusion of this Symposium which, as I understand it, serves to sum up the Symposium discussions. Although (b) (6) is on leave from the (b) (6), may she continue the tradition of OJP participation by serving as the moderator of this panel in her capacity as (b) (6)? Given the history here of AAG participation, they think that an argument can be made that she may participate. I agreed that (b) (6) may participate as stated here if AAG traditionally participates. They also asked about commitments that acting AAG had made to speak or participate in events prior to their coming on board. I advised that unless there is a clear and strong reason for the AAG to attend the events, then she should withdraw. Personal capacity would not be appropriate. (b) (6) February 5, 2009

83. (b) (6) Post government employment. Mr. (b) (6) retired in January after almost 30 years with the government. When he left he was deputy program manager and COTR for the purchase card and travel program through a contract with (b) (6). The contract is difficult to value since the government receives a rebate for doing business with (b) (6) but the government uses the purchase card for over \$1 billion dollars worth of purchases each year. The contract is one of 4 or 5 negotiated by GSA for the entire government with 4 or 5 banks. Each agency then uses task orders under the contract they think best fits their agency's needs. Mr. (b) (6) was offered a post government position (after he had retired) by (b) (6) to work as a short term consultant using their federal data base to identify agencies that may have use for one of their charge card products, Order to Pay. This product was available under the DOJ contract but not used because it had a \$1 million start up cost. I consulted with (b) (6) and the CO on the contract and we determined that this new position was too closely related to the same matter/contract that Mr. (b) (6) worked on while he was at DOJ and therefore he could not work for (b) (6) on such a matter for one year after his retirement date. (b) (6) February 5, 2009.

84. (b) (6) Civil, financial disclosure. (b) (6) had a question from an attorney completing his SF 278. He was unsure how to list one of his wife's assets. I read over the prospectus and other material regarding the fund and advised that it appeared to be a mutual fund and the underlying assets did not need to be disclosed. More info appears in the file. (b) (6) February 5, 2009.

85. (b) (6) pro bono, 18 USC 205. (b) (6) emailed with the following question. The language of the statute says that a federal attorney may not act as an attorney for anyone before any department or agency in connection with any covered matter in which the US is a party or has a direct and substantial interest. I have always advised our pro bono attorneys that they cannot seek documents from a federal agency even if their pro bono case is about another matter and those documents are merely being used as evidence of the client's status as receiving public benefits. For example, in a case against a bank which is garnishing the client's bank account, the attorney wants to show that the client's whole income is from SSDI. I have told him that he is

not permitted to seek documentation from SSA to show that she receives SSDI. Is that the proper advice? I am questioning it now because I reviewed the language of 205 again and wondered whether it applied since the US has no direct and substantial interest in the actual case. I advised that based on the case law it appeared that simply requesting information from a government agency, but anything more that created a “matter” in which the US might be a party (appealing a decision to not release information, for example) would be too far. More information in the file. (b) (6) February 6, 2009.

86. (b) (6) OIPL, post government employment. (b) (6) called and emailed with the following questions. Her firm represents a defendant pharmacist, the co-defendant we don't represent is a doctor who was convicted in the (b) (6) for dist of Oxycodone, there may be other charges I'm not familiar with the case. The case was apparently handled by the (b) (6). The plaintiff's brother overdosed on oxy. and his sister is suing the pharmacist (our client) and the doctor. The case goes to trial next week. The partner is working primarily with another associate in our office, but he and I discussed the case today and he would like me to research some issues for him. I wanted to check with you to make sure that I was able to perform these tasks without being in violation of any post employment restrictions. I told her that since she had no personal involvement in the matter and was not participating in anyway that would be representing back to the Department, we didn't need to worry. The case does not involve the federal government or the Department at all. (b) (6) February 6, 2009.

87. (b) (6) ODAG, said his former firm, (b) (6), asked if he could come to the tomorrow and go through files on a case he handled for the firm. It is a don't ask/don't tell case which the firm, and (b) (6) specifically, handled for several plaintiffs. One plaintiff, (b) (6) decided to go pro se. The case went through the First Circuit, and is now at the Supreme Court. (b) (6), after (b) (6) left the firm a few weeks ago, filed on behalf of the remaining plaintiffs that while they agreed on the merits of (b) (6) suit, they did not think the Court needed to decide the case at this time. (b) (6) filed a motion to strike and a bar complaint. (b) (6) would like (b) (6) help finding emails, notes, etc. in his files, since he had the conversations with (b) (6) at the time the individual decided to proceed pro se, in order for them to respond to both the motion to strike and to some degree (not clear right now) to the bar complaint. I consulted with PRAO, because this presents issues for him since the Department is on the other side of the case. There are 2 conflict issues presented, which probably bar him from helping the firm with its continued representation of the case and his former clients, since they are directly in opposition to his current client, the U.S. (b) (6) will tell the firm they need to search his files and can generally tell them what should be there but that's all. We can revisit the issues when the firm needs his help in responding to the bar complaint since that is not squarely prohibited by the rules, but it may present a different conflict for (b) (6) given the firm's filing (PRAO thinks this may have violated their obligation to their former client). (b) (6) February 6, 2009

88. (b) (6), EOUST - says she can't get a response from EOUST's ethics officials on her

questions re her 450. 1) She and her husband live in a Baltimore City row house. They rent out the parking area behind their house to a neighboring restaurant - they executed a contract with the restaurant in their private capacities, never set up any kind of business - does that income need reporting on her 450? Yes. Does the contractual arrangement? It's not an outside position, she only is receiving the income in her private capacity, so, I think not. She could be descriptive in her entry as to the income to show its source, or provide the background in a cover note to the reviewer, stating that the contract is available for review should the ethics official wish to see it. 2) Last year she overreported some diversified mutual funds - she does not plan to this year - any concerns? No - her ethics official/reviewer should recognize that they were not reportable and not expect to see them this year. (b) (6) February 9, 2009

89. (b) (6) CRM - said that CRM's ethics official sent him to us for an answer (!) - how does he report his 529 Plan with the District of Columbia on his 450? Told him. (b) (6) February 9, 2009

90. (b) (6) (b) (6) called with post-employment questions. He left a senior position in the ODAG on January 20, 2009. He had a question about the 2 year ban for matters under his official responsibility. I confirmed his understanding that not every matter in the Criminal Division would be considered under his official responsibility simply by virtue of the fact that the Division was under the ODAG. Nor would matters in other units of the ODAG necessarily be under his responsibility. He would be responsible for the matters handled by people who worked for and reported to him. And if he participated personally and substantially in a matter he would be subject to the permanent ban. He also had a question about the application of section 203 to sharing in firm profits. A firm in Chicago calculates partnership share in profits on the basis of a fiscal year that ends on January 31, 2009. He asked if he started as a partner on February 1, 2009 would he have to be concerned about section 203. I said that statute applies to when the services are rendered, not when the fees are paid. So if there were services rendered in January 2009 while he was still employed with DOJ he would have to make sure that he did not share in those fees. He also asked about extensions to file a termination report. I said that he has 30 days from his last day to file and that he would have to have a reason that would justify an extension of time to file. Subsequently, he called to confirm that the firm could calculate his partnership share so that it would not include any firm earnings from representations made while he was in government. An email describing the facts is in the file. (b) (6) January 23, 2009

91. (b) (6) (EOUSA, (b) (6) had sent in a question about a court appointed USA serving as a "substitute trustee" for a friend. I talked through the issues with (b) (6) on January 26. The issues concerned whether: (1) the USA could accept fees for serving as a trustee or would they be prohibited by the executive order ban on outside earned income; (2) the USA would be subject to the 15% limitation on any fees earned; (3) the USA would be considered to

be practicing a profession and thus be subject to the total ban on compensation; (4) the USA would have a 208 recusal as a result of being a “substitute trustee”; (5) the USA would have a 502 recusal as a result of being a substitute trustee; and (6) whether actually becoming a full trustee with its attendant recusals would materially impair the performance of his duties. The emails discussing these issues are in the file. (b) (6) did not know what the extent of the recusal would be as she did not know what was in the trust. He of course would be able to comply with the income restrictions by serving without receiving any fees. So the key question is whether the recusals would be too extensive. (b) (6) said that they did not have to face that question immediately as it would all depend on whether the health circumstances of the friend would change. The emails are in the file. (b) (6) January 26, 2009

92. (b) (6) called to consult on a waiver for (b) (6) to allow him to participate in NSA surveillance litigation although a trust for his children has stock in ATT and Verizon. The amounts were within the ranges in which waivers are generally approved. (b) (6) made some changes to the waiver. We concurred. Subsequently, he sent a draft of the waiver that reflected further changes that were made after he consulted with OGE. The waivers are in the file. (b) (6) January 26, 2009

93. (b) (6) (b) (6) and (b) (6) left a voice mail message requesting the phone number, address and fax number for Eric Holder. When I eventually spoke with her it turned out that a person who is a Muslim is being held at a federal detention center. He claims that he is being mistreated because he is a Muslim and is not permitted to call a lawyer. He wanted her to transmit a letter for him to Eric Holder. I suggested she contact the Federal Bureau of Prisons office to see how to handle a complaint. (b) (6) January 28, 2009

94. (b) (6) Federal Programs Branch, (b) (6) called to discuss whether or not a 502 determination could be used to permit continued participation in a class action involving the management of the TSP. It alleges that a particular executive director had been forced to resign and that some litigation had been settled improperly. A different former executive director had started the case pro se and then converted it into a class action. The class action names as members of the class all participants in the TSP. The case has been underway for about five years. When the case first started Art Goldberg in the Federal Programs Branch had talked to (b) (6) and gotten a clearance to participate under government ethics rules. Now they are seeking to depose some Department employees. About 3 months ago they consulted with PRAO about getting a waiver of any conflicts under the bar rules. PRAO advised that someone who was not a TSP participant would have to waive the conflict. Since under the current circumstances of an ongoing transition and with virtually everyone in a position of authority to

waive the conflict also being conflicted out, PRAO said that they would need to take the request to the highest level, i.e., the Acting Attorney General, who could waive the conflict under the rule of necessity. They prepared the request in this way but when it got to (b) (6) he asked them if there was not some other way to obtain waiver of the conflict. He did not think that the Acting AG should be bothered with the matter. He asked (b) (6) to call DEO and see if we thought that it could be handled as a 502 determination but (b) (6) I discussed with (b) (6) I called (b) (6) back and said that since PRAO has opined on the issue and given their advice on the application of the bar rules that they should follow the approach suggested by PRAO. (b) (6) agreed. When I called (b) (6) back he said that (b) (6) told PRAO that he would personally waive the conflict unless PRAO sent him a formal memo saying he can't do it. (b) (6) said that within a week PRAO was going to send a memo to (b) (6) telling him he cannot waive the conflict. (b) (6) January 28, 2009

95. (b) (6) a new political appointee, called. She had sent (b) (6) her pledge by fax and she wanted to know if it was okay to use interoffice mail to send the original. I told her that was fine. (b) (6) January 30, 2009

96. (b) (6) (TAX, (b) (6) sent an email asking if an attorney in Tax could ask federal judges that he has and is appearing before to write letters in support of his "application" for a position as a federal district court judge. He is interested in the federal bench in Maryland. He works out of the Northern division of Tax. But he wants to know if he could ask the judges he appears before to support him for the Maryland federal bench. He has not talked to his supervisor and does not want his supervisor to know about this at this point. He has not supervisory duties. He is active in local politics. I advised that he clearly should not ask for a recommendation from a federal judge that he currently has a case before. (b) (6) agreed with that. But she also had concerns about matters in the office even if they were not his cases. She said she would write up some guidance for him in draft and run it by us for review. (b) (6) February 2, 2009

97. (b) (6) (CISSP, (b) (6) had a question about an invitation to attend a Health Policy Ball on February 7. He has been invited by a personal friend who is a federal employee at HHS to attend as her guest. She has gotten clearance from her ethics official to attend the ball sponsored by the Winston Fellowship as a widely attended gathering. The sponsor would provide the gift of free attendance and said she could bring a guest. (b) (6) has no official interaction with his friend, HHS, the health policy area, or Winston. I conferred with (b) (6) and advised (b) (6) that he could attend. His email with additional background is in the file. (b) (6) February 3, 2009

98. (b) (6) called to ask why this year he was sent an SF-278 to file. In the past he has been an OGE Form 450 filer. I asked him if he had a change of position or was an SES. He said he is a GS-15. He said he would go back and check with (b) (6) to see why he was sent that form and call if he had further questions. (b) (6) February 3, 2009

99. (b) (6) called to consult on a draft 502 waiver for (b) (6) who is the expert on foreign exporter litigation. They want her to be able to be assigned to a case in which White & Case represents the plaintiff. Her brother is of counsel in the firm but is walled off from the case. Discussed with (b) (6). Asked (b) (6) if it was likely this would recur. He said it has never come up before but they would take that into account if they saw recurrence. Told him that it was okay for Civil to assign the case to (b) (6). The draft 502 determination is in the file. (b) (6) February 4, 2009

100. (b) (6) (b) (6) called with questions about his termination report. He wanted to know if he had to aggregate the job trip reimbursements for the entire period of the termination report. Told him he did. The emails are in the file. (b) (6) February 5, 2009

101. (b) (6) (sp?), (b) (6) the Principal Associate DAG called with a question concerning her upcoming testimony on legislation in which she will talk about need for fraud enforcement. The FBI Director and the IG for TARP will also testify. She had represented Fannie Mae in the past year as a client when she was in private practice. Discussed with (b) (6) who said she would call her back. (b) (6) February 6, 2009

102. (b) (6) (b) (6) called to discuss recusals by incoming officials. A reporter for the National Journal is doing an article and is taking the slant that incoming lobbyists are subject to stricter requirements than those who were not lobbyists. I discussed the recusal obligations that all incoming officials have under statute and regulation. Lawyers will have recusals with respect to the former firm and former personal clients. Discussed with (b) (6). Called him back and said we would not want to be boxed in by an extreme view of the recusals since there may be a time when there would be a need to seek a waiver of executive order restrictions. The National Journal article was expected on February 9. (b) (6) February 6, 2009

103. (b) (6) PRAO, (b) (6) had a question raised by one of their pro bono attorneys. He is concerned that using his DOJ email to contact his pro bono client may compromise the attorney-client privilege because DOJ emails can be monitored. She doesn't think this issue has been examined before. She was thinking of talking to some of her colleagues at PRAO about it, but wanted to ask me first in case it has been previously addressed. I advised (b) (6) that I don't think it has come up before, so talking to PRAO sounds like a good idea - maybe she could touch base with (b) (6) in Records Management, too. As a practice I don't believe any monitoring can take place on a specific employee without approval at fairly high levels of DOJ, but I could be wrong and it may not even be that relevant to the issue. (b) (6) February 6, 2009

104. (b) (6), JMD - personal activity. He is a pancreatic cancer survivor. In light of Justice Ginsburg's diagnosis, he has been approached through his surgeon's office for a possible interview about his surgery and survival by ABC News. Can he? Yes, solely in his personal capacity - with caveats as to misuse of title and position. Should he desire, he can mention that he is a fed, even a DOJ employee, but no further professional details. (b) (6) asked me to touch base with Public Affairs, (b) (6) who offered two suggestions: a specific caution that in the unlikely event the interview turns to questions about DOJ, he must defer, and that DAAG (b) (6) should be advised so that she's not surprised to see one of her HR employees on the news. (b) (6) indicated that (b) (6) should decide whether and to what detail (b) (6) should be advised because it involves personal medical issues, we can advise her if he desires us to. (b) (6) emailed his boss (b) (6) forwarding our approval and request to advise (b) (6). (b) (6) emailed (b) (6) that it's fine to alert (b) (6) "though the chain of command" because she knows about his medical history. I asked (b) (6) to let us know when (b) (6) has been advised. (b) (6) February 10, 2009

105. (b) (6) OLP, Post-employment advice. A former employee in OLP contacted (b) (6) for post-employment advice. The employee is consulting for a company, USIS, regarding criminal history dispositions as part of background investigation. The OLP work that the employee engaged in while with OLP did not fall within the scope of particular matters involving specific parties. Instead, (b) (6) thinks his work would more appropriately be characterized as general policy, legislative, and regulatory development. To be sure, there are certain companies and groups that have an interest in background check issues but (b) (6) doesn't think that would give rise to post-employment restrictions for the type of work that the employee is contemplating. (The employee is not subject to the one-year cooling off bar.) I agreed with (b) (6) that the post-employment bar does not apply since this was not a particular matter with parties. (b) (6) had also counseled him concerning disclosing any client confidences in connection with his post-employment activities. Email documentation is in the log file. (b) (6) February 11, 2009

106. (b) (6) OAG, AG attendance at WAG. The AG and Dr. Sharon Malone have been

invited by the Ford's Theatre Society to attend "Birth and Rebirth: A Celebration of the Lincoln Bicentennial and Ford's Theatre Grand Reopening" on Wednesday, February 11, 2009. There is a performance at the theatre at 7:30, followed by a dinner in the Courtyard of the National Portrait Gallery & American Smithsonian Art Museum. Spouses have been invited. The invitees include senior government officials and Members of Congress, members of the business, philanthropic and diplomatic communities. The AG will be seated with, among other, Counsel to the President Gregory Craig and Mrs. Craig, and Speaker Pelosi. Since the event is not open to the public there is no ticket value, but we have been advised that the fair market value of the performance and dinner is \$ 180 per person. This event meets the criteria for a widely attended gathering (WAG), since it will be attended a by a large number of persons from a cross section of government and the Washington area. I believe it affords the AG a valuable opportunity to interact in an informal setting with other senior officials and with persons who have interests in common with the Department. The invitation does not come from a registered lobbying organization, so acceptance is consistent with the President's recent Executive Order. I recommended approval and (b) (6) approved. (b) (6) February 11, 2009

107. (b) (6) OAG, (b) (6) attendance at embassy event. (b) (6) have been invited by the British Ambassador and Lady Sheinwald to attend a dinner on Wednesday, February 18. The dinner is marking the 82nd birthday of (b) (6) and his recent retirement from the U.S. (b) (6), and in recognition of his service to US-UK relations. The Foreign Gifts and Decorations Act (FGDA) allows a Federal official to accept a gift of de minimis value from a foreign government. De minimis value is \$335. This invitation falls within the de minimis amount, and the event is an appropriate one for the (b) (6) to attend. The recent Executive Order does not restrict acceptance of gifts from foreign governments. (b) (5) (b) (6) approved. (b) (6) February 12, 2009

108. (b) (6) (ATF (b) (6) originally sent an email on January 26, 2009 with a question that concerned an ATF employee who participated in the ATF medic program as a collateral duty. He also worked for and was paid by Cooper University Hospital for work he did as a medic. He did the work on government time. He felt this was permissible because the work for Cooper enabled him to fulfill his mandatory training requirement for the medic program. He also thought it was authorized under the Training Act at 5 U.S.C. § 4111. He is currently the subject of an internal investigation of this activity which has been going on for several years. The investigators asked (b) (6) for his opinion. He thought this was not permissible. He sought our confirmation on his view. I discussed with (b) (6) I called (b) (6) back and said that we did not believe that section 4111 was intended to be used as authority for this kind of activity. Moreover, he never obtained approval for the activity under the implementing regulation at 5 C.F.R. § 410.401 et. seq. This ongoing activity was never authorized and is not permitted. The background emails are in the file. (b) (6) said he would get back to the internal affairs group. (b) (6) February 10, 2009

109. (b) (6) (b) (6) JMD FASS) had a financial disclosure question. She wanted to know if she had to report the mortgage on residential property that she rents out and has income from. She is reporting the income and the asset on Part I of the 450. But she wanted to know if she still needed to report the mortgage as a liability. I checked the OGE website under the FAQ's dealing with the OGE Form 450 and it gave an example like (b) (6) in which the mortgage did not have to be reported. It noted that the regulation had been amended and the mortgage would not have to be reported if it was from a financial institution and the terms were those available to the general public. (b) (6) said her mortgage was from Countrywide and met the criteria for not reporting. So she will not list the mortgage as a liability. The printout of the OGE example is in the file. (b) (6) February 10, 2009

110. (b) (6) in the OIG called with a question that came to them out of the Civil Division. An intern who is a student at UC-Davis is here until March 15. She sent an email to a BOP employee asking if he would be willing to be interviewed for a paper that she was writing about whistleblowing. The BOP employee forwarded the email to the OIG. We discussed the fact that it would be necessary to find out if her paper was part of her internship here and had been approved. I discussed with (b) (6). I called (b) (6) back and said that the BOP employee should be told that his cooperation was strictly voluntary. (b) (6) said that is what they intended to do. He did not want to get any further involved with the matter because the BOP employee is a constant whistleblower and the office does not want to interact with him any more than is necessary. (b) (6) February 11, 2009

111. (b) (6) (JMD, (b) (6) (b) (6) called on 2/3/09 to ask if there was any written guidance with respect to hiring a current contract employee as a regular federal employee. Currently, there is a pending hiring decision that involves a Lockheed Martin contract employee who was hired following an A-76 process in which the MEO won and then partnered with Lockheed. Now they want to hire the Lockheed employee as a GS-9 IT person to do network administration. He would have no procurement responsibilities and would be doing strictly tech work in the 2210 series. He would be doing pretty much the same work as he does as a contract employee and would interact on a daily basis with Lockheed. I discussed with (b) (6). Lauren has been working on the issues related to the hiring of this employee. I called (b) (6) back and left a voice mail message saying that there had been powerpoint presentations that we did for his office that dealt with this issue but that beyond that I was not aware of any pamphlet on the subject and that Lauren would be handling the issues related to the proposed hiring of the contract employee. (b) (6) February 11, 2009

112. (b) (6) (Civil) sent an email with a question about (b) (6) outside activity as a member of the Steering Committee of the ABA's Death Penalty Moratorium Implementation Project. Lindsay had at one time served in a paid staff position on the project. She now works in OIL. Her term of service on the committee ends in August 2009. This service involves attending two meetings per year. The group advises the head of the project on potential future projects. I

discussed with (b) (6). I called (b) (6) and said that service on the moratorium committee even though it deals with the death penalty is not a “criminal or habeas corpus matter” within the meaning of 5 C.F.R. § 3801.106. The supplemental regulation does not cover participation in broad legal policy matters. Consequently, this activity is not prohibited by the regulation. She would need to keep in mind the restriction in 18 U.S.C. § 205. So it would be better if she did not have her name on letterhead. Prior approval is not required as the activity does not involve a subject matter within the component’s responsibility, although death penalty issues have occasionally come to the Civil Division. So it is not necessary for her to get approval to serve the remaining six months of her term until August 2009. However, if she wished to continue beyond this term of service, she should seek approval of the activity. Finally, she should not identify herself as a DOJ attorney in the bio section of the committee’s website but should refer to herself as a “federal government attorney” as one of the details in her bio. The emails are in the file.

(b) (6) February 11, 2009

113. (b) (6) (formerly with ODAG) asked where he should send his termination report. It is due on February 19. I told him he should send it to DEO. It will be addressed to me. He is going to send it by FedEx. (b) (6) February 12, 2009

114. (b) (6) (JMD, OCIO) called for his departing employee ethics briefing. He is a GS-15 Program Manager in the 0340 series. Today is his last day. He will start a new job at the Department of Homeland Security on Tuesday, February 17. He is about two and a half years away from retirement. We briefly discussed the post-employment restrictions which would not begin until he eventually left federal service. He is an OGE Form 450 filer so he does not have to file a termination report. (b) (6) February 13, 2009

115. (b) (6) USMS, with post-employment questions regarding a CDUSM’s potential recusal from supervision of the court security contract for his district due to his interest in seeking employment with company which has bid on next contract, decisions to be made in late 2009 at USMS HQ. Both seeking employment and post-employment issues here; serious concerns about a CDUSM being allowed to recuse from a significant part of his responsibilities for a an extended period of time. Spoke to (b) (6) and she agreed. She and (b) (6) will address it. Email in the file. (b) (6) February 11-13, 2009

116. (b) (6) CRM, Waiver of outside employment. (b) (6) sent a recommendation form (b) (6) to waive prohibitions on compensated outside practice by (b) (6), a former DOJ employee now serving an intermittent appointment. (b) (6) February 13, 2009

117. (b) (6) future DOJ employee, question re: withdrawal from firm. (b) (6) emailed to confirm that it is permissible for him to start his employment at the Department of Justice next

Tuesday, February 17, 2009, even though his payout from his firm will occur that same day. He and I had previously discussed these details. He is withdrawing from his firm effective Monday, February 16, 2009. Because Monday is a national holiday, banks are closed and the firm cannot make a wire transfer the day of his partnership draw, his capital contributions to the firm, or his retirement differential. (b) (6) has been informed orally, however, about the amount of these payments, and expects to receive written confirmation later today or by Monday. I indicated that, under these circumstance, it was permissible for him to begin employment at the Department on Tuesday. The firm has also informed him of the amount of money in firm retirement plans (such as his 401(k)) that he can roll-over to other retirement accounts, but these roll-overs likewise would not be completed before he started with the Department. He just wanted to confirm these things. I confirmed that it is fine for him to start with DOJ on Feb. 17 as described in his email. (b) (6) February 16, 2009

118. (b) (6) OASG, Invitations to former law firm events. On Tuesday the 17th, Jenner & Block, his former law firm, is hosting a small good-bye party for (b) (6) who recently left to come to the DAG's office, and (b) (6) who has been nominated to become the Associate. As (b) (6) understands the party, which will occur in Jenner's offices, they are inviting current partners from the D.C. office, a few partners from other offices, and some individuals who have a personal relationship with (b) (6) and (b) (6). His understanding is that (b) (6) and (b) (6) (who has a personal relationship with (b) (6) and (b) (6) in the SG's office, have cleared their attendance with our office already and (b) (6) would like to know if that is correct. On Saturday the 21st, Jenner is hosting its annual post-holiday party. (b) (6) was invited to attend it and accepted the invitation while he still worked there, and before he had any plans to leave. The event is typically somewhat formal but this year has been scaled back to something more casual and will occur in Jenner's offices. It is for attorneys and staff and commonly includes a few people who have recently left the firm. (b) (6) understanding is that (b) (6) attended the corresponding event a few years ago when it was more formal, when she first left Jenner and arrived at the SG's office; she indicated to (b) (6) that she was permitted to attend because she was recused from any Jenner & Block matters for a year anyway, so her attendance raised no additional issues. I advised (b) (6) that he may attend the 2/17 event if he considers the invitation to be based on a personal relationship with the individuals hosting the party as well as with (b) (6) and/or (b) (6). I also advised that because of the new restrictions on political appointees imposed by EO 13490, past practice is of little assistance from this point forward, and he would not be able to attend the 2/21 event, as it does not fall within one of the exceptions to the ban on gifts from registered lobbying organizations. (b) (6) asked whether if he paid for himself would it make a difference. I advised that while technically paying for the event would mean it is not a gift, I advise against going for these reasons. The transition from the private sector to the government requires severing the formal ties to the former firms and clients, and it also requires adjustment of informal ties as well, if not to all individuals, then certainly to the entity. Continuing to socialize at firm events goes against that effort. That has always been the approach, subject to very few exceptions, and I think the President's EO reinforces his desire to see gov't officials less associated with non-government persons and entities who have interests before their agencies. Also, we almost certainly will need to seek waivers under the new

extended recusal ban in the EO on participation in matters with former firms and clients, and I believe we will be on firmer ground in asserting an individual's impartiality when we can rely on the fact that our officials have distanced themselves from their former affiliations. (b) (6) February 16, 2009

119. (b) (6) OSG: 502 question. She has left her 401K with her prior firm. No contributions are being made by her or by the firm. No other financial ties there - the 401K plan is independently managed and consists entirely of diversified mutual funds. She left that firm more than 3 years ago. Does she need a 502 determination to work on matters involving her prior firm? Checked with (b) (6) - as long as there are no other financial ties, she does not need to come to us for a .502 determination to work on matters involving her prior firm. (b) (6) February 17, 2009

120. (b) (6) USMS, Hatch Act question. A USM contacted him who plays in a jazz band and was recently asked if his group would perform at a Saint Patrick's Day party which will also serve as a "meet and greet" for a candidate running for a judgeship in the Pa. Court of Common Pleas. The USM has no connection to this individual, other than meeting her once. The Marshal will not be paid but (b) (6) believes that the band will get paid. I advised (b) (6) that it depends on whether the band gets involved in any political activity, e.g., if they act as an emcee of sorts for the candidate, I think he may not participate in the band if that is the band's role. If they are just going to play and some others are going to make any announcements or chatter about the candidate or the political party, then it's probably ok. (b) (6) February 17, 2009

121. (b) (6) former DOJ employee, post-employment question. (b) (6) boss wants her to work on a bench brief for a moot he's participating in. The opposing party is the state attorneys general office, and (b) (6) was formerly the DOJ liaison for state Attorneys General in OIPL. The issue here is the tobacco settlement distribution which (b) (6) knows is a huge issue for the National Association of Attorneys General and most state AGs just from being familiar with the org and attending their meetings. She doesn't recall this coming up in her dealings with them directly as a DOJ issue, though she knows DOJ's Civil Division was involved at one point. (b) (6) took over the portfolio in May 2007, and (b) (6) is not sure if it came up with him. From review of the materials given to her this involves a case before the WV Supreme Court that has to do with a dispute between the companies and the state AGs office. Her firm doesn't represent any of the parties, just participating in a moot prior to argument before the WV Supreme Ct, but she wanted to make sure there aren't any post-employment issues. I asked if she had any non-public information about this matter gained through her time with DOJ. I also advised that if she did not, it does not seem that she participated personally and substantially in the matter and if that is true she would not be barred from participating on behalf of her firm. (b) (6) said she did not have any non-public information. I explained that Both the post-employment statute, 18 USC 207, and the rules of professional responsibility apply to matters with parties, not to general issues or policies. So, the fact that the WV Attorney General's office is involved in a matter is not sufficient to implicate the post-employment restrictions. It needs to be a matter with parties

in which she participated, and the same or substantially related matter in which she seeks to participate now. (b) (6) February 17, 2009

122. (b) (6), OIG, Fraternization policies - follow up to ethics luncheon discussion on topic. (b) (6) and I recalled reading that EOUSA was developing such a policy. Couldn't find it in the US Attorneys Manual, or on line anywhere but saw that (b) (6) was on a panel about it in late 2007. Contacted him - he responded that the topic was under study and discussion in EOUSA, but that it may not result in a policy, and, even if it did, any such policy would need to be vetted through the Department's new leadership. Told (b) (6) (b) (6) February 20, 2009

123. (b) (6) DEA - re: new employee training/documentation thereof. For DEA's "non-core" new employees in remote areas of the world, review of written materials must suffice for NET. DEA serves as its own personnel and retention office. (b) (6) wanted to know what documentation does our office place of NET into a new employee's Official Personnel File (OPF)? Does our office document ethics training in someone's OPF? No, we've not documented NET or annual training in OPFs, but we track training compliance in an internal database. At the HR level, there is a checklist contained in a new employee's folder given at their first-day orientation on which they acknowledge receipt of (among other paperwork) the Ethics Handbook and the Hatch Act booklet entitled *Political Activity and the Federal Employee*. I confirmed with HR Specialist Diane Cochette that the acknowledgment checklist is made part of the employee's OPF - advised (b) (6) who asked for us to send him a copy of the checklist - done. I did not get in to the fact that per the new EO, the Ethics Pledge is supposed to be made part of the OPF - because it has not yet been finalized how that is going to be done. I also discovered that, even though new employees are acknowledging receipt of a Hatch Act booklet, they might not be receiving it.. This is because (b) (6) (in Personnel) brought me a sample new employee folder, which contained no Hatch Act booklet, and also an outdated Ethics Handout. I asked Terrence to double-check these for me. He confirmed that he did not have a Hatch Act booklet anywhere. I emailed it to him for mandatory inclusion, and also confirmed that he is putting our most recent Ethics handout in the folders. I explained to him why it is important: per regulation, all new employees must be trained in ethics, and must be advised who is their ethics official. We use our Handout to help fulfill these regulatory requirements. Since employees are acknowledging that they are receiving the Hatch Act booklet - it really MUST be in there (!!) I will verify the folders are complete (as far as these two documents) at the next pop in. If not, we'll need to alert the HR managers. (b) (6) February 20, 2009

Follow up: I've been checking at the pop in visits - the Hatch Act Booklet is there. (b) (6) March 23, 2009

124. (b) (6) NSD, outside activities. A NSD employee has been selected for a Supreme Court Clerkship and his law school (Seton Hall) would like to publish a story about him in their alumni mag, along with a picture and possibly a video on their website. (b) (6) wanted to know if he could do it and if so, what would the restrictions be. Told (b) (6) that would be fine

so long as his position with DOJ was not highlighted over any other biographical facts, he did not share any non-public information, it should be clear any statements he makes are his personal opinion and not the views of the Department. He should do the interviews on his own time and not using any government resources. (b) (6) February 20, 2009.

125. (b) (6) JMD, (b) (6) Outside employment question. Before (b) (6) came to DOJ, he worked at the Dept. of Education and one of his responsibilities was directing the ERIC program, a series of contracts that provided bibliographic and research services for the Education community. (b) (6) is a (b) (6) based vendor that provides services and solutions to the library community. Currently, the DOJ libraries have a software maintenance agreement with (b) (6) for a product called (b) (6) that is the basis for our electronic legislative histories database. (b) (6) asked if he could accept this consulting position for a contract proposal to a Federal agency that he left nine years ago and if the current DOJ software maintenance agreement precludes him from doing this because of potential conflicts. I advised (b) (6) that any outside employment that relates to his work has to be approved by (b) (6) and because the DOJ libraries have a contract with (b) (6) our office would not recommend approval. It is just too close to his official duties, and it would mean he would have to recuse from any participation in matters relating to the (b) (6) contract, not something the head of the program is normally permitted to do. (b) (6) February 20, 2009

126. (b) (6) (NSD, (b) (6) called to ask a question about an arrangement for an unpaid summer intern who would come to work for 10 weeks this summer. The prospective intern wants to see if DOJ would make an adjustment on the dates he would be here so that he could also spend some time as a summer associate with (b) (6). As (b) (6) originally described it, the firm would pay him not only for the time he worked at the firm but also for the time he spent with DOJ. I told (b) (6) that this would raise concerns under the standards of conduct. I discussed with (b) (6) who said in the past DOJ has allowed summer interns to work a split summer between DOJ and a law firm spending maybe 5 weeks in each place. In that instance the income earned from the firm enables the intern to work through the summer as the position at DOJ is unpaid. The intern would be recused with respect to the law firm employer. I discussed again with (b) (6) and learned that the firm may not be paying the intern for his time at DOJ. Rather because of the way it pays its summer associates, the intern would only receive his summer associate salary after he came on board at DOJ. So (b) (6) concern was that he would be getting paid by the firm for completed services but at the time he was working at DOJ. (b) (6) said she needed to get more facts from the intern to determine exactly what the arrangement would be. (b) (6) also raised a concern about the firm listing the National Security Division as an organization where its fellows had performed pro bono service. (b) (6) did a conflicts check and the firm had no matters pending in NSD. (b) (6) obtained more facts and the arrangement turned out to be as follows. As a summer associate with the firm he competed for a public service fellowship. The firm would fund the fellowship which would allow him to work part of the summer doing "public service" work in this case at NSD. I asked (b) (6) if he indicated that he would do, or would seek to do, the public service work at NSD

when he applied for the fellowship with the firm. (b) (6) asked (b) (6) to find this out. She got an email back from (b) (6) saying that they were reluctant to ask the prospective intern about this because regardless of the answer the chief of CTS (b) (6) (?) is "convinced that the appearance of impropriety precludes him from being provided fellowship funding of his time at CTS." So management made a decision not to permit it. The emails are in the file. (b) (6) February 10-18, 2009

127. (b) (6) (Civil) forwarded an email that involved a request from a former DOJ employee, (b) (6) for advice about an opinion article that he wants to publish on what (b) (6) thought might be a detainee case. I discussed with (b) (6) and he is going to get back to (b) (6) with 3 points to keep in mind. First, he needs to consider his obligations to a former client under the bar rules. Second, he needs to consider any obligations he might have with respect to national security information. Third, he needs to consider whether he has any obligations with respect to confidential information. (b) (6) did not want to review the article prior to publication because he did not want to assess the point of view of the article. Discussed with (b) (6) who suggested contacting (b) (6) on the bar rule issues. Sent (b) (6) an email and she replied with a discussion of applicable California bar rules. Meantime (b) (6) called back with more information. (b) (6) is also interested in talking to reporters about the case. The case is (b) (5). It is a case that involves a state secret issue and was argued in the 9th Circuit on February 9, 2009. (b) (6) said the appellate staff strongly recommends against him writing about the case or speaking with reporters. (b) (6) name is on the brief and that may be why reporters are contacting him. (b) (6) is now with (b) (6). (b) (6) said the firm does not have any Gitmo cases. Had several conversations back and forth with (b) (6) and said he should make it clear to (b) (6) that he does not represent the United States, that he should not be making statements that would be detrimental to the interests of his former client, and that prudence and the spirit of the bar rules would indicate that (b) (6) should not comment while the case was pending. In our final discussion, I told (b) (6) that our office would strongly discourage any comment while the case was pending. (b) (6) February 11-18, 2009

128. (b) (6) an attorney with (b) (6) (b) (6) called with a Lobbying Disclosure Act question. He has a client that may contact the Deputy Assistant Attorney General of OLP. (b) (6) wanted to know if that position was one that is a "covered executive position" under the LDA. If it is, then his client would have to register. He said the position is listed in the Plum Book. I discussed with (b) (6) Called him back and left message on his voice mail that we would not interpret the LDA. Also told him that there were career and non-career DAAG positions. (b) (6) February 11, 17, 2009

129. (b) (6) (b) (6) and (b) (6) called with a question about his termination report. He wanted to know how he should report an asset sold in January 2008. Checked the regs and left him a voice mail message and then sent an email telling him how to report the item. Received his reply. The email is in the file. (b) (6) February 12, 17, 2009

130. (b) (6) (TAX, (b) (6) called with a question that came to (b) (6) from the (b) (6) office. They asked (b) (6) two people from TAX could go on a detail to the White House to vet the tax returns of nominees. Discussed with (b) (6) Then discussed with (b) (6) and we called (b) (6) and discussed the issue. The conclusion was that it would be preferable for the White House to hire an outside contractor. If a TAX employee did go over, there should be a clear understanding that if a matter that would require referral would come up in the course of a review, that the matter would be referred. (b) (6) February 17, 2009

131. (b) (6) (b) (6) called to discuss a 207(c) question dealing with the questions of attribution of a communication. He wanted to know an issue would be raised if he were to communicate with the (b) (6) or the (b) (6) on a tax shelter case that he expected would be indicted and go to trial before his one year cooling off period expired. In a few weeks he would want to communicate with either or both of these offices. He was in the (b) (6) and left on January 20, 2009. I said that while the one year restriction would not apply to communications to (b) (6) or (b) (6), that he did need to be concerned about whether his communications would be passed on to a higher level. I said if it is foreseeable or likely that this matter would involve issues that (b) (6) or (b) (6) would take up to the DAAAG or the Associate AG then he should not make the communication. I said he could work behind the scenes. I said sometimes persons who are not sure whether a communication would be passed on have told the office that they could contact that they are subject to the one year cooling off period and have asked to be advised as to the likelihood of a communication being passed on. I sent him an email that confirmed that our January 2009 memo was our most recent advice but said there were other sources that he might consult such as the 207 regulation. He sent back an email saying that he would memorialize his understanding of our conversation and send it to me in an email. The emails are in the file. (b) (6) February 17-18, 2009

132. (b) (6) who left (b) (6) had a question about her termination report. She wanted to know if she should list as an agreement or arrangement a job as a part-time occasional household employee. I said if she had the arrangement before she left DOJ then she should report it. (b) (6) February 18, 2009

133. (b) (6) (b) (6) called with a question about an item reported on his SF-278. It concerned the deferred contribution to his 401(K) plan by the firm, (b) (6). Looked at the item and it was correctly reported. He said he would sign the form and send it by messenger. It arrived just a little before 3:00 p.m. Sent him an email that we got it. (b) (6) February 19, 2009

134. (b) (6), OIG, gift question. A supervisor improperly accepted a gift of tickets from a prohibited source. The supervisor then gave them to a subordinate who used them. Did the subordinate violate the Standards of Conduct? What if they knew that the tickets were originally from the prohibited source? Told (b) (6) I thought it was reasonable that a subordinate could rely on the gift acceptance judgment of their superior, and acceptance impropriety would not necessarily transfer to the subordinate - unless the facts show that the subordinate knew that the gift was prohibited to the supervisor, and used the tickets anyway. If they contacted the prohibited source in any way about the subordinate using the tickets, that would make it a gift offered to the subordinate, not the superior. If the subordinate reasonably relied on the superior's gift acceptance propriety, and thought it was a gift to them from their superior, then I think it would be difficult to prosecute the subordinate for violating the SoC.. (b) (6) is going to find out more facts and contact us back if she wants more help. (b) (6) February 23, 2009

135. (b) (6) sent an email asking for a review of the author attribution in a book on victim assistance written by (b) (6) that will be published by the ABA. We were only asked to review the author attribution. I sent (b) (6) an email with two suggested changes. The emails are in the file. (b) (6) February 17 & 23, 2009

136. (b) (6) who is now with the firm of (b) (6) called with a question about the one-year cooling off period. He left DOJ on December 16, 2009. He wanted to know if he could get a waiver of the one year bar to work on a criminal case before the (b) (6). He was the (b) (6) but also worked int eh (b) (6) available in certain very specialized circumstances but not to represent a client in a criminal case back to the (b) (6) where he had worked. So he would have to wait for the one year cooling off period to expire. He also asked about doing veterans work in the Court of Appeals for the Federal Circuit. Discussed that issue with (b) (6) Called (b) (6) and told him he would have to find out more facts about the veterans cases to determine if the representation would involve communications to a part of DOJ covered by the ban. (b) (6) did not have any particular case in mind at this time so he had no specific facts. These cases would be pro bono

cases that the firm would undertake. (b) (6) February 18 & 23, 2009

137. (b) (6) sent an email that was a follow up to his earlier inquiry. See entry #130 in this quarterly log. He memorialized his understanding of our conversation. I sent him a reply that commented on his email. The main issue concerns the attribution issue under section 207(c). The exchange of emails is in the file. (b) (6) February 23, 2009

138. (b) (6) FBI - the MARC train free ride program for law enforcement. Has there been any change in our position that DOJ employees are not allowed to participate? This has been looked at many times in DEO in great detail- (twice by me - at least a few times before that over the years). It is not a permitted discount offered to all fed employees. It is not a discount at all: it is an outside employment agreement where the law enforcement official must sign an agreement with MARC that they will report all criminal activity they see, and that they will prepare monthly written reports of security recommendations in exchange for MARC train passes. This violates: our supplemental reg prohibiting outside employment involving criminal matters. I told (b) (6) that as long as that is part of the equation, this office wouldn't Ok it. Additionally, it is a misuse of the officer's position for their own private gain and that of MARC. (b) (6) and (b) (6) agree completely. How about the current argument being presented regarding how it is greener to use mass transit? The green argument would hold sway only if the program were changed to address the outside employment/misuse concerns. Should only badged, armed, federal law enforcement officials be green? How about the continuing argument that there are federal officials, including DOJ employees, that are currently participating? I've told the FBI in the past, if they would like to give us the names of the DOJ employees they know are participating (they said last time it involved a few Marshals) we could alert their ethics official of the need for their counseling about our view of this program. As far as other federal agencies, perhaps they do not have a supplemental reg like we do flatly prohibiting outside employment involving criminal matters. (b) (6) sent us the program's email with DOJ email addresses on it. I looked each up and provided it to (b) (6). For uniformity of action within DOJ, (b) (6) asked to be kept advised of our office's actions/suggestions. (b) (6) February 24, 2009

Follow up: Discussed at the ethics luncheon: (b) (6) contacted the Program Administrator to alert them to DOJ's position and advise them that no FBI personnel are permitted to participate. The Program Administrator was to issue a notice that any federal participants should seek the advice of their ethics officials. (b) (6) of DEA was at the luncheon, and is aware that the DEA employees who are participating are not permitted to. (b) (6) March 3, 2009

139. (b) (6) property question. Can she keep computer ram memory chips that have been replaced in her office computer for personal use on her home computer? They are apparently to be thrown away. Referred her to property management - according to their website the movement of any government property must be handled through their office. (b) (6) February 24, 2009

140. (b) (6) Post-employment question. (b) (6) has been asked to work on an appeal in a case involving the United States. (b) (6) The case was in the (b) (6) office in January 2008 -- six months before he became (b) (6) - on a prior cert petition. (b) (6) did not work on the case at that time (it is a criminal case, so (b) (6) was deputy) and (b) (6) did not act on the case and the case was not pending in the SG's office while he was (b) (6). (b) (6) would like to know if (1) He is not conflicted out of working on the case if the above is true, and (2) how should he goes about verifying the above through (b) (6) directly, or with me. I advised (b) (6) that (b) (6) was (b) (6) at relevant times in connection with the earlier appeal. So, if (b) (6) did not actually participate, he would not be barred from advising behind the scenes, but he still would not be able to make any communications or appearances to DOJ until his one-year is up. (b) (6) would not be subject to the 2-year official responsibility ban if it is a different matter - and my initial sense is that it is but we will discuss that further. (b) (6) has been asked to handle - and argue - the appeal. It would be against DOJ attorneys, but he would not have communications with them (other than in the courtroom-argument setting) or appear at DOJ. (b) (6) had assumed that role was OK (assuming no conflict). I advised (b) (6) that his appearance in court in a matter in which the US is a party or represents a party, would violate any applicable post-employment ban - so, if it occurred (or, e.g., if he filed a brief with his name on it) before his one-year ban is up, he would violate the statute since he may not make any appearance or communication with the intent to influence before any DOJ employee during his one-year cooling off period. (b) (6) February 24, 2009

141. (b) (6) OASG, Matter involving former firm. (b) (6) former law firm, (b) (6), represented (b) (6) in a Supreme Court case in 2004. (b) (6) was not involved in that case. As part of the Attorney General's state secrets review, (b) (6) has been asked to review the Department's assertion of the state secrets privilege in two cases involving (b) (6). These are not the case in which (b) (6) represented (b) (6) previously, and (b) (6) is not aware that (b) (6) has any involvement in these cases. He would like to know whether it is okay for him to participate in this review. He does not know whether a waiver is necessary. I advised that if (b) (6) is not involved in either of these cases, he is not recused from participating in the review of these two matters. (b) (6) February 24, 2009

142. (b) (6) OJP, Crime week poster on Metro. He just wanted to confirm his reaction to an issue. OJP ethics officials don't think that it would be a problem for OJP to send a request to METRO for METRO to consider using its public service advertisement space to include (for the month of April) a National Crime Victims Rights poster on METRO trains, so long as they specifically indicate that all posters will be printed and provided by OJP, and all installation and removal fees will be paid by OJP. Further, any such notice would include the METRO mandated disclaimer that WMATA does not endorse any event, etc. I advised that I don't see an issue either. (b) (6) February 24, 2009

143. (b) (6), (b) (6). USPS is in litigation on a large False Claims Act case, and wanted help interpreting 207 and how they could interview a witness pre-trial, who used to be a USPS employee but now is an employee/representative of the Defendant company, without placing her in a position of violating 207. Of note, there is already an OIG investigation into that employee's alleged 207 violations. (b) (6) recommended that USPS and the AUSA they are working with (b) (6) consult with EOUSA for this 207 interpretation, which will be very fact specific to this witness' involvement pre- and post-litigation. Gave USPS the contact info for EOUSA. (b) (6) February 25, 2009

144. (b) (6) (JMD, (b) (6) called on February 24, 2009 with a question about a widely attended gathering that was being held on February 25, 2009. (b) (6) works in procurement policy as a procurement analyst. He worked on a strategic survey team that studied various office supply products. GSA has put out a number of BPA's in this area. (b) (6) does not make any actual decisions about procurements. He works strictly on policy. He has worked with (b) (6) who is an employee of a Staples company. He said that he discusses product lines with her and that she might be calling him in the future. (b) (6) invited him to attend the reception for the Staples Brighton Awards for 2009 at the Kennedy Center. It is expected that employees from throughout the executive branch will be invited as well as small businesses and it appears veterans interests. There would not be a dinner. There would be a cash bar. Light refreshments would be served. Senator Ted Kennedy is an honoree. There is no ticket price. (b) (6) attempted to find out the value of attendance but he was told that it had no monetary value. I called (b) (6) on February 25 and told him that while it is likely that this would qualify as a widely attended gathering, that he would need the approval of the component head to attend and that would require some showing of an interest of the government in his attendance. He did not want to seek approval. I said if he could determine the per head cost of the event and could reimburse the sponsor (Staples) he could go. He declined and said that he would not attend. The emails are in the file. (b) (6) February 25, 2009

145. (b) (6) (TAX, (b) (6) called with a question that was prompted by an AP story which reported the the Swiss Minister of Justice would be meeting with (b) (6) next Monday to discuss the UBS case. TAX has both civil and criminal cases involving UBS and the office was concerned about this story and about the idea of such a meeting with the Swiss Minister. (b) (6) thought that (b) (6) was recused from UBS matters because it was a former client. She wanted to know how to approach this issue. I discussed with (b) (6) who spoke with (b) (6) in Public Affairs who has told reporters that (b) (6) is recused. I called (b) (6) back and left a message in her voice mail telling her that (b) (6) would not be meeting with the Swiss Minister and that he was recused from UBS matters. (b) (6) February 25, 2009

146. (b) (6) (b) (6) called with a question about 207(f). His firm has a client that is an American company that is wholly owned by a German company that is wholly owned by the German government. (b) (6) wanted to know if either or both the American company and the German company would be considered a "foreign entity" within the meaning of 207(f). The German company is in the freight forwarding business. It is possible that in the future there might be an Initial Public Offering but right now neither company had any publicly traded stock. I discussed with (b) (6) I called (b) (6) back and said that the reg did not define "foreign entity" and that there was no guidance available that would enable us to say that either company was not a foreign entity. We discussed some of the factors that might be relevant to this determination such as ownership and control of operations. I said we would have to research this issue and probably discuss with OLC and that it would not be a top priority right now and so we would not be able to give him a definite time frame for an answer. I said I wasn't sure that there would be any additional facts that would enable us to give a quick answer. He did not ask us to put it on our list of projects at this time. He was going to try to get more facts and if he learned anything that he thought might be relevant he would get back to us. We also discussed the prohibition on aiding or advising under 207(f). I said even though the OGE reg also reserves a definition of this term that it is generally understood to encompass behind the scenes work in the post-employment law context. He said he would get back to me if he had further information. (b) (6) February 25, 2009

147. (b) (6) Outside position by USA. (b) (6) EOUSA contacted (b) (6) about an issue that I previously advised on. (b) (6) of the (b) (6) is seeking permission to serve on the Board of Trustees of the Public Broadcasting Station affiliate in Reno (KNPB). (b) (6) does not currently serve on the Board, but did previously serve on this Board between 2001-2003. I had been consulted and (b) (5) (b) (6) responded that after speaking with me he is convinced that approval of this request would be inconsistent with Department policy and the request was denied. (b) (6) February 25, 2009

148. (b) (6) ODAG, DAG gift acceptance. (b) (6) received from the Maria Falcone Foundation (a private organization not connected to the government) a Mont Blanc Pen which was appraised at \$100.00. (b) (6) wants to reimburse the foundation for the gift and has given (b) (6) \$100.00 to send to the foundation. (b) (6) wanted to know the appropriate language she can use for the letter to the foundation. I advised her of the following language: thank you for your gift, etc. ... the ethics rules do not allow the (b) (6) to accept the gift. However, he would very much like to keep the pen and has been advised by the Department's ethics officials that he may do so if he reimburses you for the value of the gift. Therefore, he is sending the enclosed check. (b) (6) February 25, 2009

149. (b) (6) OAG, Luncheon Invitation. (b) (6) was invited to a private, off-the-record lunch hosted by Brookings, OSI, and the International Commission of Jurists on February 27th at 12:30 at Brookings. They will be discussing the recently launched ICJ report on terrorism, counterterrorism, and human rights. The original invitation is in the log file. I advised (b) (6) that since she is a career employee the usual \$20 rules applies and she doesn't have to worry about the lobbyist gift ban. I also advised her to get a value for the luncheon and keep track in case she attends future events. (b) (6) February 25, 2009

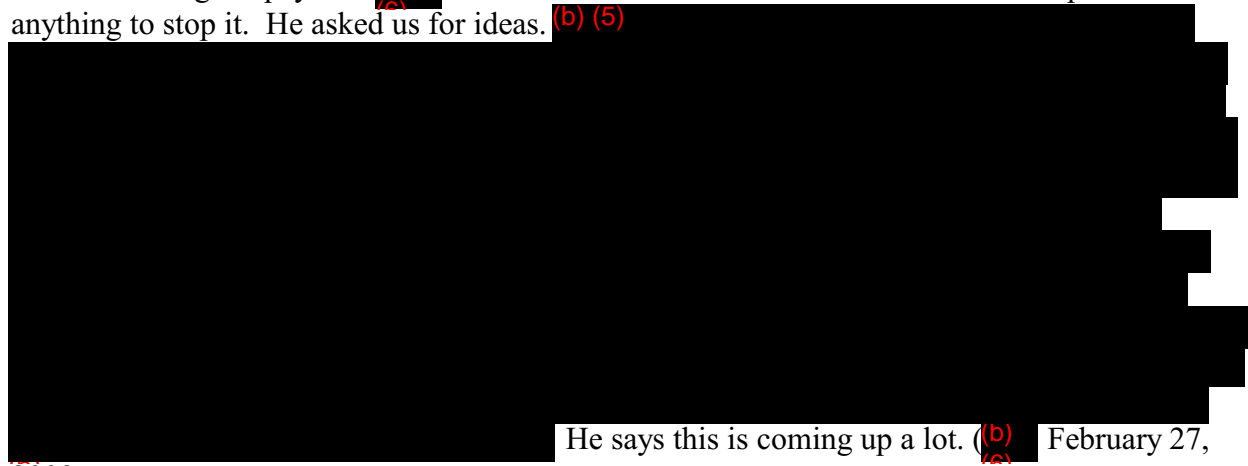
150. (b) (6) (FBI, (b) (6) called with a question about the outside practice of law. A paralegal who is also an attorney would like to write a will and power of attorney for his brother who is a police officer and who is going to Iraq as a contractor. He leaves in two or three weeks and will be gone for a year. Brother is not one of the relationships where an employee can provide legal services unless the employee gets a waiver. I discussed with (b) (6) I called (b) (6) back and left a message saying he can do it. I followed up with an email. (b) (6) replied and said that (b) (6) the DDAEO, will write the waiver. The email is in the file. (b) (6) February 26, 2009

151. (b) (6) (b) (6) the former (b) (6) called with a question about an honorarium payment of \$1,500 which he received from the 5th Circuit for a conference that he participated in last May while he was still employed by DOJ. I discussed with (b) (6) and reviewed earlier emails on the subject from OGC in JMD. Sent (b) (6) an email saying it was the view of this office that he could not accept the honorarium because it was given when he was still working for DOJ and that the best course was to return the check. He sent an email thanking us for the quick turnaround on the question. (b) (6) February 23 & 25, 2009

152. (b) (6) (Civil, (b) (6) had questions relating to an upcoming ABA conference on Health Care Fraud. (b) (6) wanted to know if there was anything problematic about the Speaker Release form that the ABA asks people to sign. I discussed with (b) (6) I called (b) (6) back. People from Civil have been going to this conference for years. This is the first time that (b) (6) himself is going and the first time he has seen the Speaker Release. I said that we should reserve the right to review substantive editing prior to public release. (b) (6) agreed. I said provisions 3 and 4 in paragraph two that tell with publicity, advertising and promotion are objectionable and should be stricken out. Bios are okay if part of the conference materials on speakers' bios but cannot be used to advertise the product. I said the box at the bottom indicating that the presentation was produced as part of official duties as a government employee should be checked. (b) (6) agreed with all of these changes to the release. The copy of

the release is in the file. (b) (6) February 23 & 26, 2009

153. (b) (6) DEA - misuse of nonpublic information by former employees. DEA has Diversion Investigators - they are not 1811 Criminal Investigators. They're job classification is 1801. They investigate mostly the healthcare and pharmaceutical industries for diversion of controlled substances: prescription-writing doctors, pharmacies, drug manufacturers. (b) (6) is repeatedly being asked the same question about Diversion Investigators who leave DEA and go to work for the targets of their investigations. They do not represent back to DEA in violation of 207 but are revealing sensitive, confidential information to their new employers which then harms the US' investigations and prosecutions. Nonpublic information is showing up in the prosecution of cases which could only have been obtained from the DEA investigator, who is now on the target's payroll. (b) (6) has reviewed the ethics rules and cannot come up with anything to stop it. He asked us for ideas. (b) (5)




He says this is coming up a lot. (b) (6) February 27, 2009

154. (b) (6) ENRD, fundraising. (b) (6) emailed asking whether offices are permitted to hold food drives. I told her it required component head approval and that government resources (email, copiers, etc) could not be used to advertise. The collection box should be in one, public area (such as kitchen, copy room, etc) and one flier may be hung in a public location. (b) (6) February 25, 2009.

155. (b) (6) ENRD, post employment restrictions. (b) (6) wants to write a letter of recommendation for someone, can he do so without violating 18 USC 207(c). Consulted with (b) (6) and found an example under "specialized knowledge" that allows a former senior employee to contact his former agency through a letter of recommendation if that letter is based on personal knowledge of the applicant and his working ability, strengths, etc. (b) (6) February 27, 2008.

156. (b) (6) Advice from PRAO. This issue is a permissible level of assistance to former firm in connection with the matter in which DOJ official participated while with his former firm. See email. (b) (6) February 27, 2009

157. (b) (6) NSD, conflicts. A CES attorneys is working with a USAO and the DOJ Fraud section regarding the prosecution of four individuals and a company for Foreign Corrupt Practices Act violations and possible export control violations. (b) (5)



Advised (b) (6) to keep a record of our discussion of this matter but that no formal determination was needed. (b) (6) March 3, 2009.

158. (b) (6) (b) (6), WAG approval. I emailed (b) (6) that (b) (6) (b) (6) requests approval to attend the annual reception hosted by NAAG at the Supreme Court on Tuesday evening. It is part of NAAG's annual spring meeting, and meets the criteria for a widely attended gathering. Some Justices normally attend, and the SG and sometimes others in OSG have gone in the past. Individual state AGs may be involved in cases in which DOJ is also involved will be there. Attorneys from OSG often attend moot courts in cases involving the states when we are on the same side. (b) (5)

(b) (6) approved.

(b) (6) March 2, 2009

159. (b) (6) PRAO, PRAO event. In April, PRAO will be celebrating its 10th anniversary with a ceremony in the AG's conference room, to be followed by a celebration at a private restaurant to be funded out of (b) (6) personal funds. Given that situation, (b) (6) wonders whether

there are ethical constraints concerning her using office resources to plan and carry out the celebration at the private restaurant. By office resources, she means computers, printers, paper and the like, and also the use of staff to make arrangements, send invitations, track acceptances, and the like. I advised (b) (6) that the time spent to organize the official ceremony is of course fine. I do not think the fact that (b) (6) is paying for the refreshments later with personal funds is inconsistent with the fact that it is a continuation of the official recognition event. (b) (5)

[REDACTED]

This situation seems similar, even though refreshments will be provided at the follow-on event at a restaurant. Therefore, if planning the ceremony and the follow-on event will be coordinated, I think it is fine for PRAO employees to handle both together. I also suggested she run this by (b) (6) as well, to have the benefit of his advice. (b) (6) March 3, 2009

160. (b) (6) Library, outside employment/teaching speaking, writing. Ms. (b) (6) is a librarian at the (b) (6). She has been invited to teach a course entitled "The CUA Institute on Federal Library Resources" in the Summer session. The course will be a week long institute, June 22-26, 8:00 am to 5:00 pm. She will be paid (b) (6) to teach the course. Ms. (b) (6) will use annual leave during this period and all teaching will be done on her personal time. Her supervisor has approved her use of annual leave at that time. The course meets the exception in 5 CFR 2635.807(a). The DOJ Library System accepts interns from area library science programs, including CUA. Graduate Library students pursue practicums and internships, and receive credit hours for them. This raises a potential 208 conflict for anyone employed by CUA and DOJ Library System. In the past, (b) (6) Director of the DOJ Library System, as well as other library staff members have taught courses at CUA and received payment from CUA for teaching. Mr. (b) (6) employment with CUA requires his recusal from any DOJ Library System matters involving CUA. Mr. (b) (6) has effectively recused himself from these matters because the program is managed by (b) (6) Reference & Research. All internship inquiries are referred to Ms. (b) (6) and those employees who teach at CUA do not supervise intern projects. This separation of duties prevents a financial conflict of interest for those who teach at CUA, including Ms. (b) (6). We recommended that a formal delegation by Mr. (b) (6) to Ms. (b) (6) be done and circulated to relevant library staff which clearly identifies her as the responsible official for all matters in connections with CUA. Letter and emails in file. (b) (6) March 4, 2009.

161. (b) (6) OSS, contractor 502 conflict. OSS contacted our office concerned about a potential conflict with a potential employee they wished to hire. (b) (6) is currently employed by Pier, Jr, a subcontractor of Lockheed Martin. Lockheed Martin holds the contract with the Department for technical work at the Rockville, MD DOJ Datacenter. Mr. (b) (6) applied for and has tentatively been selected for a position at the Datacenter which would require him to work with and generally supervise the work of employees of Lockheed Martin and Pier,

Jr. This means he would have a covered relationship with Lockheed Martin and Pier, Jr, were he to be hired. Under the Standards of Conduct, employees are generally prohibited from participating in matters affecting someone with whom they have a covered relationship. Mr. (b) (6) applied for the federal junior network engineer position and was rated the second most qualified candidate. The highest rated candidate, a veteran, turned down the position, so Mr. (b) (6) is now the most qualified candidate for the position. The candidate who is the third most qualified applicant does not have the technical experience that Mr. (b) (6) possesses. Mr. (b) (6) proposed new position would be a Federal Junior Network Engineer, GS-9. His duties would include ensuring that contractors (both from Lockheed Martin and their sub-contractors, including Pier, Jr) are providing the technical work for which they are responsible, within the guidelines and requirements of the contract and that their time is not being abused, misused or overstated. His position will provide additional technical insight to OSS on the day to day activities with regard to the networking systems that OSS is responsible for and manages. The formal supervision of the contractors would not be Mr. (b) (6) responsibility and he would hold no decision making authority. He will report his observations of the contract employees to the contract project manager. If Mr. (b) (6) were to be hired for this position, he would be supervised by the same DOJ official who supervises him now. Because of the safeguards in place, as well as the fact that Mr. (b) (6) had worked for Pier Jr for only a few months, it seemed that the conflict would not be that great. Wrote a waiver memo for (b) (6) signature, which he signed. (b) (6) March 3, 2009.

162. (b) (6) prospective political appointee, pro bono case. (b) (6) referred Ms. (b) (6) to us. Ms. (b) (6) has been offered and has orally accepted a job as a DOJ political (DAAG) under (b) (6). Her question is whether she can accept a pro bono immigration case where DOJ is adverse. I spoke to Ms. (b) (6) who said she had been waiting for a while to be assigned a case through the Ninth Circuit pro bono program. She had finally received a case but it was a immigration case with the DOJ as the adverse party. (The title of the case was X vs. Holder.) She said she had only been offered (and accepted) the position with the Department orally and was told until she completed the vetting process, the job would not be officially offered. So she wanted to know if she could take the case. I reviewed with her the potential conflicts involved and that if she became involved with the case (which I did not advise at all) she would have to withdraw once she began the process to start here, as well as disclose to her client that she may be working for the Department in the future. I also told her that she would be conflicted out of anything relating to this case/client for 2 years if she joined the Department. She had some general questions regarding the process to be nominated for the position and I reviewed it with her. She said she would not take the case because she could see the potential ethics issues present. (b) (6) March 5, 2009.

163. (b) (6) ATR, Article by (b) (6). (b) (6) just got a call from (b) (6). He has been asked to write an article about a recent Supreme Court decision in a private case where the Department filed 2 briefs (one supporting cert, one on the merits.) (b) (6) advised the (b) (6) on the case and his name is on the briefs. He stated that he would not use any non-public information,

but wanted to know if there was any other issue he should think about. (b) (6) spoke to their Appellate chief who was fine with it as long as no non-public information was used. I advised (b) (6) that it was fine as long as his comments are consistent with the duty of loyalty to the former client. (b) (6) March 5, 2009

164. (b) (6) (OAG, (b) (6)) called with questions about his SF-278 which was due today. He needed to report clients and he was waiting for the list from Covington. I answered some other questions he had. He was able to get the client information and email his report before the end of the day. And the original hard copy followed. (b) (6) March 2, 2009

165. (b) (6) called with questions about the permanent ban and the two year ban. We discussed these restrictions in general terms. He had a question about whether it was possible to segment a portion of a large bankruptcy matter (possibly General Motors). I said we would need the facts of a specific situation. He also asked for (b) (6) number because he wanted to call her with a question about Cobra benefits. I gave him her number. (b) (6) March 2, 2009

166. (b) (6) (OIG) called with an outside activity question. The (b) (6), has been invited by his high school alma mater to speak to the (b) (6) community in a speaker's program sponsored by a (b) (6) adult education program. This is a lecture series for adults. There are 5 speakers in the series and the charge for the entire series is \$60. It seems that it is also possible to buy a ticket for a specific speaking event. The price of attendance at (b) (6) presentation would be the same as the price for the other speakers. The speaking series would begin in September 2009. The subject of his speech would deal with the Office of Inspector General. I discussed with (b) (6) on February 27 and said I would get back to her on Monday. I left a message for her on March 2. (b) (6) called back for (b) (6) who was out on March 3 and we discussed. (b) (6) has two options. He could do the speech in a personal capacity and not receive any speaking fee or reimbursement of expenses. If he did it in a personal capacity, the reference to his title in connection with any information about the speakers program would have to be part of other significant biographical details such as that he is a graduate of (b) (6), a (b) (6), and (b) (6) etc. Or he could do it in an official capacity and voucher his travel expenses and DOJ could be reimbursed under section 1353. In that case, since it was an official activity he could simply use his title and would not have to ensure that it was part of other biographical details. (b) (6) thought that in any respect they would use the general professional bio. I explained that prior approval is necessary under 1353 and that there are reporting requirements. I sent her the reference to the 1353 regulations. At this point, they do not know which option he might take. (b) (6) February 27 & March 3, 2009

167. (b) (6) called and asked whether a group of six employees could take the boss to lunch on the boss's birthday. I said that a birthday is not a special infrequent occasion on which group gifts are permitted. Section 2635.304(a)(1) allows gifts on occasions when gifts are traditionally exchanged (such as a birthday) provided that the items have "an aggregate market value of \$10 or less per occasion." So they might, for example, be able to buy pizza for the supervisor's birthday provided the boss's share of the total cost of food, beverage, tax and tip is \$10 or less. (b) (6) March 4, 2009

168. (b) (6) (CRT, (b) (6) called with a question about a prize that an employee who is an architect won in a drawing. CAD Microsolutions held a seminar to which it invited architects and others in the field. CAD provides design automation software. Although it only invited people in that professional field, attendance may have been open to the public. He attended on official time. The company has done business with CRT in the past and may do so in the future. The employee filled out an evaluation form. His form was selected in a random drawing and the prize was a \$100 gift certificate for Ruth Chris. The employee wanted to know if he could swap the gift certificate for a \$99 seminar offered by CAD. He believed that CAD would be amenable to such a swap. I reviewed the OGE memo on prizes won in random drawings and discussed with (b) (6). In order to be able to use the gift exclusion provision at 5 CFR 2635.203(b)(5) contest entry must be open to the public and contest entry must not be related to official duty. Because entry was limited to a group, architects, it probably was not open to the public although not all of the facts were known as to whether the public might have attended even though only architects were specifically invited. However, the second requirement was clearly not met because the employee attended on official time and filled out an evaluation form which the OGE memo expressly states involves acting officially. Therefore, the exclusion does not apply and no other gift exception is apparent. That means that the Department would have to exercise its gift acceptance authority. It would not be proper to do that to accept the meal certificate. And a swap would likely involve a solicitation which can only be authorized by the DAG. Consequently, we advised (b) (6) that the best course was for the employee to return the certificate. The email is in the file. (b) (6) February 26 and March 5, 2009

169. (b) (6) ((b) (6) called with further questions about involvement in pro bono work for the firm. His one year restriction expires on December 16, 2008. He asked about handling veterans cases that originate in the Department of Veterans Affairs and go to the Court of Veterans Appeals and then the Federal Circuit. He said that DOJ does not represent a party in these cases. I said that as long as DOJ is not involved, he would not be barred from undertaking such pro bono cases. But if DOJ should become involved he would have to withdraw. He also asked about personnel cases before the MSPB. I said that again as long as they did not involve Department employees and the Department was not participating that he could undertake such a pro bono case. Finally, he asked about immigration cases before

EOIR. I told him that he could not do that until the one year restriction expired as EOIR was a part of DOJ that was covered by the restriction. He had been the [REDACTED] (b) (6). (b) (6) March 5, 2009

170. (b) (6) [REDACTED] called with a question about 18 USC 205. An employee in an SES Candidate Development Program (CDP) is looking for a developmental assignment. He is interested in a 60 day detail to a company called Total Immersion. The company does business with DOD and has a video game product that simulates special operations that it wants to sell. (b) (6) [REDACTED] wanted to know if this was permissible under section 205. I told him that 205 would prohibit the employee from representing the company to the federal government. That was the conclusion (b) (6) [REDACTED] expected but was seeking confirmation. The employee would either have to ensure that he did not represent the company to the federal government during the detail or find another CDP assignment. The email is in the file. (b) (6) [REDACTED] March 5, 2009

171. (b) (6) [REDACTED] (CRT, (b) (6) [REDACTED]) called with a question about an employee whose wife has a business and is applying for 8(a) certification by the SBA. The employee needs to get a “no objection” letter from an ethics official or other appropriate official that his wife can include in her application. It is required if the spouse of the 8(a) applicant serves in a position at or above a GS-13. I discussed with (b) (6) [REDACTED]. Called (b) (6) [REDACTED] back and left a message and followed up with an email saying that either she or (b) (6) [REDACTED] could do the letter. Preferably the letter/memo should be addressed to our employee. It should point out that he is in the criminal section and does not work on procurement, that it would be unlikely that any conflict would arise, that any conflict could be handled by recusal without interfering with the work of the office. The email is in the file. (b) (6) [REDACTED] March 6, 2009

172. (b) (6) [REDACTED] sent an email on March 3 with a follow up question regarding his representation of a client to the USANYS. He is subject to the one year cooling off period. But he is not barred from USANYS. But he needs to be sure that his communications are not elevated to a covered part of DOJ. I discussed with (b) (6) [REDACTED] in New York (b) (6) [REDACTED]. It is clear that USANYS does not have any obligation to refrain from attribution or to sanitize its communications. It appears that at this time such elevation is not foreseeable. But it remains [REDACTED] obligation to cease communications or appearances if he becomes aware that his communication with attribution has been elevated to a covered component. The extensive email chain is in the file. (b) (6) [REDACTED] March 6, 2009

173. (b) (6) (DEA) called to find out what the definition of minimal value was under the Foreign Gifts and Decorations Act. I sent him an email with the cite to the GSA regulation which currently defines minimal value as "\$335 or less". See 41 C.F.R. 102-42.10. (b) (6) March 9, 2009

174. (b) (6) () JMD) called with a question relating to a former employee. (b) (6) worked in that office for more than 20 years. So he knows what the office does and how it is run. He was a member of the SES. He left the office more than two years ago and now works for . The office has a contract with four contractors in which the contractors can compete for specific tasks. is one of the four and a newcomer to the group. (b) (6) has been calling regularly saying that he wants to come in to make a pitch as to what can do for the office. (b) (6) said some people are concerned about him coming in. We discussed post-employment restrictions. As he has been gone from the office for more than two years, the only restriction is the permanent one on matters that he participated in personally and substantially. This contract is not one he was involved in. So he could come in and talk to them. (b) (6) said in order to avoid any appearance that (b) (6) is getting preferential treatment that he would give all four companies an opportunity to come in to talk about what services they can provide. I said that arrangement was okay. (b) (6) March 9, 2009

175. (b) (6) OPR, Publication Interview. (b) (6) had a question on behalf of on detail to OPR who is on the short list to be (b) (6) for the . There is a legal publication by the "Women's Bar Association of the State of New York" (the acronym is WBASNY) which publishes a quarterly newsletter. In the newsletter, they may do a "Member Profile" and write a half page or so about one of their members. The AUSA in his office has been contacted by WBASNY to be interviewed and it will undoubtedly be relating to her candidacy. He would like to know if there is anything he should discuss with the AUSA in addition to not discussing or disclosing any client confidences and like case related-information. I advised that there is nothing in addition to the items he mentions, although I think she has to be careful about commenting on any ongoing DOJ matters. I see this as a prudential issue - especially since she cannot control what they write - she should be careful not to appear to be actively promoting herself for the position, or certain that she will be nominated. (b) (6) March 11, 2009

176. (b) (6) (OGC, (b) (6)(b) (6) called with a question about a proposal by Lexis Nexis to beta test a new product. He said he needed an answer fairly quickly. I asked him to send a copy of the agreement that LN would ask each employee to sign. I reviewed the agreement and discussed with (b) (6) I sent (b) (6) and email and outlined our concerns. The agreement seems to place employees in the position of wearing two hats on the one hand identifying it as an agreement with a DOJ employee and on the other stating that the activities

under the agreement are “independent” of DOJ. Second, there is a concern as to how the feedback would be used either to bolster the bargaining position of LN or possibly to endorse an LN product. We also thought it would be better if the testing of the product were done in a personal capacity on the employee’s own time. I talked to (b) (6) and he said it was mostly people in the litigating divisions who were interested in testing the product. JMD OGC attorneys would not do the testing so the potential issue of a conflict in the event of a later dispute would not arise. (b) (6) said that (b) (6) had not yet been consulted. He asked that we talk on Monday morning. On Monday, (b) (6) another attorney in OGC JMD called and said that (b) (6) was busy with another matter and he would follow up on the matter of the LN testing program and the agreement. Barry’s concern was the potential liability of an individual DOJ employee under the agreement for a violation of the confidentiality provision, as for example, if an employee were to give out LN proprietary information to Westlaw. He said that (b) (6) (sp?) who is a contracting officer in procurement services asked OGC to look at the arrangement. He believes that (b) (6) who is in charge of the LN contract and the Westlaw contract was the one interested in the testing. He believes that LN came to (b) (6) with the proposal. (b) (6) questions were these: if an employee is the party to the agreement, can the employee use official time in the testing. If the Department is the party to the agreement, can it assign employees to do the testing. I asked (b) (6) if he had talked to (b) (6). He had not. I said that it would be helpful to us to know Stu’s view on the acceptability of the proposal. He said he would talk to (b) (6) and get back to us. The emails and the agreement are in the file. (b) (6) March 6 & 9, 2009

177. (b) (6) a (b) (6) called with a recusal question. He was asked by the Criminal Division to review a prosecution memo. He noticed that the memo mentioned a person he knew. The person was a witness and a journalist. The witness is the son of family friends of both his in-laws and himself and his wife. He has met the son/witness but has not seen him for many years and has no social relationship with the son. He wanted to know if he could review the pros memo and if he needed any approval to do so. Specifically, he asked if he should run it by (b) (6). He said the underlying matter was a sensitive one. I discussed with (b) (6) and called him back. He said that the witness is being called in his capacity as a journalist. He said that whole issue is being addressed separately, i.e., calling a member of the media as a witness. He said he only suggested a review by (b) (6) because (b) (6) is, as he put it, an “ombudsman.” I said in our view this remote association with the witness is not significant enough to cause a reasonable person with knowledge of the relevant facts to question his impartiality. It is not a covered relationship and it would not trigger the catch-all provision. I said it did not require any authorization and suggested that we could send an email to that effect to (b) (6) the (b) (6). (b) (6) seemed to feel that that was too “elaborate” a procedure and he was concerned it would make a larger issue out of it than he felt was warranted. He said what he was going to do was send an email to me, (b) (6) and (b) (6) describing his understanding of our analysis of the question. He followed up the phone conversation with a short email which described his understanding. The email is in the file. (b) (6) March 9, 2009

178. (b) (6); (b) (6); (b) (6) called with a post-employment question. He said he was not subject to the one year restriction under 207(c) because he did not exceed the dollar threshold. But he was asking whether the two year restriction for matters under his official responsibility would apply. He is considering representing (b) (6), the (b) (6). He wanted to know if the investigation in the Fraud Section was underway before he left DOJ on January 20, 2009. He said (b) (6) was working the case in Fraud and he asked if I would call. I called (b) (6) and (b) (6) said that the matter was in the Criminal Division going back to around May 5, 2009. And (b) (6) as the number two person in the company was under investigation. I asked (b) (6) if any of the information he gave me was confidential and he said it was not as there was a reference to the investigation in an investigator's affidavit that was in the public record. I sent (b) (6) an email and said the matter was pending under his official responsibility during his last year of government service and that the two year restriction applies. (b) (6) called to ask if there was a knowing requirement and if the two year restriction would bar behind the scenes work. I said the restriction would still apply even if he was not aware of the matter when it came into the Criminal Division. I said 207(a)(2) did not bar behind the scenes work but that he needed to consider bar rules. He was going to try to do additional online research. Subsequently, I sent him an email with the definition in the reg of the knowing requirement. It is know or reasonably should know and a note to the definition makes clear that if a former employee has reason to believe that a matter was under his responsibility, he should consult an ethics official for assistance in determining that fact. This was the case in this question and we did confirm that the matter was in the Criminal Division. The emails to (b) (6) are in the file. (b) (6) March 10, 2009

179. (b) (6); (b) (6); (b) (6) called with a post-employment question. He participated in a criminal material support case prosecuted in California while he was (b) (6). It was (b) (5). He was on a brief opposing cert to the Supreme Court along with (b) (6). The second case is (b) (5). He wanted to know if his participation in the criminal material support case would trigger any restrictions on his representation of a potential client in the (b) (6) appeal. His one year restriction expires in June 2009. (b) (5). he government has until March 16 to enter an appearance in the appeal. (b) (6) filed the appeal on behalf of (b) (5) on (b) (6). (b) (6) was on travel and I spoke to him when he returned on March 5 (b) (6). He did not think it would be a problem for (b) (6) to represent a client in the appeal. He said

that the reference to the superseding indictment in the January State Department decision was more in the nature of background. He said that essentially this was a new decision. He said (b) (6) might represent one of the individuals in the criminal case in an amicus filing. He said that it was possible someone might disparage the superseding indictment in the course of dealing with the issues in the appeal. But he says he knows (b) (6) and he does not think that (b) (6) would do that. I said there could be a conflict, however, because on the one hand he has a duty to zealously represent his current client in the appeal and on the other hand he has a duty to his former client (the Department or the United States) not to undermine that interests of the former client in the case that he worked on. (b) (6) said he hadn't thought of it that way. At any rate we were able to obtain the information on the two cases that would enable us to conclude that the appeal of the State Department administrative determination on (b) (6) status was not the same specific party matter as the criminal material support prosecution. I sent (b) (6) an email on March 5 to that effect but cautioned him that he needed to consider the restrictions that the bar rules would impose, notably under D.C. Rule 1.11. (b) (6) (b) (5)

(b) (6) (b) (5)

(b) (6) eminded him that in addition to Rule 1.11 of the bar rules, the rules on client confidences would also need to be considered. The emails are in the file. (b) (6) February 23 - March 11, 2009

180. (b) (6) personnel, award/private organization. Mr. (b) (6) called regarding a Women in Law Enforcement Award. Although there have been many times DOJ has been involved with awards from WIFLE, this is the first time it is cosponsored with a private sector company, rather than a 501(c) 3 or a government entity. This year the award is co-sponsored by (b) (6) (b) (5)

(b) (6) (b) (5)

We determined that this was a bonafide award and that (b) (6) s participation would not preclude DOJ's involvement. However, because of past issues with federal law enforcement's "partnership" with private industry, (b) (6) asked that we be included in the vetting process this time, to ensure no improper partnerships are being rewarded. Notes in file. (b) (6) March 11, 2009.

181. (b) (6) CRT, internet issues. (b) (6) called regarding a front office attorney who has a LinkedIn page. His position at NSD/DOJ is listed, as well as his participation in a number of outside organizations and his outside employment as Regional Sales Manager for Marketing for a

product line. His position at NSD has him doing many outreach jobs for DOJ as well as private groups (the attorney is blind and does outreach work with many private organizations involving disabilities and work place accommodation.) (b) (6) was concerned that all of this appeared on his LinkedIn page, especially the sales manager because it may create the appearance of a DOJ endorsement. I advised (b) (6) that we cannot prohibit him from listing the DOJ position but he should be made aware that there are limits as to what he may post along side the DOJ title. If (b) (6) feels there is a problem with the information he currently has listed (such as some of the private organizations) than the attorney should be told that his DOJ profile and his private activities should be kept separate. This applies to other internet activities such as Facebook, blogs, comments, etc. (b) (6) March 11, 2009.

182. (b) (6) (b) (6) had a question as to whether he could review a draft of a brief in a case he had worked on in private practice. When he was at (b) (6) he took a pro bono case that involved section 5 of the Voting Rights Act. He participated in this case at the District Court level. He said as an amicus. The case is (b) (6) and it is scheduled for argument in the Supreme Court on April 27. He was sent the draft brief of the United States' brief on the merits which is due to be filed on March 19. He did not open the attached brief. He said that he believed the position that he took on this case when he was at (b) (6) would be aligned with the position of the United States in the appeal. He wanted to know if he could review and comment on the draft brief. I said he could not participate in a specific party matter in which his former personal client (even if done pro bono) was a party. He said he would respond to (b) (6) and say he cannot review the draft brief. (b) (6) March 12, 2009

183. (b) (6) (OJP, (b) (6) called with a question about a webcast to be held on March 17, 2009 by the U.S Conference of Mayors that would be sponsored by TASER, i.e., TASER would pay the costs of broadcast. The Acting AG of OJP and the Acting Director of COPS would be speakers who would explain the new funding available under the American Recovery and Reinvestment Act. The Office of Communications needed a clearance that same day (March 11) of a memo announcing the webcast. In the memo the recognition of TASER along with the company logo immediately followed the names of the DOJ officials. (b) (6) was concerned about this association because of past issues in the Department about whether TASER products were or were not to be considered lethal force. I told (b) (6) we would need to look at the memo. He sent the memo on March 12. I discussed with (b) (6) I left a voice mail message for (b) (6) and sent him an email saying the should take whatever steps were necessary to ensure that there was no implied endorsement of TASER, no suggestion of a joint venture with TASER and no suggestion of an association or relationship with TASER. The TASER thank you should be at the bottom of the memo separated from the names of the DOJ officials. Also in future promotional materials they should ensure that TASER is not connected to DOJ. In the broadcast itself, they would need to be sure that things like banners, placards, and steaming messages did not associate TASER with the Department officials who were speaking. The email and the draft

announcement are in the file. (b) (6) March 11 & 12, 2009 UPDATE: On March 16, 2009, (b) (6) forwarded an email from (b) (6) which indicates that DOJ would be paying for the webcast, not TASER. This memo attached the announcement memo from the U.S. Conference of Mayors which indicated that DOJ was the sponsor of the webcast with no mention made of TASER. (b) (6) March 16, 2009

184. (b) (6) PRAO, Pro Bono Opportunity. (b) (6) is working on setting up a federal pro bono program in New York City. She has been communicating with an attorney in the New York City Civil Court who runs the court's volunteer lawyers project to see whether its pro bono opportunities are appropriate for their attorneys. The lawyer explains that the New York Bar implemented a conflicts check exemption for certain limited representation services. It's a great exemption for New York state attorneys, but (b) (6) would like to know if it would affect the conflicts check for our attorneys. In other words, would this exemption cover conflicts for our attorneys or do we consider the ethics obligations of federal attorneys to be separate from those of their state bars (i.e. standards of conduct vs. professional responsibility)? I advised (b) (6) that I was cc'ing (b) (6) to seek PRAO's advice as to whether DOJ attorneys practicing in NY (those licensed there and those not) would be able to rely on the exemption. From the standpoint of the gov't ethics conflicts, I think we would still need to make an independent judgment as to conflicts, but the exemption could be relevant in terms of how extensive a check is needed. (b) (6) March 12, 2009

185. (b) (6) called with a gifts question. One of their employees has a friend who wants to take the employee and his wife out to dinner this weekend. The employee and the person used to work together at DOJ and are old personal friends. The friend no longer works for DOJ and (b) (6) said he would be a prohibited source. She asked if the gifts based on a personal relationship would apply. I said if the history of the relationship indicates that it truly is a personal relationship and if the friend pays for the dinner out of his own pocket and does not charge it to an employer expense account or take it as a business expense deduction, then the personal relationship exception could be used. (b) (6) March 13, 2009

186. (b) (6) (JMD, ITSS, (b) (6) sent an email asking if there were any ethics issues raised by an employee, (b) (6) leaving and coming back to work as a contractor. I discussed with her, (b) (6) (b) (6) I also sent (b) (6) an email and got additional information. On March 13, I discussed again with (b) (6) and (b) (6) and we were able to determine that he was not barred from working for the contractor, Cyber Balance. I sent the following email to him on March 13:

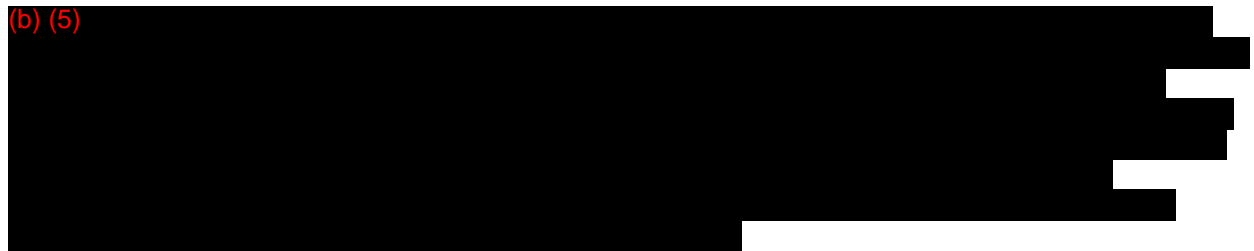
After reviewing the information that you have provided by email and in our phone conversation today and

discussing this matter earlier in the week with (b) (5) and (b) (5) and again with (b) (5) this afternoon, we have determined that federal ethics laws and regulations do not bar you from proceeding with your employment plans with Cyber Balance.

(b) (5)

A large rectangular area of text is completely redacted with a solid black box.

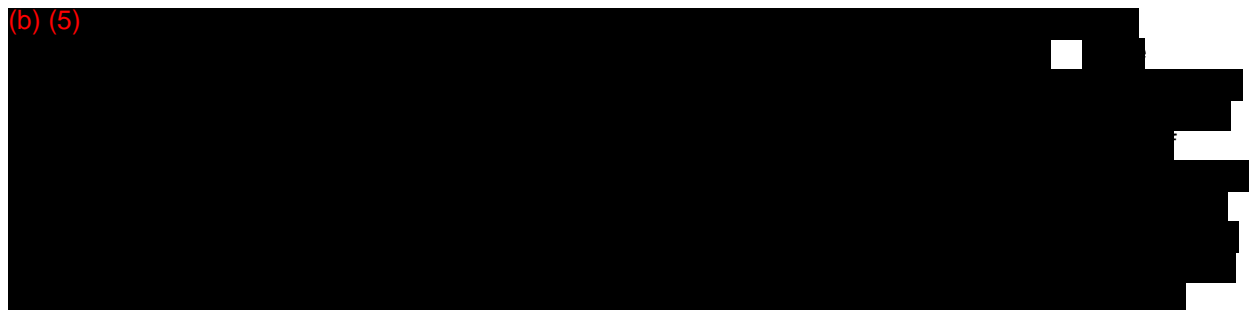
(b) (5)

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(b) (5)

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(b) (5)

A large rectangular area of text is completely redacted with a solid black box.

(b) (5)

Consequently, you are not barred from making communications to DOJ on behalf of Cyber Balance.

This email and other emails are in the file. (b) (6) March 13, 2009

187. (b) (6) OCIO, post employment. (b) (6) and (b) (6) called Friday to discuss the possibility of (b) (6) returning to work at OCIO as a contractor. (b) (6) was (b) (6) at OCIO. He left last year, in February, and was counseled by (b) (6) at the time regarding post government employment. He is now trying to work as a subcontractor with (b) (6) working in the same office he retired from. He would be working in the "line of business" area - which supports other federal agencies. He would be the representative to other agencies, up to 13 agencies including Dept of Interior and USDA. When he was there as Staff Director, this was under his official responsibility, according to (b) (6). He would be a subcontractor to (b) (6). He was recused from all things involving (b) (6) prior to leaving DOJ (Dec 07) because he was interviewing for work. I explained to both him and (b) (6) that because this was under his official responsibility while he was at OCIO, he would have a 2 year cooling off period and it had only been a year since he left the Department. (b) (6) continues to believe that he does not fall under the 2 year cooling off period and has sent me further information for my review. (b) (6) March 13, 2009.

188. (b) (6) OLP, Question on EO 13490. Senior OLP officials have traditionally attended various Bar functions such as the meetings of the ABA Standing Committee on the Federal Judiciary at the semi-annual ABA conventions, as well as occasional other speaking engagements at ABA panels, state bar functions, and sometimes a local bar like the Assn of the Bar of NYC. Traditionally, these kinds of events have fit comfortably within either the widely attended gathering category or for approval for reimbursement of official travel expenses by an outside sponsor for out-of-town events. One of OLP's new political appointees was recently invited to speak at a regular Maryland State Bar Assn panel next month, and (b) (6) expects that other similar kinds of invitations may be forthcoming in the future. (b) (6) question is whether DEO thinks that there is anything under the President's new Executive Order that may affect the ability of the new political officials to attend these kinds of functions, either as (i) a widely attended gathering or (ii) on the basis of acceptance of reimbursement of official travel expenses under 31 U.S.C. 1353. Based on a very quick check by (b) (6) it does not appear that the

Maryland State Bar Assn is a 501(c)(3) organization. However, there is an affiliated organization, the Maryland Bar Foundation, that is a 501(c)(3) organization. He asked the follow question to which my answers are in blue: (1) Would OLP need to engage in a case by case review to determine if the sponsoring bar association is a lobbyist or if the individual extending the invitation is a lobbyist? For the speaker this would not be necessary, because the provision in the WAG exception states that a meal, free attendance, etc. that is provided to a speaker on the day he or she is speaking is not a gift, would apply. So...(2) Would we be limited to sending only a speaker to an event like this or could other staff members attend as well? For political appointees other than the speaker, it would be necessary to find out if the individual extending the invitation is a lobbyist and whether the sponsor is a lobbying organization, and if so, if they are a 501©(3), in order for the non-speakers to attend any portion of an event for free. Career appointees could be approved to go under the WAG exception as we have in the past. (3) As a related question, where the invitation is coming from a bar official who is not a regular employee of the bar association (e.g., a local law firm partner who is serving this year as the president of the local bar association), do we need to check whether the particular official is registered as a lobbyist in his or her regular private employment even though the invitation is being extended in his or her bar assn capacity? (b) (5)

Based on (b) (6) quick review, he thinks that the Executive Order's restrictions on acceptance of gifts is not applicable in the context of reimbursement of official travel expenses under 31 U.S.C. 1353. That is because the Executive Order applies to the acceptance of "gifts" as defined in Section 2(c)(1) of the EO and 5 CFR 2635.203(b), and because 2635.203(b)(8) expressly provides that gifts accepted by the government under section 1353 are excluded from the definition of "gifts." That provision covers not only speakers but also acceptance of reimbursements of travel expenses in connection with an employee's "attendance" at a function approved under that statute. This would mean, as I understand it, that we don't need to worry about the "lobbyist" issue in connection with reimbursement of travel expenses under section 1353 and that the approval of acceptance of reimbursement of expenses is not limited to "speakers." I advised that I agree that the restriction in the EO does not apply to acceptance by the agency under 1353, but I also think the fact that the source is a lobbyist is a factor that perhaps should be given greater weight when doing the conflict analysis under the 1353 regs now than in the past - although I think the particulars are important, i.e., do they lobby DOJ, etc. Let me think about this a bit more. However, as (b) (6) understands it, the rules are different under the Executive Order for "widely attended gatherings" since widely attended gatherings are NOT excluded from the definition of "gifts" from lobbyists under section 2(c)(3) of the EO. Thus, unless I am misunderstanding something, it does appear that the new EO rules on acceptance of gifts from lobbyists do apply with respect to widely attended gatherings. Yes. (b) (6) March 14, 2009

189. (b) (6) (Civil, (b) (6)) called with a question about service on a board of directors. A career line attorney in appellate wants to serve on the board of Ford's Theater in a private

capacity. (b) (6) said he is clear about advising her with respect to conflicts under 205 and 208 and rules on fundraising, misuse of position etc. He wanted to know, however, if she could allow just her name to appear on standard letterhead and would it be a representation, for example, if a letter were sent to the National Park Service, etc. I discussed with (b) (6). Told (b) (6) it was okay for her name (without her DOJ affiliation) to appear on the letterhead or on a website. Of course, she could not sign the letter or make a communication on behalf of Ford's to a federal agency. The email on this is in the file. (b) (6) March 13 & 16, 2009

190. (b) (6) (b) (6)) called with a recusal question. He had been a member of the board of (b) (6) an advocacy group interested in voting issues. He had resigned his membership on the board when he started at DOJ last month. But he is still within the one year recusal period that applies to specific party matters in which (b) (6) is a party or represents a party. He received a call from (b) (6) and discussed various issues relating to voting including election related issues and (b) (6) concern about a lack of enforcement. They discussed the National Voter Registration Act, a designation of certain federal agencies, the establishment of an interagency task force, and voting issues related to HHS. Another DOJ employee (b) (6) was with him during the call and he said that for the most part he and (b) (6) simply listened and asked questions. I said that he had a covered relationship with an organization that he had served as a board member and that he could not participate, unless authorized, in a specific party matter in which (b) (6) was a party or represented a party. This restriction last for one year under the regulation. Under Executive Order 13490, the recusal period is extended for two years. I told him I would review the E.O. and get back to him if there were any other requirements. I called him back. The restriction on participation in certain "issue areas" is not applicable because he was not a registered lobbyist. He said that he had called DEO because the DDAEO for OLP was not in the office that day. He said that he would appreciate some more specific guidelines going forward as to how he could or could not interact with (b) (6). For example, he wanted to know if he could discuss broad policy matters with (b) (6). He was also a board member of the (b) (6). But he is more concerned about (b) (6) than (b) (6). (b) (6) is more of a philosophically oriented organization. (b) (6) however, is an advocacy group and is engaged in matters focused on specific interests. (b) (6) March 9, 2009

191. (b) (6) (OLP) had a question about communications with the (b) (6). I told him that he had a covered relationship with (b) (6). He asked what the effect would be if (b) (6) resigned. I said that the covered relationship would end upon her formal, written resignation provided she did not have an ongoing active role in the organization. He could communicate with the staff of the (b) (6) once (b) (6) has resigned even though a member of (b) (6) firm, (b) (6) will continue to serve on the board, provided that he does not communicate with the (b) (6) board member. The email is in the file. (b) (6) March 13 & 16, 2009

192. (b) (6) (NSD) speaking. (b) (6) emailed regarding (b) (6) who had been asked by her alma mater, (b) (6), to come speak at a professional responsibility class. It will be a two person panel (b) (6) (the Oklahoma City bombing prosecutor, now in private practice) and (b) (6). The discussion starter will be the Detroit Sleeper Cell case, involving a DOJ prosecutor who was fired and then sued the Department. (b) (6) will pay for Megan's travel expenses. Discussed with (b) (6) and advised that (b) (6) should not speak to the case since she was not involved with it in any way and was not even at the Department at the time. It would only be appropriate for a DOJ attorney to speak about it in their official capacity and since (b) (6) lacked knowledge of the case to do that, we advised she not speak about it at all. She can participate in the panel if they are willing to tailor the discussion for her and not focus on the case. She can accept the travel benefits (based on her alumni status, not her official position) so long as she has no matters involving (b) (6) before her. (b) (6) March 16, 2009.

193. (b) (6) (OARM, (b) (6) called with a question about 2635.809 which requires employees to meet their just financial obligations. They hired an attorney under an 18 month appointment while they were doing his background check. One of the things they take into account in determining suitability is credit record. (b) (6) wanted to know how section 809 would be interpreted and applied in the current economic environment if someone was behind in making mortgage payments. Discussed with (b) (6). Called (b) (6) and said that if the person (1) otherwise had a good credit history, (2) acknowledged the financial obligation, (3) was making a good faith effort to work out a payment plan, and (4) the payment plan was realistic and feasible, then we would view the person as not being in violation of section 809. (b) (6) then said that there was a particular irony in this case because the person moved here to accept the appointment and then was unable to sell his house and thus fell behind in the mortgage payments. He said he would advise the person along the lines we discussed. (b) (6) March 12 & 17, 2009

194. (b) (6) (OLP) had a follow up question related to log entry #189. He wanted to know if there would be any problem if the person who replaced (b) (6) as a board member of the (b) (6) was a (b) (6) lawyer that he saw socially when he took his son to basketball practice. I said that would not be a problem as long as there was a clear understanding that they would not discuss government business. The email is in the file. (b) (6) March 16 & 17, 2009

195. (b) (6) EOUSA, writing. (b) (6) called regarding (b) (6), from the (b) (6) in (b) (6). (b) (6) is a former JAG attorney for the US Army and the prosecutor who handled the prosecutions arising out of detainee abuse at Abu Ghraib. After leaving active duty, but before being hired by DOJ, he wrote and floated a manuscript of a book

about Abu Ghraib to a number of different publishing houses. None of these publishing houses were interested, until last November (2008), a publishing company has approached him and his co-author about publishing the book. He began the approval process for outside writing while he was still at DOJ, submitting it to his section chief (Domestic Security Section), CRM DIV's ethics officer, and the DAAG overseeing DSS. However, the submission did not arrive to the DAAG in time to get final approval before he left on January 31 and joined [REDACTED]. The DAAG, (b) (6), suggested that he resubmit it to EDM and EOUSA for final approval. He submitted it to the EDM ethics officer, (b) (6), and the acting US Attorney, (b) (6), and both have reviewed the submission and approved the participation in publishing the book. It was forwarded to EOUSA for final approval. The book includes two mentions of the DOJ (b) (5)

[REDACTED] Discussed with (b) (6) who did not feel we were the right office to opine on whether we were comfortable with the information included or not. Sent it back to (b) (6) recommending that he talk to Crim or someone else familiar with this litigation to determine if the information included was ok. Notes in file. (b) (6) March 18, 2009.

196. (b) (6) EOUSA, writing. Mr. (b) (6) sent us an article written by (b) (6) regarding human trafficking, to be published in the Minnesota Women Lawyers magazine. (b) (6) is an [REDACTED] in the [REDACTED] who is on the federally funded working task force on human trafficking under the leadership of the [REDACTED] Police Department and the USAO [REDACTED]. I reviewed the article and told Mr. (b) (6) there were no issues with publication so long as the standard disclaimer were attached (views of the author and not necessarily the views of the Department) and that her position at the Department was not highlighted over other biographical information and did not appear in the byline. Article in the file. (b) (6) March 18, 2009.

197. (b) (6) (OIP, (b) (6) (b) (6) called with a recusal question. They have a pending FOIA request from (b) (6) who left the office in January 2007 after running it for about 20 years. He is now affiliated with (b) (6). He is representing a client who is an attorney who claims to be passed over for consideration in the honors program for political reasons. The Civil Division is handling the lawsuit. (b) (6) is the chief of staff and signs off on FOIA responses prepared by her staff. She is concerned that (b) (6) might criticize the office as being biased toward him and she wanted to know if she should have another component handle this request. OIP has never had another component handle one of its requests although it has handled FOIA matters from other components when they have had a request that they felt they

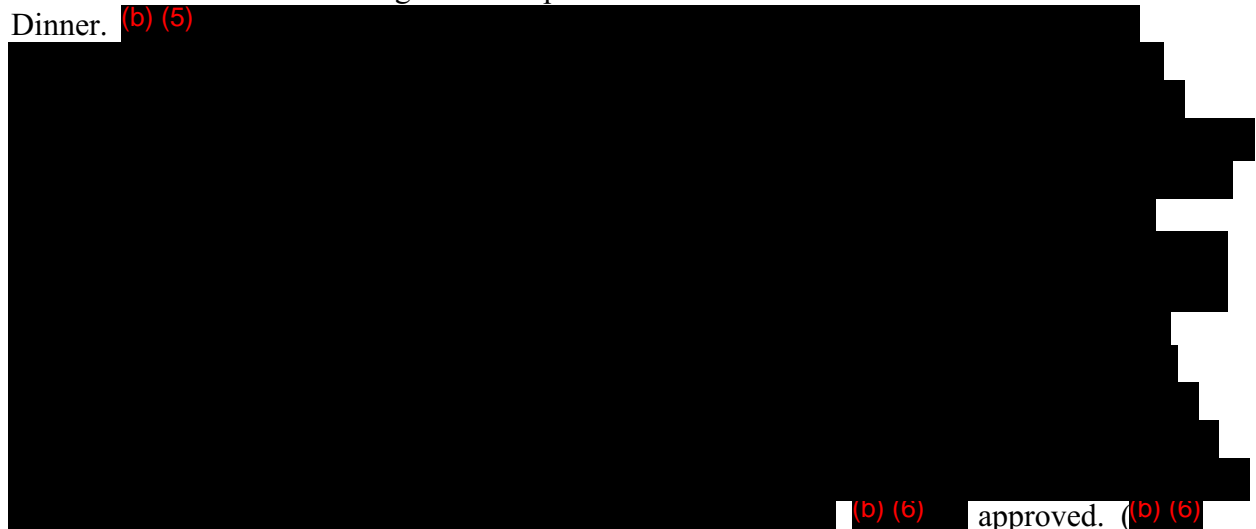
should not handle. But this request was unique because of his prior relationship to the office. She said that objectively she felt that they could process the request without bias in a completely impartial manner. But she was concerned about charges ██████ might make. I discussed with (b) (6) ██████. Called her back and said that unless she felt that OIP could not make an impartial determination on ██████ request that OIP should handle it. She asked if an individual staff member could not be impartial could she assign it to someone else. I said if there was a bona fide reason that she could. She was also consulting with Civil Division who was handling the lawsuit but had not heard back from them. (b) (6) March 17 & 18, 2009

198. (b) (6) ██████ speech & possible gift. (b) (6) ██████ has invited ██████ to lunch before he speaks at their commencement on May 9th. This is an invitation that they traditionally extend to all commencement speakers. ██████ would like to know if it would be possible for him to accept. (b) (6) ██████ has also said they usually give speakers a gift: a crystal apple worth approx \$50. I advised (b) (6) ██████ & (b) (6) ██████ that lunch with the speech is fine in any event, but the question is whether he will be speaking as ██████, i.e., giving an official speech, or appearing in his personal capacity. If it is official, it's fine for (b) (6) ██████ to use his title when identifying him in the materials; if not, it should just be "(b) (6) ██████" although if they do a bio of him in the program, or when introducing him they may also include that he is currently serving as ██████ but that fact may not be given greater prominence than the other facts of his bio. If he is speaking as ██████, he may not accept the apple; if he is speaking in his personal capacity, he may accept it. I also advised that with commencement speeches, it can go either way - official or personal, but in the past, ██████ usually have given what they/we considered an official speech - speaking about DOJ or Administration priorities, goals, etc., and also including personal observations, reflections, advice etc., to the extent ██████ wished. (b) (6) March 19, 2009
(Emails in log file also)

199. (b) (6) ██████ Possible conflict of interest question. Many months ago (about 7 or 8) (b) (6) ██████ "reported" she had gone out to dinner with a lobbyist based on a social introduction by their mutual personal trainer. She allowed him to pay for dinners because they were "dates." They have continued to date since then and are in a serious personal relationship (boyfriend/girlfriend). His business focuses on telecom and energy issues, and he does not lobby DOJ. His interest in her has always been and continues to be a personal relationship. He is going to attend a wireless industry convention in Las Vegas and has invited her to attend as his personal guest. Her understanding is that government employees including Congressional staffers who work in the telecom/wireless area are invited to attend and may speak on various panels. While she would not be attending any of the substantive part of the convention, she would be attending a Gala and/or other social events in the evenings when spouses or significant others are invited to join. Her boyfriend would pay for tickets to these evening events for both of them. She may also choose to listen to the closing speaker, Al Gore, out of personal interest. She would not be attending as a DOJ employee, but merely as her boyfriend's personal guest. She would not represent that she is at the convention on any official government business. She will use two days of annual leave to go to Las Vegas. She didn't perceive that there was anything

inappropriate or any conflict of interest but brought to my attention to see if there are any notifications or other approvals she should obtain (other than getting annual leave approved). I advised that I agreed that it was fine for her to attend as the guest of her friend as she described. (b) (6) March 19, 2009

200. (b) (6) award. I emailed (b) (6) the following: "The National Association of Black -Owned Broadcasters (NABOB) wishes to present (b) (6) with its Public Service Award for Outstanding Leadership in Government at its annual Communications Awards Dinner. (b) (5)



(b) (6) approved. (b) (6)
March 18, 2009

201. (b) (6) a (b) (6) who formerly was with (b) (6) called with a question about the Executive Order. He wanted to know how the EO would apply to communications with a former personal client, (b) (6), and with a former co-counsel, (b) (6). There was concern about a recent Supreme Court case and (b) (6) wanted to know how the EO might apply to conversations about a legislative fix to the case. I advised him on March 12 that the EO would bar a communication or meeting with a former personal client with regard to a "particular matter involving specific parties." I said the EO definition of particular matter involving specific parties was broader than the regulatory definition and included any meeting or communication with a former client that related to the performance of official duties unless it was a matter of general applicability and the meeting or event was open to all interested parties. The EO would preclude him from a one on one meeting or communication with a former client that related to the performance of his official duties. (b) (6) thought this was very broad and asked for a further clarification of the definition in the EO. Subsequently, DEO confirmed this interpretation with OGE. (b) (6) conveyed this

interpretation to (b) (6) in connection with the discussion of another matter. (b) (6) March 12, 2009

202. (b) (6), (b) (6), DOJ Pride. (b) (6) called with a question regarding DOJ Pride's Pride celebration held every June in the Great Hall. The event is sponsored by the Department. At the celebration they give out awards. Their members are asked to provide nominees for the awards and this year a Member of Congress was nominated for their work on some proposed legislation. The legislation has not been enacted. He wanted to know if they could 1) give a Member of Congress an award and 2) if they do, can they discuss their work on a pending piece of legislation. Conferred with (b) (6) and felt that he should contact the General Counsel's office who could better advise. (b) (6) March 20, 2009.

203. (b) (6) NSD, conference attendance. (b) (6) called regarding the Satellite 2009 conference sponsored by a private company, Access Intelligence. There is a cost to attend the conference. Along with the conference, there is also an exhibit hall. The exhibit hall is free to attend and anyone who registers for the exhibit hall may attend. There is also a tour of the exhibit hall for government and military employees, put on by the MSUA, a trade association. The trade association does not have business before the Department but their members do. We advised that the DOJ employee could attend the exhibit hall but to be safe, should not go on the tour. (b) (6) March 20, 2009.

204. (b) (6), is getting lots of questions re: March Madness pools/gambling on Fed property. Sent her the OPM and GSA regs prohibiting same - which were recently linked on the IEC website. Can an employee basketball pool take place for bragging rights only, since the required element of betting money is removed? Yes, it can, as long as misuse of government time and resources are avoided (per (b) (6) ridiculous amounts of it have been wasted on sports pools in the past by some employees). Can employees pool together funds for Powerball tickets? The regs specifically prohibit this activity on federal duty or property. All emails and copies of the regs are in a subject matter file entitled Gambling on Fed Property. (b) (6) March 18 - 20, 2009

205. (b) (6) of OLP called with financial disclosure questions relating to the SF-278 of (b) (6). (b) (6) said that (b) (6) does not want its faculty to reveal the amount of their salary. (b) (6) also has a speaker's agent and he has given a number of speeches for which he received a speaking fee or honorarium. The agent does not want the amount of the fees to be disclosed. I confirmed (b) (6) understanding of the disclosure requirement which is that he would have to disclose the actual amount of his (b) (6) salary and the actual amount that he earned for each speech. He could not aggregate the speaking fees and attribute it to the speakers agency. Also any amounts over \$5,000 would have to be reported on Schedule D, Part II. (b) (6) March 23, 2009

206. (b) (6) (b) (6)
Cleveland based attorney placement firm that specializes in placing antitrust lawyers called with a question about 207(c). He wanted to know if someone who served as the Assistant Attorney General for Antitrust but whose salary was below the threshold that triggered 207(c) would be subject to the one year restriction. I gave him the cites to the regulation. I discussed with (b) (6) and called him back and spoke with him on March 24. I told him that someone who, for example, served as the Acting Attorney General for Antitrust and made less than the dollar threshold (\$153,105 for 2009 and \$148,953 for 2008) would not be subject to the 207(c) one year restriction. He asked about the Executive Order and how it would apply to new people who signed the pledge. I said that if someone is covered under 207(c) that the EO would extend that restriction to 2 years. But the threshold question would still be whether someone was covered by 207(c). So for a person who served in an acting capacity whose salary was below the threshold, they would not be subject to the two year restriction. He observed that the effect of this could be to make a deputy more valuable as a commodity in the attorney job market because the deputy would not be subject to the two year restriction as would the head of Antitrust. (b) (6) March 24, 2009

207. (b) (6) from (b) (6) Committee called to ask what ethics rules would apply to book royalties received by a nominee for a PAS position at FDA. I gave her the reference to the OGE 2008 memoranda on book deals which she said is exactly what she was looking for. (b) (6) March 24, 2009

208. (b) (6) Civil Rights, post employment. (b) (6) received a call from a (b) (6) who is now with a private law firm. She wanted to know if she was barred from contacting the entire Department or just her component. I sent (b) (6) the chart and the info from our briefing book, explaining who is barred from contacting who. (b) (6) March 24, 2009.

209. (b) (6) former (b) (6), post-employment question. (b) (6) would like to know if the 1-year ban on "lobbying" prevents him from participating in a moot court for a private party for Supreme Court case in which the US filed an amicus brief after he left the Department. He had no involvement with the case while he was at DoJ. I advised (b) (6) that it is fine as long as no DOJ employees are in attendance. (b) (6) March 26, 2009

(b) (6)(b) (6) EOUSA, USA teaching request. The General Counsel's Office of EOUSA intends to seek approval for (b) (6), the (b) (6) for the (b) (6), to co-teach a trial practice course at Columbia University Law School this semester. Before he became (b) (6), (b) (6) was an (b) (6) in (b) (6) and received approval to co-teach the course with (b) (6) of the United States (b) (6) is a former (b) (6)

[REDACTED] who served with (b) (6)) Now that he has become [REDACTED] (b) (6) seeks approval from ADAG (b) (6) to continue to teach the course. Before they go to ADAG (b) (6) EOUSA wanted to obtain my approval on the matter. The trial practice course meets one night each week for 14 weeks. Each class is approximately one hour and 50 minutes in duration. Based on GCO precedent, they intend to recommend that [REDACTED] (b) (6) request to co-teach the course be approved, provided that he comply with the applicable restrictions on outside activities, which they will explain thoroughly to him. I advised that this sounds fine. One thought I had is to have the school continue to identify him (only in a bio) as an [REDACTED] rather than [REDACTED] to limit the potential for any misuse of his acting position. (b) (6) March 26, 2009

211. (b) (6) USAEO, writing. (b) (6) sent an article by (b) (6), an [REDACTED] in the [REDACTED], who has requested permission to publish an article about guilty pleas and plea bargaining in a (b) (6) [REDACTED] journal. The article is entitled, (b) (6) [REDACTED]

[REDACTED] From April 2005 to September 2007, (b) (6) served as the (b) (6) (b) (6) in the (b) (6). (b) (6) is a member of the State Bar of California. Attached below is a copy of the article. The article had been forwarded to the necessary offices for approval. Read over the disclaimer and found no problems, all the correct language was included. (b) (6) March 26, 2009.

212. (b) (6) [REDACTED] award. I sent the following email to (b) (6) The Whitman-Walker Legal Services Clinic wishes to present [REDACTED] with its Joel Toubin award, at its annual "Going the Extra Mile" Reception and Awards ceremony, to be held at the Italian Embassy on June 9, 2009. (b) (5)

[REDACTED]

(b) (5)

(b) (5)

(b) (5)

(b) (6) approved. (b) (6) Marh 27, 2009

213. (b) (6) of JMD OCIO (b) (6) called with a question from (b) (6) a member of her staff. (b) (6) is a student at (b) (6) He has been invited to be on

a panel and discuss research that he is doing in connection with his academic program that deals with the topic of information sharing and bureaucratic limitations in the pre- and post-9/11 eras. TSA is also participating in the panel and it will be held at TSA headquarters. The research is part of an article that he is working on for publication. There was a management issue and an ethics issue. He asked if he would have to take leave. I said that was a management decision for her to make as to whether he should use annual leave or be granted administrative leave. We went through the ethics rules that would apply. First, the project is related to his academic program and does not use any nonpublic government information. He should identify himself as a degree candidate at [REDACTED] and if he does identify his employment it should only be one detail in his professional bio and should not be highlighted. If he mentions his employment with DOJ he should make it clear that his views are his own and do not necessarily reflect the views of the Department. He should not use government resources. I suggested that [REDACTED] should review the article before it is published to make sure the author attribution also was consistent with the above guidance and that there was no nonpublic government information in the article. [REDACTED] email is in the file. (b) (6) March 24, 2009

214. (b) (6) [REDACTED] of OPDAT called with a question about seeking employment. She is thinking about starting a job search. She had only general questions at this point. I explained her recusal obligations and sent her our paper on seeking employment. (b) (6) March 24, 2009

215. (b) (6) [REDACTED] (U.S. Parole Commission, (b) (6) [REDACTED] called with a board membership question. [REDACTED] wants to know if he can serve on the board of directors of [REDACTED] a 501(c) organization. He serves in a PAS position. I said the policy of this Administration and past Administrations has been that PAS individuals should not have outside board positions. She said she thought that was the answer but she was seeking confirmation. (b) (6) March 26, 2009

216. (b) (6) [REDACTED], (b) (6) [REDACTED] sent an email with a fundraising question. He wanted to know if he could do fundraising for his 400 member church and if so, what parameters were there. We discussed the limitations on personal fundraising. No solicitation from a subordinate or a prohibited source. We discussed the permissibility of mass communications to the entire church membership even though it might include, for example, an attorney who practiced before the Department, provided that the communication was not targeted at that individual. He asked if a person whose practice did not in any way involve the department would be considered a prohibited source simply because he was a partner in a firm that had attorneys in other practice areas that did practice before the department. I discussed this question with (b) (6) [REDACTED] and sent (b) (6) [REDACTED] an email advising that in that circumstance the church member/attorney would not be considered a prohibited source. We also discussed the rules on use of official position, title and authority and the fact that no government resources could be used and that the de minimis use policy did not allow de minimis use in connection with private fundraising. We

also discussed recusal from specific party matters related to the church because fundraising would make him an active participant. We discussed the question of whether he would have a recusal obligation with respect to church investments if he were to serve again on the Board of Trustees. I discussed the requirements of the exemption, i.e., no role in investment decisions and no action on a matter that affected the organization directly as opposed to the organization's investments. The emails are in the file. (b) (6) March 26 & 27, 2009.

217. (b) (6) (NSD) sent an email with a question about a pro bono activity. An attorney wants to participate in the "Maryland Foreclosure Pro Bono Project" which involves informal counseling to individual homeowners. The project is under the auspices of the Maryland State Bar. The attorney would be involved in informal counseling and would not represent homeowners in challenging foreclosure. Discussed with (b) (6). Suggested to (b) (6) that she contact (b) (6) who coordinates pro bono activities and see if they have reviewed this program. Components may give general approval for particular programs but individual approval is necessary if an attorney wants to represent a client in a particular case. Discussed with (b) (6) the importance of making the attorney aware of the restrictions under section 205. As proposed, participation would be permissible. The email is in the file. (b) (6) March 30, 2009

218. (b) (6), Federal Reserve, security issues. (b) (6) from the Ethics Office at the Federal Reserve called with questions regarding security detail and whether he must reimburse for security when he travels on personal matters. I talked to (b) (6) and she felt the General Counsel's office was the best ones to talk to her. I passed along (b) (6) name and phone number. (b) (6) March 31, 2009.

219. (b) (6) ODAG, Hatch Act. (b) (6) called to confirm that the Hatch Act did not preclude personal donations. I said no, but reviewed with him the restrictions on fund-raising as a further restricted individual, as well as reminding that donations should not be made using government resources (computer, email, phone, etc.) (b) (6) March 31, 2009.

220.

221.

DEO Counsel Log, Second Quarter, 2009 (April 1 - June 30, 2009)

1. Contractor Attorney in ATR - outside practice of law. Called asking if there were prohibitions on his opening a solo practice - only wanted to give his name as [REDACTED] (there are two attorneys named [REDACTED]). Insisted the practice would involve nothing to do with what he does here at DOJ but maybe other government work. He called DC Bar and they referred him to us. I told him that the DOJ's ban on compensated practice of law states it is applicable to "employees", which usually did not include contractors, but that he would have bar concerns and also probably concerns with his private sector employer and perhaps also FAR issues. Referred him to (b) (6) who might also send him to PRAO. (b) (6) April 1, 2009
2. (b) (6) PAO, Recommendation letter question. (b) (6) writing a letter of recommendation for her landlord who's applying for a job with a public school, and (b) (6) would like to include her position with DOJ so it's clear she is a credible reference. I advised (b) (6) that for this reference, she needs to use personal stationery, she may mention that she works at DOJ but must be careful not to overemphasize it in connection with her personal evaluation of her landlord's qualifications, character, etc. (b) (6) April 1, 2009
3. (b) (6) (Civil) sent an email with a draft 502 determination and asked for our concurrence. (b) (6), the [REDACTED], has a brother-in-law who is a partner in a firm that represents an insurance company involved in the consolidated Katrina cases. The relative is not involved in the case. I reviewed and sent (b) (6) an email saying we concurred but suggested some changes to strengthen and clarify the memo. The original request with draft and my email response are in the file. (b) (6) April 1, 2009
4. (b) (6) EOUSA, Book deal. (b) (6) forwarded the manuscript of a fictional novel by (b) (6), an [REDACTED]. I reviewed (skimmed) the book, which is also going through the normal channels for vetting, and advised (b) (6) that there needed to be a disclaimer stating that the views of the book are those of the author only and not of the [REDACTED] or the Department of Justice. Also that the book is entirely fictional and not based on any actual cases of the [REDACTED]. Advised that her position as an [REDACTED] may not be highlighted or featured over any other biographical information, especially while promoting the book. Cannot appear on the front cover, by line, in promotional material (except as part of general biographical material.) (b) (6) April 1, 2009.
5. (b) (6) JMD - Procurement Policy, Outside employment. (b) (6) is in nursing school in the evenings and completing an internship at a local hospital. The hospital has offered her employment on the weekends which will allow her to continue practicing her skills. She wanted to be sure there was no official approval she needed. Because the outside employment is completely unrelated to her DOJ job, I told her that she did not need permission. I advised that she cannot use her DOJ title in anyway at the nursing job and that she cannot do any work related to her outside employment while on DOJ time. (b) (6) April 1, 2009.
6. (b) (6) OJP, 207(c), On March 29, 2006 the Attorney General appointed (b) (6) to the Review Panel on Prison Rape ("Panel"), in accordance with the Prison Rape

Elimination Act of 2003. At the time, Mr. (b) (6) was serving as the (b) (6) the Panel in his personal capacity and not in anyway relating to his official position at the Department. Mr. (b) (6) resigned from his position at the Department in January, 2009. Mr. (b) (6) continues to serve on the Panel and asked if he is barred from contact with officials of the Department to discuss Panel matters, as well as Members of Congress or their staff, particularly in connection with extending the National Prison Rape Reduction Commission so the Commission does not sunset before the Panel may complete its final report. As a former senior employee of a federal agency, Mr. (b) (6) is barred by 18 USC 207(c) from knowingly making, with intent to influence, any communications to or appearance before all or part of his former agency, on behalf of another person on a matter on which they seek official action, for one year. However, (b) (6)'s work on the Panel is on behalf of the United States and therefore the 207(c) restriction does not apply, even if that involves contact with his former agency on a matter which he seeks official action. In determining if his work was on behalf of the United States, (b) (6) consulted with (b) (6) in OGC, who agreed that his position makes him an "officer or employee" of the US for the purpose of serving on the Panel. With respect to communications with members of Congress, the post-employment statute does not prohibit such contacts, but for advice on whether they would be inconsistent with service as a Panel member, we recommended that he seek advice from OJP Office of General Counsel. Email in file. (b) (6) April 1, 2009.

7. (b) (6), teaching. Mr. (b) (6) called seeking to "appeal" a decision from the (b) (6) office. He says he has been teaching a class on (b) (6) at the (b) (6) for 20 years and never had an issue from the ethics office. Last year he added in a day class that met for 2 days each session, with 4 sessions a year. Last year he received approval to teach this class and receive compensation from the (b) (6) for it. This year he requested approval for the same day class and was told that they were mistaken, this does not qualify for the exception because it is not "multiple presentations" are required for the teaching exception. (b) (6) had provided this decision to him and stated that their interpretation of multiple presentations had changed. He also spoke to (b) (6) who said that Mr. (b) (6) should write it up and (b) (6) would look over the decision. (b) (5)

(b) (6) I told Mr. (b) (6) that he should go ahead and submit the memo to Mr. (b) (6). Mr. (b) (6) was upset and said that he felt that we were allowing different agencies to have different interpretations of the same law, because he had spoken to someone who had been approved for the same thing at Dept of Energy. I told him without knowing all the facts, I cannot speak to why DOE would have approved something and DOJ did not. I also told him that if he felt a mistake had been made at (b) (6), he should use to process offered to him. He was also upset that he had relied on the past decision that he could teach this kind of course. I again told him without all the facts and speaking to (b) (6) I could not say exactly why they felt a change in this case was needed and that he should work through the options (b) (6) had offered to him. (b) (6) April 2, 2009.

8. (b) (6), Outside employment. Ms. (b) (6) called to find out the limitations on outside employment for DOJ employees. I told her that it would depend on the job


that she wanted to take and what her position at the Department was. She claimed that the outside employment would have nothing to do with her job, but referred to it as "consulting". I asked her to send me an email with all the details of the job as well as her position with the Department so that we could better discuss the facts and whether there might be a conflict.

(b) (6) April 2, 2009.

9. (b) (6) HR, procurement. (b) (6) was reviewing the proposal to suspend (b) (6) for his ethics violations, as determined by the OIG. One of the violations was having a contract employee write the Statement of Work for a contract bid that she later bid and was awarded the contract for. OIG said this was in violation of 48 CFR 3.104-4. In the CFR it refers to agency regulations determining who can and cannot see such information as the Statement of Work. (b) (6) wanted to find the agency regulation that stated this. (b) (6) helped me locate the Procurement Guidance Documents, where I found PGD 07-14 regarding Ethics and Procurement and discussed the release of non-public information. (b) (6) April 2, 2009.

10. (b) (6) OCIO, conflict of interest. (b) (6) emailed with a question regarding an employee acting as COTR on two contracts - (b) (6) and (b) (6). (b) (6) worked at (b) (6) from July, 1977 until May, 1996. She worked with (b) (6) from September, 2003 until February, 2008 when she became an employee of DOJ. (b) (6) has a defined benefit retirement package with (b) (6) which will be effective in several years when she is 65 years old. The benefits under this retirement package are set and will not vary. (b) (6) is the prime contractor providing data telecommunications services to DOJ. (b) (6) provides management services to the Department. Because it has been over a year since her employment at both of these positions, I advised that there was no conflict with her serving as the COTR on both contracts. (b) (6) April 2, 2009.

11. (b) (6) (b) (6), WAG. I sent the following email to (b) (6) (b) (6) (b) (6). (b) (6) has been invited to attend the White House Correspondents Association Dinner on May 9, 2009, at the Washington Hilton. (b) (5)



(b) (5)

(b) (5) [REDACTED]
[REDACTED] . (b) (6) approved.

(b) (6) April 3, 2009

12. (b) (6) [REDACTED] WAG. I emailed the following to (b) (6) [REDACTED] (b) (6) [REDACTED]
[REDACTED] invited to attend the White House Correspondents Association Dinner on May 9, 2009,
at the Washington Hilton. (b) (5) [REDACTED]

(b) (6) [REDACTED] approved. (b) (6) April
3, 2009

13. (b) (6) [REDACTED], WAG. I emailed (b) (6) [REDACTED] the following for approval: (b) (6) [REDACTED]
(b) (6) [REDACTED] has been invited to attend the White House Correspondents Association Dinner on May
9, 2009, at the Washington Hilton, and a reception prior to the dinner. (b) (5) [REDACTED]

(b) (5)

(b) (6) approved. (b) (6)

April 3, 2009

14. (b) (6) (b) (6) called on March 30 with a question about the application of 18 U.S.C. 207(c) to her as a result of her December 2008 promotion from a GS-15, Step 10 career position to an SL career position making \$158,500. Specifically, she wanted to know what would be the effect of a statutory change in the SL pay system that was enacted in October 2008 (Pub. L. No. 110-372). That law merged the pay of SL's in a way similar to what had been done several years earlier with the SES. Under the new law, there would no longer be a base pay component and a locality pay component. It would simply be base pay. There was a question as to when this would take effect, whether people could be grandfathered, or whether this would mean that (b) (6) would become subject to the one year restriction. (b) (6) did some research and contacted (b) (6) and found that currently her salary of \$158,500 breaks down as base pay of \$131,111 and locality pay of \$27,389. Since the restriction is keyed to base pay she is not currently covered because her base pay is less than \$153,105. We discussed this issue with (b) (6) (b) (6) on the phone and after a meeting of the HR executive group on March 31. At the meeting (b) (6) reported that locality pay "goes away" on April 12 and brought up the issue of the effect on post employment restrictions. He said the finance group would be working on the conversion. (b) (6) reached out to I believe (b) (6) sp?) at OPM. OPM had not yet put any guidance out. However, we were able to confirm that the merger into a single pay category would become effective on Sunday, April 12, 2009. So if (b) (6) were serving in a position for which her base pay was less than the triggering threshold on April 12, 2009, she could avoid the one year restriction. I discussed this with her and said her options would be either to retreat to a GS-15 position or resign from the Department prior to April 12. She is in the process of negotiating for employment with two firms so that is a possibility. However, she could not remain in the SL position and take a reduction in pay below the threshold. Pay reductions are only legitimate when they are related to a performance issue and not simply to manipulate the effect of the post-employment laws. (b) (6) agreed with that. She had also raised the question of obtaining a waiver for the SL position so that 207(c) would not apply to it. I told her that that required action by OGE and that at least with respect to the impending new pay system that it was not feasible to think in terms of getting a waiver from OGE before April 12. I gave her (b) (6) name as a contact to follow up with on the HR aspects of her question and she did contact him. She was exploring the possibility of retreating to a GS-15. That raised its own issues as she was just recently appointed to the SL position. But on April 1, we were able to confirm for her that she did have a window until April 12 before the one year restriction applied. I asked her if in her new SL position she had any supervisory role or if there were matters under her review or official responsibility and reminded her of the two year restriction. She said that the promotion was so recent that she had not been given any such responsibility over the work of others in the office. (b) (6) has also asked whether (b) (6) would be subject to the restriction because she works 80% of full time and would be below the threshold under the new law after April 12 if the threshold is annual salary. I told (b) (6) that (b) (6) would still be subject because the restriction is

keyed to rate of pay and not annual salary and her rate of pay if annualized would be above the threshold. (b) (6) had indicated that (b) (6) was also thinking of leaving DOJ in order to avoid the restriction. But (b) (6) never communicated directly with us on this question. (b) (6) April 1, 2009

15. (b) (6) (b) (6) called in connection with (b) (6) question about the effect of the new SL pay law. He wanted to know whether there was a window before the law became effective and he wanted to know if a waiver could be obtained for the SL positions in the (b) (6). I told him the law took effect on April 12. I explained that a waiver for the SL positions would have to be approved by OGE and that that would take some time assuming that these positions were good candidates for a waiver. (b) (6) made the pitch that they were. He said that there are only three career deputies and they remain for a long time so there are not many opportunities for the Assistants to get promoted. They had one SL position and they worked very hard to get a second one approved by OPM last year. (b) (6) and (b) (6) moved into these SL slots in December 2008. He said these positions are necessary for retention but that if they are subject to the one year restriction then people would be reluctant to take them. We did not really discuss the internal inconsistency in this justification. (b) (6) said that salary was the least compelling incentive and that instead it was title and the opportunity to do some review work. He was interested in exploring the waiver option in the future. He was speaking only in terms of the two (b) (6) SL positions. There are 99 SL positions in the Department. We had discussed these matters on March 31, 2009. (b) (6) April 1, 2009.

16. (b) (6) (b) (6) had a question about her recusal obligations and what she needed to do in terms of screening because she is in job discussions with (b) (6) and (b) (6). (b) (6) I said that if there had already been a mutual expression of interest that she would have to recuse under the criminal statute. If there had been only a unilateral expression of interest from one side or the other, she would have to be recused under the administrative standards of 502. She wanted to know if he was obligated to tell people or if she could just not work on something if it was assigned to her. I said she should notify her supervisor. The rule only states that an employee "should" notify but the only way to ensure that the conflict is avoided is by notification and screening. She agreed. She also wanted to know how soon she could work on something if negotiation for employment was completely terminated. I said that would depend on the facts and we should talk about that again if that issue came up. (b) (6) April 1, 2009

17. (b) (6) (b) (6) wanted to know what matters she could work on in the aftermath of the Supreme Court's decision in *Carcieri v. Salazar*, decided on February 24, 2009. In that case the Supreme Court ruled that for the purposes of a particular statute, the definition of an "Indian" included all persons of Indian descent who are members of a recognized tribe that was under federal jurisdiction in 1934. The Narragansett tribe was thus ruled not covered and so the Secretary of the Interior could not take certain acres under a deed of trust for the tribe. The decision raised great concerns in Indian country. One prominent group, the National Congress of American Indians, had filed an amicus in the Supreme Court case and (b) (6) had represented them and filed the amicus brief for them. (b) (6) said that there is now an exploration of various ways to "fix" this decision either by legislation or perhaps by some action of the Secretary of the Interior. Because she is in job negotiations with (b) (6) she wanted to know what kinds of things she could work on. I discussed this issue with (b) (6). I talked to

(b) (6) and said that she should avoid working on all matters related to the follow up to the Carcieri decision because it is virtually certain that such matters would be particular matters under section 208. Even something that started as a very broad discussion of policy would be almost certain to become a particular matter very quickly as specific options were explored. . Particular matters are those focused on a discrete and identifiable class and can include legislation. (b) (6), participated in the case and would be affected by whatever fix was decided on. But (b) (6) should not only avoid discussing this with (b) (6) but should not work on it internally within DOJ. She agreed. (b) (6) April 3, 2009

18. (b) (6) (Civil) sent an email with a financial disclosure question that (b) (6) had about his SF-278. (b) (6) He has power of attorney over her bank accounts, mutual funds and bonds. He and his brother are also co-trustees for two trusts for the benefit of (b) (6) in which they and their children have a vested remainder. (b) (6) was seeking advice as to (b) (6) financial disclosure obligations. I agreed that under 5 C.F.R. 2634.310 he would have to report the assets in the trust for himself and the interest of his children. He would also have to report the trustee position on Schedule D and trustee fees over \$200 if any as income on Schedule A. I discussed the power of attorney issue with (b) (6) who researched and found advice that we had received from OGE with respect to a 450 filer that the position of power of attorney and the assets under the power of attorney control are not reportable. I discussed with (b) (6) OGE to confirm that this would also be true of an SF-278 filer. She confirmed that it was and that a 278 filer did not have to report the "position" of having power of attorney or that assets under control. She said that OGE tells people that even though not reportable, filers should be aware of any matters that might effect assets under their control though a power of attorney for appearance concerns. She said also that OGE has told people that if the relative was going to die soon and the assets would become the filer's, that the filer should be very careful about working on anything that might affect those assets. I so advised (b) (6) on both the trust reporting question and the power of attorney question. In this case there was little potential for a conflict with the assets held under power of attorney because they were bank accounts, mutual funds, and bonds. The emails are in the file. (b) (6) April 3, 2009

19. (b) (6), gifts. (b) (6) was invited to participate in a focus group of newly hired cyber security professionals (hired less than a year ago) by the Partnership for Public Service, a private, nonprofit group. He had already contributed to the Partnership for Public Service and Booz Allen Hamilton study on Recruiting and Selecting Hard to Find Cyber Security Talent. Lunch would be provided at the focus group and (b) (6) wanted to bring some OCIO students with him. Because BAH is a prohibited source, we asked (b) (6) to find out the cost per person for the lunch. The Partnership for Public Service said they would be paying for lunch from Subway and it would be no more than \$5 per person. We approved his attendance, along with the students, since it was under \$20 per person. (b) (6) April 3, 2009.

20. (b) (6), ATF, outside employment/training. FOLLOW UP TO FEBRUARY 10 LOG ENTRY. (b) (6) was unhappy with the answers given to him by (b) (6) regarding Mr. (b) (6) continuing to receive compensation for training he provided at a nonprofit hospital during his government working time. He called to "appeal" the decision. I spoke to him about it and then discussed the background with (b) (6) and found the previous log entry (#108 in

counsel1.09). I spoke to Mr. (b) (6) regarding our decision - that the exception that he is looking at in 5 USC 4111 was a discretionary exception and that it allowed agencies to give permission for this kind of work, but that it was not a mandatory exception. He was unhappy with this answer and wanted to know why he was denied the exception, I directed him to (b) (6) for this. He said this was a giant cover up and said his attorney would be contacting us and wanted us to release any information we had on this. I told him we could not release any of our notes to him and again suggested he speak to (b) (6) directly. (b) (6) April 6, 2009.

21. (b) (6) PAO, gifts. (b) (6) just started at PAO and previously worked as a reporter in Vermont. A friend of her's from Vermont is a state lawmaker and has 4 tickets to the Univ of Vermont hockey game in DC that he cannot use. She wanted to know if she could accept them. I asked her about their relationship and it appeared that they had a prior personal relationship on which the gift was based and it had nothing to do with either one's official position. I told her she could accept the tickets. (b) (6) April 6, 2009.

22. (b) (6) (CRT) - a staff director contacted (b) (6) to ask if they would donate sandwiches to the office's admin staff for admin day. Apparently (b) (6)'s entertains such requests, and it seems that the staff director had successfully obtained past such donations for teacher groups and (b) (6). The (b) (6) manager asked their Corporate Office, who agreed to donate the sandwiches. (b) (6) believes this is improper, but because her advice will not be well-received, she wants to double-check with us whether the individual secretaries might accept because a sandwich is under \$20, and the staff director herself would not accept. Also, could (b) (6) practice of donating sandwiches be considered open to the public by virtue of their practice of granting these requests for different assumably worthy groups. Checked (b) (6) thinking with (b) (6) - no- since in her solicitation the staff director clearly identified herself as a DOJ employee, and specifically asked for sandwiches for CRT's admin staff, there was an improper solicitation by and for DOJ employees by virtue of their official position. The \$20 exception is not applicable, and the gift could not be accepted by any of the parties. Advised (b) (6) by email. (b) (6) April 7, 2009

23. (b) (6) Recusal question. (b) (6) asks whether she needs to recuse from a pending case which concerns the constitutionality of a provision of the Sarbanes-Oxley Act under the Appointments Clause. When (b) (6) was a (b) (6), she talked on a couple of occasions with a member of Sen. Sarbanes' staff about this issue and, at his request, provided a brief letter stating her view that the provision was constitutional. (This is the same position that the office would take in the case, in accordance with their longstanding practice of defending federal statutes.) (b) (6) would like to know if she needs to recuse herself from participation, or is it OK to play her normal role. I advised her that as long as her views were not offered on behalf of a client (and even then I'm not sure there is a problem but it would warrant checking with PRAO) there is no need to recuse. She confirmed that she was not representing a client. (b) (6) April 7, 2009

24. (b) (6) had follow up questions relating to earlier advice he had sought on post-employment restrictions. He wanted to know if the restriction in 207(f) dealing with behind the scenes assistance would apply to his work in helping (b) (6) prepare its brief. Was

██████████ a foreign political organization. I referred him to the definition to the Foreign Agent Registration Act referred to in the statute. He looked at the definition and wanted to know if he could work behind the scenes if the work product resulting from that work would not be filed until after his post-employment restriction expired in June 2009. I said that it would if the behind the scenes assistance occurred during the time he was still covered. He also wanted to know whether he could withdraw from representing ██████████ now and then resume after his restriction expired. I said that the best course would be for him to have no further involvement in the matter. The emails are in the file. (b) (6) April 1, 2009

25. (b) (6) ██████████ (b) (6) ██████████ (b) (6) ██████████ had called on March 18 to find out whether he could work on the PMOI appeal of the State Department's determination that it should remain on the Foreign Terrorist Organization (FTO) list. (b) (6) ██████████ is now a partner with (b) (6) ██████████, the same firm as (b) (6) ██████████ (b) (6) ██████████ said that he was certain that he never worked on the ██████████ matter personally and substantially while he was at DOJ. But he was trying to determine whether the matter was under his official responsibility and thus whether he was subject to the 2 year restriction. (b) (6) ██████████ had worked in the ██████████ until October 23, 2009 when he left DOJ. From September 2002 to April 2006 he had been the ██████████. From April 2006 to October 2007 he had been the ██████████. For a short time between September and October 2006, he was responsible for ██████████. From November 2007 until May 2008 he was the ██████████. From May 2008 until October 23, 2009 he was the ██████████. I had filed its petition with the State Department to be removed from the FTO list on July 15, 2008. So the question was whether that matter which was a specific party matter involving ██████████ was in the ██████████ between July 15, 2008 and October 23, 2008 and whether it would have been under (b) (6) ██████████ official responsibility as the ██████████ during that time. (b) (6) ██████████ could not recall ever seeing anything related to the ██████████ petition and he was certain he had not participated personally and substantially in the matter. He suggested that (b) (6) ██████████ would likely know something about it but he did not want to call (b) (6) ██████████ because he is still under the one year cooling off period restriction because he was in the non-career SES and his salary was over the threshold. He also brought up the related material support case in California. He said he had no involvement in that criminal prosecution. He said it would not have been under his official responsibility. He said the prosecutors might have consulted (b) (6) ██████████ on First Amendment issues. But he was not asking for any advice about the material support case. He simply brought it up because of its relationship to the ██████████ designation as an FTO. He said that he may have heard (b) (6) ██████████ talk about this organization but he could not recall when. He said when he was the ██████████ he may have heard (b) (6) ██████████ talk about FTO designations at meetings. When he was the ██████████ he did some Bivens cases and there were some terrorism cases under Bivens. He worked on defensive litigation for FDA and CPSC. (b) (6) ██████████ did not think the ██████████ petition was the kind of thing that would have come to him when he was the ██████████. I called (b) (6) ██████████ and he said that he worked very closely with the State Department on the response to the petition late in 2008. Under the statute, 8 U.S.C. 1189(d)(4), the Secretary of State is required to consult with DOJ on a petition to delist. (b) (6) ██████████ was certain that State did consult with him prior to October 23, 2009 although he could not establish a definite date. He said that NSD was talking about the petition and anticipating it even before it was filed on July 15, 2008. So the specific party matter was in the Civil Division when (b) (6) ██████████ was ██████████. The question that remained is

whether it was under his official responsibility. (b) (5)

He consulted with (b) (6) and called back and said that a matter like that having a relationship to sensitive national security concerns would have come through the (b) (6) if there was an issue that needed to go to the AAG for resolution. So whether or not the matter ever did come to (b) (6) it was under his official responsibility. I called (b) (6) on April 1, 2009 and told him that based on the information I had obtained that he was subject to the two year restriction with respect to the (b) (6) appeal of the FTO determination and that he could not participate in that appeal. (b) (6) accepted this although he said matters usually only came through him that required formal action. He raised the question of the application of 207(f) which he had talked with (b) (6) about. I said that as he was subject to 207(c), he was also subject to 207(f) until the one year period expired in October. But after October he would still have an additional year to run on the two year restriction. (b) (6) said he understood that. He then raised a completely separate question. He wanted to know when a matter was substantially related to a specific party matter that he had worked on when he was at the Department. He was only asking for general advice and did not have any specific case in mind. (b) (5)

I said that the fact that he worked on FDA regs would not preclude him from working on a matter later on that arose under those regs. Also he could work on a matter that might be decided under principles established in Wyeth. I said the question of whether a case at (b) (6) was the same or substantially related to a case he worked on at DOJ was very fact specific and involved looking at whether the two matters involved the same parties, same facts, same issues, etc. So, for example, if the only thing the two matters involved was the same particular drug that would not by itself make the two cases the same. The cases might involve different injuries, different plaintiffs etc. I said he should call if he had a matter arise that could be substantially related to discuss the specific facts. Subsequent to our conversation, I sent (b) (6) an email to remind him that he should also take into account the bar rules dealing with client confidences when considering revolving door issues. The email is in the file. (b) (6) April 1, 2009

26. (b) (6) of (b) (6) had requested the ethics agreements and other related documents pertaining to (b) (6) who was at one time under consideration for the position of (b) (6). I called (b) (6) on April 6 to discuss the FOIA request and he said it would be appropriate to contact the requester and see if he was still interested in the information since (b) (6) was no longer under consideration for the position. I called (b) (6) and he said that (b) (6) had "dropped" the request several weeks ago. He could not remember who he had spoken to at DOJ. He said the request was withdrawn. He said because (b) (6) was "no longer a nominee" that "there was nothing to FOIA." A relevant email is in the file. (b) (6) April 6, 2009

27. (b) (6) called to say that OPM had put out some advice on the upcoming conversion of the pay system for SL's. He noted that the lower end of the range of SL pay was below the threshold that would trigger the one year restriction. He raised the question about reducing pay below the threshold. I said a pay reduction would normally be based on

performance factors and should not be done just to manipulate the application of the post employment restriction. He agreed. He said they were exploring the possibility of the two SL employees in OSG retreating to GS-15, Step 10 positions. He is exploring that with HR. (b) (6) April 6, 2009

28. (b) (6) EOIR, gifts. (b) (6) emailed with a question regarding an EOIR employee who had been told he could not accept travel reimbursements from a private organization. He was giving a speech in his personal capacity to a private organization who was a prohibited source. EOIR approved him giving the speech in his personal capacity but stated he could not accept any gifts, including the cost of travel, from the organization. When (b) (6) received his 278, he disclosed that he had accepted travel benefits from the organization. She had referred the matter to the employee's supervisor but wanted to know if anything else had to be done. Told her he needed to pay the organization back and had to have proof that they accepted the payment. That proof should be given to (b) (6) or the employee's supervisor. (b) (6) April 7, 2009.

29. (b) (6) EOUSA, writing. (b) (6) sent an article about the International Criminal Court written by AUSA (b) (6) from the USAO (b) (6) that would now be published in the American Society of International Law's "Proceedings of the American Society of International Law". (b) (6) had presented this article at a meeting of the Society. (b) (6) had already advised (b) (6) of the limitations on the use of his title (only allowed to be part of a larger biography) and sent him the language of the disclaimer necessary (views those of him alone, not necessarily of the DOJ or the Government.) I told (b) (6) I saw no other issues with the publication. (b) (6) April 8, 2009.

30. (b) (6) BOP, Official fundraising. (b) (6) received an email from (b) (6) on Behalf of (b) (6) (HR) that said the following: "The Susan G. Komen for the Cure has invited the Department of Justice to join in a competition by forming teams to take part in the Susan G. Komen Global Race for the Cure, Saturday, June 6, 2009 on the National Mall. This event is an opportunity to help raise money to end breast cancer forever. Through this race series, millions of dollars are raised for breast cancer screening, support and education programs in the Washington Metro area. If your Component is interested in participating in the Global Race for the Cure, please see the attached memo for program and point-of-contact information." (b) (6) was asking since she tells her folks not to participate in these types of activities while representing the agency if something changed. I advised (b) (6) that the rules have not changed and it was not approved. The email is going to be withdrawn. (b) (6) April 7, 2009

31. (b) (6) OJP, Scholarship fund for death of NIJ employee. (b) (6) advised that tragically, a popular, young NIJ program person died unexpectedly two weeks ago. NIJ staff, starting with an email notice, would like to conduct a collection of dollars from NIJ/OJP staff to present to the young man's parents with a scholarship fund at his Temple. (b) (6) is aware that a component head may authorize the raising of funds for the "welfare" of a co-worker or his/her family, like dollars for "a co-worker whose home burned down or to help pay the medical expenses of an employee's sick child". OJP has reservations about whether this situation permits an exception to the general rule that dollars may not be solicited or collected other than for the CFC. They have considered advising staff that on their own they may send a donation to this scholarship

fund, but they think that NIJ staff are likely to prefer a more active collection effort. I advised (b) (6) that because there cannot be an "official " bank account set up, we recommend that the AAG authorize letting employees know of the scholarship fund via email, but not to authorize actually collecting money in the workplace. (b) (6) April 7, 2009

32. (b) (6) Offer to co-sponsor ABA conference. (b) (6) sent a letter from the (b) (6) requesting the Attorney General's, and the Department's, participation as a co-sponsor in an upcoming (b) (6) conference. I advised (b) (6) of some suggested language to decline the offer (see emails) and also advised that we almost always decline offers to co-sponsor event with outside organizations when we are being asked to do little other than publicize the event and put our name on it. (b) (6) April 8, 2009

33. (b) (6) WAG. I emailed (b) (6) the following for approval: (b) (6) has been invited by the American Judicature Society (AJS) to attend the Justice Award event sponsored by AJS on April 17, 2009, and being held at the Ronald Reagan Building in Washington, D.C. (b) (5)

(b) (5)
(b) (6) approved and also advised he needed approval for the same event. (b) (6)
April 8, 2009

34. (b) (6) (CIV) sent an email with an "emergency question" regarding a statement in jury instructions that were due to be filed on April 9. The DOJ attorneys wanted to explain why they paid their expert witness in the case while the other side did not. They were going to cite to the gift rules in the standards of conduct as to why the government had to pay its expert witness as the AG could not accept a gift of personal services. I told (b) (6) that was incorrect. I said the issue arises under appropriations law which prohibits augmentation of an agency's appropriations by accepting free personal services in connection with doing government work. The only way it could be accepted is to use the Department's gift acceptance authority. (b) (6) was looking for the cite in Title 31 to the anti-augmentation law. I said it wasn't as simple as that as the principle is embodied in several different statutory provisions. I suggested she call (b) (6) office as they

have the experts on fiscal law. I sent her a link to a 2006 memo that discussed issues relating assistance and gifts in connection with litigation, investigation, etc. Also told (b) (6) she could find a discussion of this topic in Ch. 6 of the GAO Redbook. (b) (6) April 8, 2009

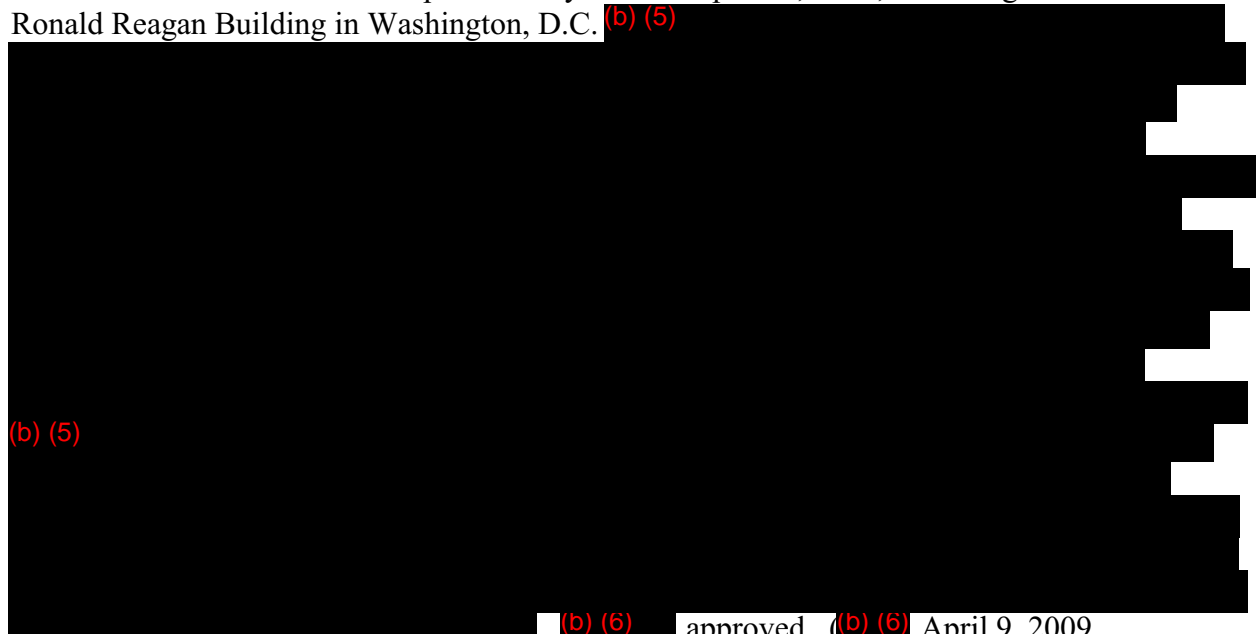
35. (b) (6) (OAG, Deputy White House Liaison) called with a gift question. He is subject to the EO. Someone who he characterized as a “friend” wanted to treat him to dinner this evening to celebrate his new position at DOJ. He had worked with this person as a volunteer when he was on the Transition Team. He was not sure if the person was a registered lobbyist. The question was whether the relationship was such that he could rely on the personal relationship exception to accept the meal. I discussed with (b) (6) I called (b) (6) back. He went online on the Senate database and found that his friend was a registered lobbyist. He said he could not find any indication that this person lobbied the Department. He said the person had his own small lobbying firm. He has only known this person since November 2008. We discussed the personal relationship question. He has had some recent communications with the person and regards him as a friend. I explained some of the circumstances that would be demonstrative of a personal relationship. He has not had other social interaction with this person since the Transition. I said he needs to find out if the person is paying this completely out of his own personal funds. If he is going to put it on a business expense account or claim it as a tax deduction then that indicated it is not based on a personal relationship. I said that of course if they simply wanted to go out to dinner and each pay their own way, that would be unobjectionable. (b) (6) April 8, 2009

36. (b) (6) (OAG, Deputy White House Liaison) called with a gift question. He is subject to the EO. Someone who he characterized as a “friend” wanted to treat him to dinner this evening to celebrate his new position at DOJ. He had worked with this person as a volunteer when he was on the Transition Team. He was not sure if the person was a registered lobbyist. The question was whether the relationship was such that he could rely on the personal relationship exception to accept the meal. I discussed with (b) (6) I called (b) (6) back. He went online on the Senate database and found that his friend was a registered lobbyist. He said he could not find any indication that this person lobbied the Department. He said the person had his own small lobbying firm. He has only known this person since November 2008. We discussed the personal relationship question. He has had some recent communications with the person and regards him as a friend. I explained some of the circumstances that would be demonstrative of a personal relationship. He has not had other social interaction with this person since the Transition. I said he needs to find out if the person is paying this completely out of his own personal funds. If he is going to put it on a business expense account or claim it as a tax deduction then that indicated it is not based on a personal relationship. I said that of course if they simply wanted to go out to dinner and each pay their own way, that would be unobjectionable. (b) (6) April 8, 2009

37. (b) (6) (CRT) sent an email with a question as to whether a current CRT employee could sign a joint letter by a number of former law clerks of a federal district court judge supporting his nomination for position on the 4th Circuit. The letter would be supporting a person seeking a federal job and would be based on having worked together in the federal courts. So it is permitted under the rules, even though it is for a political appointment and even though

the CRT employee would list current position and affiliation with the Department although it was based on her former position as a clerk. I discussed with (b) (6). The one caveat that I passed on to (b) (6) was that the (b) (6) should make sure that the letter went out on plain stationary and not on some law firm's letterhead. The email string is in the file. (b) (6) April 9, 2009

38. (b) (6), WAG. I emailed the following to (b) (6) for approval: Associate Attorney General (b) (6) has been invited by the American Judicature Society (AJS) to attend the Justice Award event sponsored by AJS on April 17, 2009, and being held at the Ronald Reagan Building in Washington, D.C. (b) (5)



(b) (5)

(b) (6) approved. (b) (6) April 9, 2009

39. (b) (6) (OSG) called about getting authorization to resume work on a brief in opposition to a cert petition in In re Bilski. She stopped working on this matter when she discovered that an attorney with (b) (6) had filed an amicus brief in the case when it was in the Federal Circuit. She was in the process of discussing possible future employment with Morrison. Nevertheless, the (b) (6) attorney had filed in his capacity as the president of the American Intellectual Property Law Association, and (b) (6)'s name was not on the brief. Also (b) (6) itself had not participated either in the litigation below or in the Supreme Court. She requested a determination that would authorize her to resume participation in the case. DEO recommended approval of the request and sent it to (b) (6) as the approving official. The (b) (6) approved the request on April 6. The relevant emails including the recommendation and the (b) (6) reply approving the request are in the file. (b) (6) April 6, 2009

40. (b) (6) JMD-ESS, conflict of interest. (b) (6) called regarding potential employment for his spouse. (b) (6) is the program manager for many contracts in the Department, including Lexis/Nexis and Westlaw. He is not the COTR. He received an email from one of the organizational CEO's at Lexis/Nexis stating that the CEO was looking for a new administrative assistant. This email went out to a large distribution list. (b) (6) is looking for employment so he told her about the position and she was considering applying.

Before she started in the process, he wanted to know if it would be a conflict for his wife to have this position, based on his job at the Department. (b) (6) states that he has some contact with this part of the company and he would have occasion to call the office, meet with the CEO, and that (b) (6) would have at least tangential contact with the Department contract. Based on what her job would be, (b) (6) relationship with the CEO and the company and the fact that (b) (6) only knew about this job opening because of his position at the Department, we told him that it would be a conflict for (b) (6) to take this job. (b) (6) April 9, 2009.

41. (b) (6), conflict of interest. (b) (6) has been offered the position of (b) (6) and is expected to start in a few weeks. She is currently a partner at the (b) (6). She called with a couple ethics questions. 1) Can she keep the speaking engagements she currently has scheduled - she wanted to know what the "rules" were for speaking engagements and whether the Department would pay for her travel for these. I told her it would be fact specific to each event, but went over some of the general parameters for speaking in your official capacity vs. personal capacity. She said she would contact those groups who she was scheduled to speak at to determine if they were still interested in having her and then send a list of the events for us to go over with her. 2) Her law firm has paid her bar fees and Innes of Court dues for this year, does she have to pay them back? I told her no, they were made at the time of her employment with the firm, but that she would not be able to accept such payments once she left the firm. 3) She is on the (b) (6), the (b) (6) and the (b) (6) - can she continue? I told her again this was fact specific and asked her to provide additional information as to what each organization does, the other members of each organizations and for the courts, what sort of involvement with the judges is there. 4) She is scheduled to receive final payment from the firm prior to joining the Department but wanted to know what would happen if that was delayed. I told her that we would include that on her 278. I also reviewed the rules regarding accepting payment/benefits in accordance with the partners or employment agreement and that she cannot receive any special treatment for going to the government. I also told her all accountings for her payments had to be done based on the day she left the firm - she cannot receive payment for any work done while she is with the government. 5) She participates in a composite tax filing in several states where her firm does business but she do not live. This means that she may owe the firm some income taxes for 2009 that would be billed to me in 2010. She wanted to know if this continuing obligation would cause a conflict. I asked her to find out how the firm handles this arrangement - do they hold back some of her 2009 salary/compensation to pay for the taxes or will she be billed for it? She will get back to me with the additional information requested on this items. (b) (6) April 9, 2009

42. (b) (6) OASG, Pledge clarification regarding former client. I advised (b) (6) regarding the (b) (6) in an email as follows: Last week OGE issued interpretive guidance concerning the recusal obligations under the Pledge which has created some room for the communications you seek with the (b) (6). The Pledge itself permits communications with former employers so long as (1) they are about matters of general applicability; and (2) they are open to all interested parties. In the new guidance, OGE has interpreted this latter provision to mean that "such meetings do not have to be open to every comer, but should include a

multiplicity of parties.” OGE offered as an example “if an agency is holding a meeting with five or more stakeholders regarding a given policy or piece of legislation, an appointee could attend such a meeting even if one of the stakeholders is a former employer or former client” since “such circumstances do not raise the concerns about special access at which the Executive Order is directed.” The guidance also carves out a second exception for communications to “consult with experts at educational institutions and ‘think tanks’ on general policy matters, at least where those entities do not have a financial interest, as opposed to an academic or ideological interest.” Based on this, the WH believes, and I agree, that the proposed communications between you and the [REDACTED] could fall within both exceptions. First, the consideration of legislative proposals is a matter of general applicability, so you would be able to engage in conversations with the [REDACTED] in which other groups were also present, as that would appear to fall within the first exception (multiplicity of parties). Second, given the expertise of the [REDACTED]’s staff and its role as a leading think tank on these issues, your desire to communicate with them to tap their expertise likely also falls within the exception for consultations with experts at educational institutions and think tanks when those entities do not have a financial interest involved. To guard against any potential favoritism or special access concerns, the WH recommends that if you want to have communications with the [REDACTED] that do not involve a multiplicity of parties in the meeting or on the line, you have another DOJ employee present. You mentioned that there was someone else here who you planned to work closely with on the legislation, so I want to check with you to see if this seems practicable: that if you are meeting with or talking to the [REDACTED] alone or as one of less than 5 parties, you can have another DOJ employee participate in the meeting or on the call. Then, as you begin to involve larger numbers of interested parties, you could dispense with the need to always have someone else present. If this is workable, we’ll go with it and not actually obtain a waiver. If you don’t think this can work, let’s discuss what might and we’ll see where to go from here. I then advised (b) (6) [REDACTED] about the situation saying: (b) (6) [REDACTED] may already have advised you, but this is the resolution of the voting legislation matters and the [REDACTED]: Based on additional interpretation of the language in the Pledge from OGE, (b) (6) [REDACTED] may meet with the [REDACTED] based on its status as a “think tank” with particular expertise which has no financial interest in the legislation, as long as he has another DOJ employee participating in the meetings/contacts, or until he reaches the point where the meetings and communications take place with at least 5 interested parties. (b) (6) [REDACTED] said he can operate within the guidelines, so I have withdrawn the request for a waiver. (b) (6) [REDACTED] April 9, 2009

43. (b) (6) [REDACTED] ENRD, outside speaking. (b) (6) [REDACTED] called to find out whether an [REDACTED] requires approval for outside speaking engagements done in their official capacity. I talked to (b) (6) [REDACTED] and she said there was no official process in place for how this was done. She said that if the [REDACTED] felt that the A [REDACTED] or [REDACTED] was comfortable with them determining what was in their official capacity, then that was enough. It was really a matter between the two individuals. (b) (6) [REDACTED] was disappointed there was not more official policy or procedure for this sort of thing. (b) (6) [REDACTED] April 9, 2009.

44. (b) (6) [REDACTED], JMD/Library Staff, Fundraising question raised at NET. Can she utilize Goodsearch Internet search engine in her library research? Goodsearch apparently donates a penny per search to a charitable cause that the user picks. Checked w/ (b) (6) [REDACTED] - no - it is

impermissible fundraising outside the CFC, using official position and government resources. (b) (6) can use the search engine but cannot designate a charity. Advised (b) (6) by email; she understands and is appreciative of the advice (but sorry about the answer). (b) (6) April 10, 2009

45. (b) (6) ODAG, Gifts question. (b) (6) has received an invitation (along with a couple other DOJ attorneys) from an Australian Parliamentary delegation that will be visiting Washington, DC next week to attend lunch at the Caucus Room. This delegation is in the United States as part of an exploratory mission to determine how they deal with organized crime. Earlier in the day they will be hosting a meeting with them at Main Justice to discuss the issues. The lunch is intended to be a business event where they would continue the discussion in a social atmosphere. (b) (6) would like to be advised of the rules about allowing the Australian delegation to pick up the check. I advised that she may let them pay- the de minimis amount for a gift from a foreign govt is \$335 so she should be fine even at the Caucus Room. (b) (6) April 10, 2009

46. (b) (6), (b) (6), Gift question. (b) (6), who is working in the White House, has asked if (b) (6) could get written confirmation that their DC faculty working for the federal government do not have to pay for their dinners at the spring faculty party. He's just being cautious and would appreciate having what I told her in writing. I advised via email that under the standards of conduct, an employee is prohibited from soliciting or accepting a gift from a prohibited source or offered based on official position. The standards provide a number of exceptions, including a gift based on an outside business relationship. 5 cfr 2635.204(e)(2). E.O. 13490 has imposed additional limitations where the source of a gift is a lobbyist or a lobbying organization. However, these additional exceptions do not prohibit gifts from 501(c)(3) organizations, even if the organization is a registered lobbying organization. Therefore, even if (b) (6) is a registered lobbying organization, because it is a 501(c)(3), the (b) (6) faculty who are serving at DOJ while on a leave of absence may accept the gift of dinner because it is offered based their employment with (b) (6), and because the E.O. does not further restrict acceptance of the gift. (b) (6) April 13, 2009

47. (b) (6), ITSS, WAG approval. Mr. (b) (6) was invited to speak at the 2009 RSA conference. The conference fee is waived for those who speak at the conference - the cost is approx. \$2200. The Department is paying for (b) (6) travel. Recommended that the conference be approved as a WAG and that (b) (6) be allowed to accept the gift of attendance. Notes in the file. (b) (6) April 13, 2009.

48. (b) (6) ENRD, pro bono. (b) (6) emailed regarding an attorney who wanted approval for pro bono work. She wanted to assist someone in having a criminal record sealed. (b) (6) sent the law from Nevada (where the crime occurred) which stated that the act of having a criminal record sealed is a civil matter, not a criminal one. (b) (6) wasn't sure if this needed DAG or AAG approval since it was a hybrid crim/civil matter. I talked to (b) (6) and determined this outside practice of law will need DAG approval. While Nevada defines this sort of proceeding as a civil matter, it is important to look at the intent of the Department's prohibition of attorneys working on outside criminal matters. The policy's goal is to avoid people taking a

position that may not be consistent with the Department's law enforcement ideals or to be sure DOJ employees will not be involved with people who may come before them in an official capacity. I told her that we would probably recommend approval of the outside practice of law but that we needed more facts. (b) (6) April 14, 2009

49. (b) (6) ODAG, (b) (6) invitation. DAG (b) (6) was invited to host a meeting of national civil rights leadership on Tuesday, April 21 at 10:30 at their office. (b) (6) requested (b) (6) to ask me for a review. (b) (6) did not see anything negative with the invitation. I advised (b) (6) that the only potential issue I see is the prohibition on any political appointee meeting with a former employer, client or organization the appointee recently served as an officer, director, trustee, etc. So, I would ask for the names of the attendees (it isn't clear to me if all those at their conference are full-time (b) (6) officials or whether they may be from other groups or organizations with similar interests or have more than one affiliation), in order to make sure that no one (b) (6) wants to attend for DOJ, including himself, has a conflict. (b) (6) April 13, 2009

50. (b) (6) ODAG, (b) (6) speaking and attendance. (b) (6) was invited to speak at and attend the 2009 Reuters Global Financial Regulation Summit, which will be held from April 26-29 at the bureaus in New York, Washington, D.C., London, Brussels and Sydney. After looking over the invitation (in log file) I advised (b) (6) that I did not see an ethics issue if (b) (6) determines this is an audience he wants to reach. (b) (6) April 13, 2009

51. (b) (6), JMD/OCIO/E-Gov, gift collection question. A nonsupervisory employee is leaving. The office is going out to lunch w/everyone paying their own way. Can they conduct a collection for a small gift and to pay for the lunch of the departing employee? The employee leaving supervises NO ONE in the office. Yes -this is allowed. Even if the departing employee makes more money than another in the office, it is a special infrequent occasion so there would be an exception to allowing pooling for a gift. Their collection will be voluntary and noncoercive. Can they include contractors? No, that would be soliciting a gift from someone doing business with DOJ. Contractors cannot be included in the gift collection efforts. (b) (6) very disappointed but seemed to agree with this answer. (b) (6) April 14, 2009

52. (b) (6) FBI: asked about a "No Objection Letter" he's been asked to provide for an FBI employee under 13 CFR 105.301 to be provided by the spouse to the SBA. (b) (6) researched and based on (b) (6) log entry of March 3, 2009, (b) (6) asked me to advise (b) (6) of our past experience with this, which I did by email as follows: The ethics official from the Civil Rights Division called with a question about an employee whose wife has a business and is applying for 8(a) certification by the SBA. The employee needs to get a "no objection" letter from an ethics official or other appropriate official that his wife can include in her application. It is required if the spouse of the 8(a) applicant serves in a position at or above a GS-13. Resolution: The ethics official for the component could do the letter. Preferably the letter/memo should be addressed to the DOJ employee. It should describe his section/division, and point out that he does not work on

procurement, that it would be unlikely that any conflict would arise, that any conflict could be handled by recusal without interfering with the work of the office. (b) (6) April 14, 2009

53. (b) (6) (b) (6)) called to follow up on a question of outside practice of law. Drafted and sent to (b) (6) a request that (b) (6) be permitted to participate in a response to a show cause order. The recommendation stated:

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(b) (6) approved that day. I sent (b) (6) an email with the AAG's approval. The emails are in the file. (b) (6) April 13, 2009

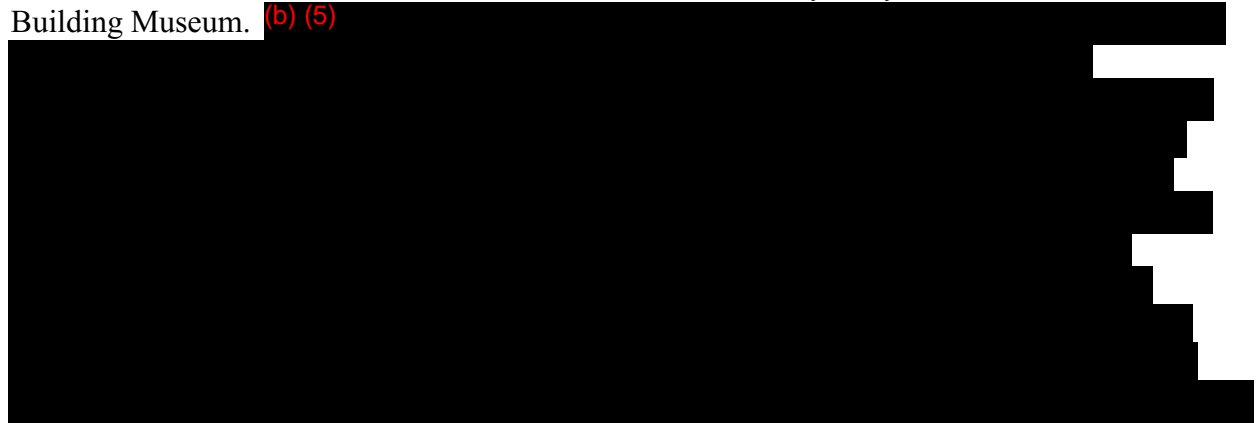
54. (b) (6) (ATF) called for a clarification of the new SL/ST pay system. He has some employees in IT and scientific positions (i.e., chemists) that he thinks may be covered. He is planning to send out a memo and he wanted to know how someone would know if they are covered. I said they should check their personnel paperwork and confirm whether or not they are in an SL or ST series and then see if they are paid above the dollar threshold. If they meet both requirements, then they will be subject to the additional post-employment restriction. (b) (6) April 13, 2009

55. (b) (6) (OAG, (b) (6)) called on 4/13 to ask whether there would be any problem if (b) (6), invited the First Lady to be an honorary chairperson of the DC Campaign to Prevent Teen Pregnancy. I told her there was no ethical restriction. She wanted to know if for any reason it would be a bad idea. I discussed with (b) (6). Called her back on 4/14 and said there was no problem as long as it doesn't give that group any special status or treatment by the Department and the Department does not take it up as an initiative because of the relationship with (b) (6). The Department should not be drawn into the effort. She said she understood and agreed. (b) (6) April 14, 2009

56. (b) (6) (OCIO, (b) (6)) called for an ethics exit briefing. He has been a GS-9 member of the e-Gov staff and has worked here for a year and a half in a student employment program. He is going to work for the National Geospatial Intelligence Agency. He had no supervisory responsibilities. I said the post-employment restrictions would not immediately apply because he was going to work for another federal agency. However, if he participated personally and substantially in a specific party matter, the restriction on representing a private party would last for the life of the matter. His last work day at DOJ is April 17, 2009 and he starts at NGIA a week after that. (b) (6) April 14, 2009

57. (b) (6) and (b) (6) called with a question about deferred employment arrangements. Law firms, law schools, and non-profit groups are offering attorneys who may have their employment with a firm deferred for some period of time various arrangements. They were asking about what ethics issue might be raised if these persons were hired by the Department. (b) (6) along with people from Civil and Antitrust, will be speaking tomorrow at Columbia and she wanted to know if there was any specific ethics guidance she could give. I said there were many potential ethics issues to be sorted out but that these would have to be addressed on a case by case basis depending on the individual facts as to the terms of the arrangement, who the parties were, what the compensation would be, etc. (b) (6) said she had a good idea of what the conflicts were. A relevant email is in the file. (b) (6) April 14, 2009

58. (b) (6) award acceptance. I emailed (b) (6) the following: The Women's Bar Association (WBA) wishes to present the Solicitor General with its 2009 Woman Lawyer of the Year Award, at its 2009 Annual Awards Dinner on Tuesday, May 19, 2009, at the National Building Museum. (b) (5)



include the Hon. Ruth Bader Ginsburg, Marcia Greenberger, Judith A. Winston, the Hon. Norma Holloway Johnson, the Hon. Noel Anketell Kramer and Judith A. Miller. An official may accept an award for public service upon a written determination by an ethics official that it is a bona fide award and is being given as part of an established program of recognition under which awards have been made on a regular basis and pursuant to identified standards. I determine that it is a bona fide award. In addition, the award is permissible under E.O. 13490, Ethics Commitments by Executive Branch Officials. The EO generally restricts awards if they are given by a lobbying organization; the WBA is not a lobbying organization. (b) (5)

approved. April 15, 2009

59. (b) (6) (b) (6) mailing letters. When (b) (6) travels, his Security detail provides us with names of local law enforcement, as well as local FBI agents, who assist with his visit. (b) (6) would like to make sure it is appropriate for (b) (6) to be sending kudos letters to the local FBI agents. The only reason is if they say thanks for a great job, when in fact the local office may have an issue. I advised that if it's a pretty general thank you and going to all agents on the assignments, I thought it was fine. (b) (6) April 15, 2009

60. (b) (6) NDIC, Hatch Act. (b) (6) wanted to know where our office had come down on Department disciplinary action for Hatch Act violations. Discussed with (b) (6) and told (b) (6) that because the OSC has exclusive jurisdiction over Hatch Act violations, we cannot give out disciplinary action for Hatch Act violations, even if the OSC does not discipline the individual. If there is a violation of a government order or Department policy or regulation involved, such as sending out an improper email over government computers or email systems, then they may be disciplined for that behavior. In the case of a NDIC employee, (b) (6) should review whatever guidance the individual received to be sure that there he can make the case that the employee violated a Department rule/regulation. Email in the file. (b) (6) April 15, 2009.

61. (b) (6) EOUSA, teaching approval. The General Counsel's Office (GCO) of EOUSA intends to seek approval for (b) (6) (b) (6) (b) (6), to teach a white collar crime course at Southern Methodist University (SMU) Dedman School of Law this semester. Before he became (b) (6), Mr. (b) (6) was an (b) (6) and received approval to teach the course. Now that he has become (b) (6), Mr. (b) (6) seeks approval from Associate Deputy Attorney General (ADAG) (b) (6) to continue to teach the course. The white collar crime course meets one night each week for 14 weeks. Each class is approximately one hour and thirty minutes in duration. The compensation for teaching the course is \$750 before taxes and withholding. The course is part of SMU Dedman School of Law's regularly established curriculum, and Mr. (b) (6) has not been operating under his current title. Based on GCO precedent, EOUSA intends to recommend that (b) (6) (b) (6) request to teach the course be approved, provided that he comply with the applicable restrictions on outside activities, which they will explain thoroughly to him. We had no objection to this, but recommended that (b) (6) continue to be referred to as (b) (6) (b) (6) and not use his new title, to avoid any confusion or appearance of misusing his title. (b) (6) April 15, 2009.

[REDACTED]

[REDACTED] do not believe that a reasonable person with knowledge of the facts would question your impartiality in participating in these matters. Finally, on a related note, we remind you of the applicable bar rules which would bar any discussion with [REDACTED] of the current matters in [REDACTED].” I also advised (b) (6) that we determined in response to an unrelated matter that each designation of the organization as a FTO is a separate matter and I agree that no 502 determination is needed here. (b) (6) April 17, 2009

67. (b) (6) OCIO, WAG attendance. Ms. (b) (6) emailed with several questions. 1) She was attending the RSA Conference in place of (b) (6) as well as speaking at the event for him. She would be receiving free attendance at the conference because she was a speaker. Sent email to (b) (6) for approval. 2) She wanted to attend two private events held in conjunction with the RSA conference. One was the Computer Science Magazine awards. She was given tickets to the event by Netwitness, a contractor who works in the OCIO office. The cost of a ticket to the event was between \$370-390. I advised that she could not attend, even if the event was a WAG because the ticket cost was over \$335 and her ticket was not coming from the sponsor. The other event was the Executive Women’s Forum panel discussion and cocktail hour. The women attending the RSA conference were invited and influential women in the cyber security field would be speaking on the panel. The event was followed by cocktail hour. It was sponsored by CA, who is a contractor for DOJ, but not one Ms. (b) (6) works with at OCIO. (b) (6) approved her attendance at the EWF event as a WAG. 3) Ms. (b) (6) in the past has taught for [REDACTED] and [REDACTED]. [REDACTED] wanted to do a spotlight article on Ms. (b) (6) for their website. I reviewed the proposed questions, which were mostly about why she taught at [REDACTED] and what she enjoyed about it. I advised her that she may participate in the interview for the article but that her position at the Department may not be used to advertise the article or her and that her current position could not be featured more prominently than any other biographical information. Discussed with (b) (6) the teaching positions and requested the Ms. (b) (6) send us the memo from her previous position (OJP) that authorized her to teach. Also told her she

would need to receive approval from her current supervisors and JMD to be able to continue to teach. Emails in file. (b) (6) April 17, 2009.

68. (b) (6) Civil, witness issue. (b) (6) was advised by PRAO to give us a call. He is an attorney in (b) (6). He is working on a case with a witness who previously worked for the defendant in DC but now lives in Chicago. Mr. (b) (6) needed to depose the witness and the witness requested to be brought to DC for the deposition. Arrangements were made through the US Marshals Service for this. After the deposition was complete, the witness requested payment for lost wages, which is not normally paid. PRAO was looking into whether he has an obligation to pay the witness and he wanted to know if there were any "ethical issues". I spoke to (b) (6) and we agreed this was much more fiscal in nature than ethical. I advised Mr. (b) (6) he should contact the General Counsel's Office. (b) (6) April 20, 2009.

69. (b) (6) Post-employment question. (b) (6) would like to know if he can participate in a moot court in a case involving the government where (a) he did not have any involvement in the case while at DOJ and (b) the case was not pending in (b) (6) while he was (b) (6). This was a case that (b) (6) was asked to argue a couple of months ago, and could not (because I explained doing so would violate the one-year bar), but (b) (6) understanding is that because this is a moot court among lawyers for the client, he can participate. I advised (b) (6) that if there are no DOJ officials participating in the moot court, and the lifetime ban and 2-year official responsibility ban do not apply, he is fine to participate in the moot court. (b) (6) April 21, 2009

70. (b) (6) OASG, Event approval analysis. (b) (6) emailed and asked that I review a memo request from (b) (6) for AAG (b) (6) to attend an event at the French embassy on April 27th. I advised (b) (6) that the event looks fine to me and it does not raise any issues under the Executive Order or the Pledge. I recommended approval and (b) (6) said he would approve. (b) (6) April 21, 2009

71. (b) (6) (b) (6) who is the (b) (6) called to ask about financial disclosure requirements. The Senate ethics people advised him he did not need to file anything with them when he left his position in Senator Reid's office. He wanted to know what he needed to do when he arrives at the Department. Told him his nominee report that he has already filed will serve as his new entrant report and that no further financial disclosure report is needed at this time. (b) (6) April 20, 2009

72. (b) (6) (NSD, (b) (6)) called with two questions. (b) (6) in NSD sent out an email encouraging people in NSD OI to participate in the blood drive to be held on April 30, 2009. Told her this was not a fundraising issue. Discussed with (b) (6) and called her back and said the one concern would be if he was a supervisor. She said he was not. (b) (6) also asked about an employee who wanted to support the Race for the Cure. She had an 8x10 announcement of the event that is displayed on her desk. Also discussed this with (b) (6) Told

(b) (6) it was permissible to have this poster in her office. It could be displayed in common areas like a kitchen where there is a bulletin board on which people are permitted to post personal items. This person is also not a supervisor. (b) (6) email is in the file. (b) (6) April 20, 2009

73. (b) (6) wanted to know what ethics concerns needed to be addressed in connection with two upcoming events that (b) (6) is planning. Both events will deal with the question of how effective Article III courts are as a tribunal for the prosecution of terrorists. The first panel would DOJ participants and former prosecutors. The second panel would include federal judges who have experience in these types of cases. (b) (5)

[REDACTED]

I sent an email outlining the rules that are applicable. That and other emails are in the file. (b) (6) April 20, 2009

74. (b) (6) (b) (6) called with a question about discounts that hotels or car rental companies offer to all federal employees. He wanted to know if he could accept the discounts for personal purposes. I sent him an email with the reference to the exclusion of such discounts from the definition of a gift. If the discount is only available when a person is on official travel, then they cannot use it for personal purposes. But if the discount is made available to all federal employees without regard to whether it is personal or official travel, then it can be accepted. The email is in the file. (b) (6) April 21, 2009

75. (b) (6) (CRT) called to discuss a volunteer outside activity. A CRT attorney wants to participate as an unpaid volunteer in a one day program on April 25 sponsored by Catholic Charities of the Diocese of Arlington. The program assists legal permanent residents in completing an application form (N-400) for citizenship. The CRT attorney would help persons with the task of completing the form. The attorney would not sign the form. Another group of attorneys who have immigration law expertise will review the completed forms and sign as the preparer. The attorney would not provide legal advice and (b) (6) does not consider the assistance in completing the form to be the practice of law. The attorney would not represent applicants. The attorney works in the employment litigation section and does no immigration work. I discussed with (b) (6). Told (b) (6) that the volunteer activity was permissible since the attorney did not sign the form and was not involved in any representational activity. (b) (6) (b) (5)

[REDACTED]

An email with background is in the file. (b) (6) April 22, 2009

76. (b) (6). I emailed (b) (6) the following: (b) (6) have been invited by the Kennedy Center, to attend a reception and dinner, and a performance of

Ragtime, tomorrow evening. There will be at least 50 persons attending the dinner, including Supreme Court Justices, members of the board and donors of the Kennedy Center, other government officials, and several persons associated with the Ragtime production. The ticket price is \$75, we do yet have a figure for the cost of the dinner. The Attorney General and Dr. Malone know (b) (6) who was Mrs. Clinton's Social Secretary. Ms. (b) (6) works at the Kennedy Center and is on the Board as Assistant Secretary. (b) (6) were often invited to these types of events by (b) (6) President of the Kennedy Center, while (b) (6) was at (b) (6). Therefore, it is not clear whether this invitation was extended based on (b) (6) relationships with Mr. (b) (6) and Ms. (b) (6) or based on his position as (b) (6), and the invitation may fall within the exception for a gift based on a personal relationship. However, (b) (5)

(b) (6) approved. (b) (6) April 23, 2009

77. (b) (6) ODAG, Attendance at political event. I emailed (b) (6) the following for approval: (b) (6) currently a career NSD attorney on detail to ODAG, requests approval to attend a political fundraiser on April 28, 2009 at Sen. Jay Rockefeller's home. (b) (5)

(b) (6) (b) (6) advised that he will approve it. I then advised (b) (6) that next weeks event was approved and we would work on the longer-term issues and get back to her. (b) (6) April 22, 2009 –Follow up: (b) (6) has advised that this event has been postponed and will be rescheduled. I advised that she may use the original approval for the rescheduled date so long as the details are the same. (b) (6) April 27, 2009

78. (b) (6) (CIV) sent an email with a draft 1353 request and asked the question as to whether the employee could receive a reimbursement payment from the non-Federal source for his travel expenses. As drafted, the employee is stating that he would receive the reimbursement directly. I sent (b) (6) an email and said that the employee could not accept a reimbursement payment made out to him. He could only accept in-kind items, such as airline tickets or meals provided in-kind. This results from the definition of “payment” in the regs. 41 C.F.R. 304-2.1. I also noted that there were inconsistencies in the description of the transportation arrangements and that she should check with her travel/finance people to see whether he could rent a car to drive to his friend’s home where he would stay overnight. The emails and the draft request memo are in the file. (b) (6) April 23, 2009

79. (b) (6) Tax, Political activity. (b) (6) emailed asking if she could attend the Illinois Democratic Women Convention this weekend. She sent the agenda - Friday was dinner, speeches and awards and Saturday was two seminars on organizing political parties. I advised her that our office recommends that nominees follow the ethics rules once they have been announced, even though they have not yet been sworn in. Based on the Hatch Act and as a political appointee, she may attend the events in a passive capacity but not in an active one or take part in any party organization efforts. Based on the agenda I advised that under the Hatch Act she could attend Friday but not Saturday. Email in the file. (b) (6) April 23, 2009.

80. (b) (6) CIV, contractors. (b) (6) called regarding potential conflicts with contractors. She said that there are contractors who are providing litigation support who may have past employment or other conflicts with firms or defendants who are involved in the cases they are working on. I told her the ethics rules do not apply to the contractors, but she should look to the language of the contract to see what, if any, conflict rules are in there. If there are none, it may be a bar rule issue as to whether the lawyer should be working with a support person who has these conflicts. (b) (6) April 23, 2009.

81. (b) (6) USMS, financial disclosure report. (b) (6) wanted to know when the 60 day rule for someone in an acting capacity attaches, requiring them to file a 278. (b) (6) is dealing with acting Marshals who have not been officially appointed as interim Marshals under the vacancy statute but are acting as the marshal in the absence of an appointed Marshal under the succession rules. Discussed with (b) (6) and felt that anyone who has been in that position for 60 days or more should file the report, even if they have not officially be appointed to the "acting" position. They are in the position and may be there for an extended period of time, therefore the report should be filed. (b) (6) April 23, 2009.

82. (b) (6) PRAO, gifts. (b) (6) called with a question from (b) (6) who wanted to get a small gift for people who spoke at the PRAO 10th Anniversary celebration. She was looking to the \$10 limit for annual events/occasions. I told her it probably would meet the special infrequent event, since its not the type of event that is celebrated each year, but that it would probably be best that the cost of the gifts be kept to \$10 or less. She was going to talk to (b) (6) and get back to me if she had more questions. (b) (6) April 23, 2009.

83. (b) (6) speaking appearance. (b) (6) is doing a speaking event with ABA on May 8th on "Internal Corporate Investigations and In-House Counsel". They would like to do a picture/poster of (b) (6) as the speaker. I looked at website and advised (b) (6) that it was ok since the event was not a fundraiser, the amount they are charging for the seminar is pretty standard, as well as this being the audience that (b) (6) would like to address on this topic. (b) (6) April 24, 2009

84. (b) (6) pro bono. (b) (6) was approached by The Legal Services Corporation who are doing a quality review of the DC Neighborhood Legal Services Program. LSP requested an

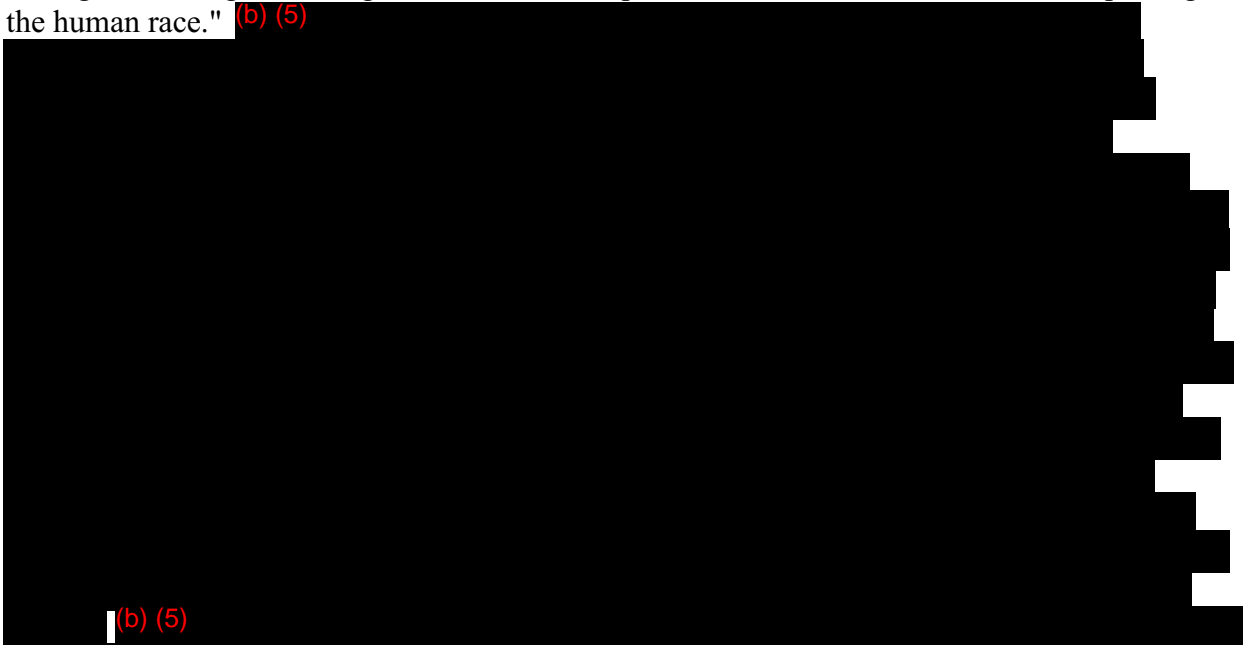
interview with (b) (6) about the work she has done with NLSP. LSC is NLSP's primary grantor. I advised so long as her answers were based on personal knowledge and the Department's name would not be used in any way to build up or advertise the program, it would be ok. (b) (6) April 24, 2009.

85. (b) (6), National Guard. (b) (6) called with a question regarding a retiring Army Colonel and his continued work with a contractor. There was no nexus with the Department so I advised that he should contact the DOD SOCO or Army Ethics office. (b) (6) April 24, 2009.

86. (b) (6), intern, JMD. (b) (6) was ending her internship with JMD today. She is graduating and taking a job at DHS. Since she was not leaving the government I advised her generally and told her if in the near future she was switching jobs and had questions relating back to her work here she may call us. (b) (6) April 24, 2009.

87. (b) (6) NSD, funding. NSD would like to find a component "gift" or item, such as a medallion, coin or patch to give to other components when they help out or support them. She wanted to know if there were any ethics issues. I advised it was merely an appropriated funds issue and she should contact the General Counsel's office. (b) (6) April 24, 2009.

88. (b) (6) acceptance. I sent the following email to (b) (6) for approval: The Washington Bar Association would like to present (b) (6) with the Charles Hamilton Houston Medallion of Merit, an award given annually to an individual who embodies a "commitment to the ideals and jurisprudence of Charles Hamilton Houston, which, among other things, challenges man to leadership and service for the betterment and uplifting of the human race." (b) (5)



(b) (5)
(b) (6) approved. (b) (6) April 27, 2009

89. (b) (6), (b) (6) Invitation/Recognition. (b) (6) has received an invitation to attend a reception honoring South Asians in public service being organized to benefit the Washington Leadership Program, a non-profit organization that funds South Asian American college students to spend a summer in Washington and intern for a Member of Congress (a program formerly run through the India Abroad Center for Political Awareness). The event is at White Tiger on May 12 from 6pm-8pm. The program has placed 170 summer interns over the last 15 years. I spoke to the organization and advised (b) (6) that it was fine for him to attend and be recognized at the event. The concern was that they would use his participation to specifically solicit attendance at the event which is a fundraiser, and they have assured us they do not intend to do that. The award is not formal, but is, as they describe, "recognition" of his contributions. (b) (6) April 27, 2009

90. (b) (6)) called with a gifts question. A contractor employee wants to give a regular Department employee a \$5 Starbucks gift certificate for Administrative Assistants Day. I told (b) (6) it would have to be analyzed under the gifts from prohibited sources rule but that the exception for gifts valued at \$20 or less would allow the employee to accept the gift certificate. I told him the employee would have to keep track of gifts from that same source (i.e., anyone who worked for that company) and not exceed \$50 in a calendar year. (b) (6) April 24, 2009

91. (b) (6) political appointee coming in from law firm. Payout of capital account and an amount equal to one year of her annual salary - she wants to select a 4 year payout rather than lump sum. Can she? Asked (b) (6) - yes, and it will not necessarily create a financial interest under .208 which would require recusal past 2 years. It is a large law firm, not a small firm whose viability could be affected by paying these amounts. The appointee is (b) (6). Told (b) (6) (b) (6) answer over the phone. (b) (6) April 29, 2009

92. (b) (6) JMD/OSS, letter of recommendation. Can he provide a personal letter of recommendation to a contractor employee who is applying for a federal position? Under the rules he can, and he could use letterhead and his title, but we discussed that since it is a contractor employee there is the risk that it may result in an improper endorsement of the contracting company. Before providing a personal letter of recommendation to the individual, he should check with and clear it with the COTR and the CO on the contract to see if they have any reservations about his doing so. If he does provide a LOR, he needs to make it clear that it is personal reference and not an endorsement of the contracting company. (b) (6) knows the COTR on the contract and is going to check with her about this. (b) (6) April 30, 2009

93. (b) (6) COPS, Hatch Act. (b) (6) wanted to know if a Department employee may run for Sheriff in a Maryland district as an independent candidate. The Maryland district is one listed at 5 CFR 733.107(c). However, the Hatch Act regulations need to be read with the DOJ Supplemental Ethics Regulation. 5 CFR 3801.106(b)(ii) states that no employee may engage in

outside employment that involves any criminal or habeas corpus matter, be it Federal, state or local. 5 CFR 3801.106(a) defines outside employment as "form of employment, business relations or activity, involving the provision of personal services, whether or not for compensation, other than in the discharge of official duties." Therefore, it will have to be determined if the duties of the Frederick County, MD sheriff include criminal matters, which is seems by definition it will. If so, then 5 CFR 3801.106 will prohibit the employee from taking such a position, even though the Hatch Act does not prohibit the employee from running as an independent candidate in the election. (b) (6) asked if the individual could run for the position if he understood he would have to resign from the Department if he won. I told her that would be ok. (b) (6) April 29, 2009.

94. (b) (6) USMS, financial disclosures. (b) (6) emailed with the following question. "We have several Chiefs who were/are acting as Marshals, and some employees who were acting for Assistant Directors (SES). Because we figuring out whether they had to file (both new entrant and termination reports), and it was difficult to find out when they began acting or when they stopped acting, we have a few employees who did not file new entrant or termination reports within the proscribed time periods. In all instances, this is not their fault because I did not give them timely notice." I spoke with (b) (6) and we agreed that we wanted to be sure all reports are received to cover the requisite time periods, and if they are received more than 30 days after the Marshal's assumed the covered positions, than they should a waiver of the late filing fee due to administrative error. (b) (6) April 29, 2009.

95. (b) (6) COPS, financial disclosure. (b) (6) called regarding a 278 filer who is invested in a trust. She wanted to know how it needed to be reported. I told her the underlying assets should be listed on Schedule A if they meet the reporting threshold. She asked if the trust needed to be reported if the filer did not have a vested interest and I told her it did not. (b) (6) April 30, 2009.

96. (b) (6) OARM, outside activities. (b) (6) was asked to be on the advisory panel for the MCCA/Vault Career Fair Advisory Panel for the 2009 Career Fair to help develop the topics and identify potential presenters for the professional development breakout sessions at the Career Fair. The duties involve participating on two one-hour telephone conference calls. No money or in-kind gifts will be involved. As background, MCCA, the Minority Corporate Counsel Association, and Vault, sponsor an annual career fair for law students and experienced/lateral attorneys. DOJ has participated in the career fair every year but has not played a role in the professional development sessions or programing. MCCA's mission is to expand the hiring, retention, and promotion of minority attorneys in corporate law departments and law firms that serve them. Vault is an on line job search resource of professionals and students. MCCA and Vault have been expanding the participation of public service and government entities in the Career Fair. The advisory panel is made up of representatives from Vault and MCCA, as well as from a law firm, a corporate legal department, a law school, a minority bar association, and government. (b) (6) would participate as the government representative and will have no authority to bind MCCA, Vault or the advisory panel or to spend any the organizations' funds. I will not participate in the internal operations of MCCA, Vault or the advisory panel and will not

have any fiduciary responsibilities to the organizations. Neither are we being asked to nor will be committing to provide resources for the project other than my time. The time commitment will be two one-hour conference calls. The MCCA Vault Career Fair is a unique fair because it attracts law students as well as experienced/lateral attorneys. It is in the Department's and this offices interest to participate in the fair as well as assist in making the programs relevant to students and lawyers who are interested in public service. Increasing the participation of law students and attorneys who are interested in government will potentially broaden and increase the diversity of our pool. We advised (b) (6) that this request does not require (b) (6) approval and we do not see any issues with her serving on the panel. It is appropriate for her to participate with this panel in her official capacity. As we understand she will assist in planning the event, but will have no part in the fundraising or soliciting of items/goods/etc for the event. Therefore, so long as her position and/or the Department of Justice name is not used to fund-raise or solicit in anyway, we have no objection to her participating in this panel. (b) (6) April 30, 2009.

97. (b) (6) OCIO, outside employment. (b) (6) has started his own business and wanted to be sure that there were no conflicts. He said his business will be computer repair or assisting people with setting up their own websites, as well as some personal training. He is an (b) (6) at OCIO. I told him that I did not see a conflict since he is not a hardware repair person for OCIO but advised that he could not duplicate his work in his personal business without permission. He said that he would never be doing that kind of work. I advised him that he cannot solicit for work for his personal business while on Department time, he cannot use Department resources and that he will be unable to try to contract with the Department for any kind of work. (b) (6) May 1, 2009.

98. (b) (6) post government employment. Ms. (b) (6) is leaving DOJ to work for DHS. She called for her ethics outbrief and I advised her that there were not many restrictions when moving from one government agency to another. She had not worked with any contracts while at DOJ but I advised her she could call back here at any time if she had questions relating to her time at DOJ. (b) (6) May 1, 2009.

(b) (6) Asset Forfeiture/JMD, outside activities. Mr. (b) (6) called regarding a contract employee who provides legal support/paralegal work to the Asset Forfeiture section. The contract employee wanted to volunteer with the Bay Area Legal Services, providing legal support to the organization. Mr. (b) (6) wanted to know if any permission was needed for the employee to do this. I advised that as a contract employee, the only restrictions would be in the contract. I asked him if this was in any way related to her work at the Department or if it was an organization that had matters before the Department and he said no. I told him that the employee would not need permission (though a Department employee would) because she was a contract employee. (b) (6) May 1, 2009.

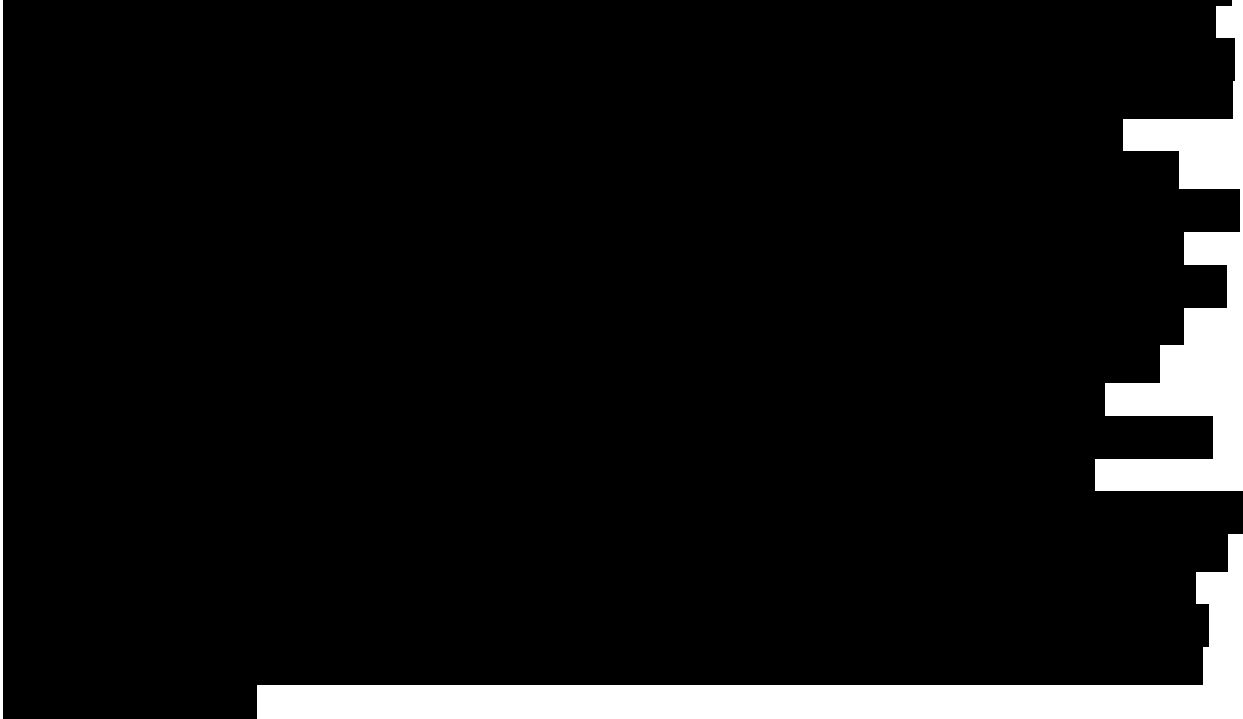
100. (b) (6), post government employment. Mr. (b) (6) called for (b) (6) with a post government employment question. (b) (6)

(b) (5) He was calling to find out what the limits of the one year ban were - whether it encompassed all of DOJ or just the [redacted] office. Mr. (b) (6) worked as [redacted] and is now at [redacted] case will be involving the [redacted] and [redacted]. It is not a matter he worked on while at the Department personally and substantially and not one he supervised. I advised him that the Civil Division was deemed a separate component and therefore he could speak to them on behalf of Boeing - but advised that nothing he said could be repeated to those parts of the Department he was barred from contacting and be attributed to him. He understood. I advised that NSD is not deemed to be a separate component and therefore he was barred from speaking to that office for one year, but he may participate behind the scenes, so long as nothing was attributed to him. (b) (6) May 4, 2009.

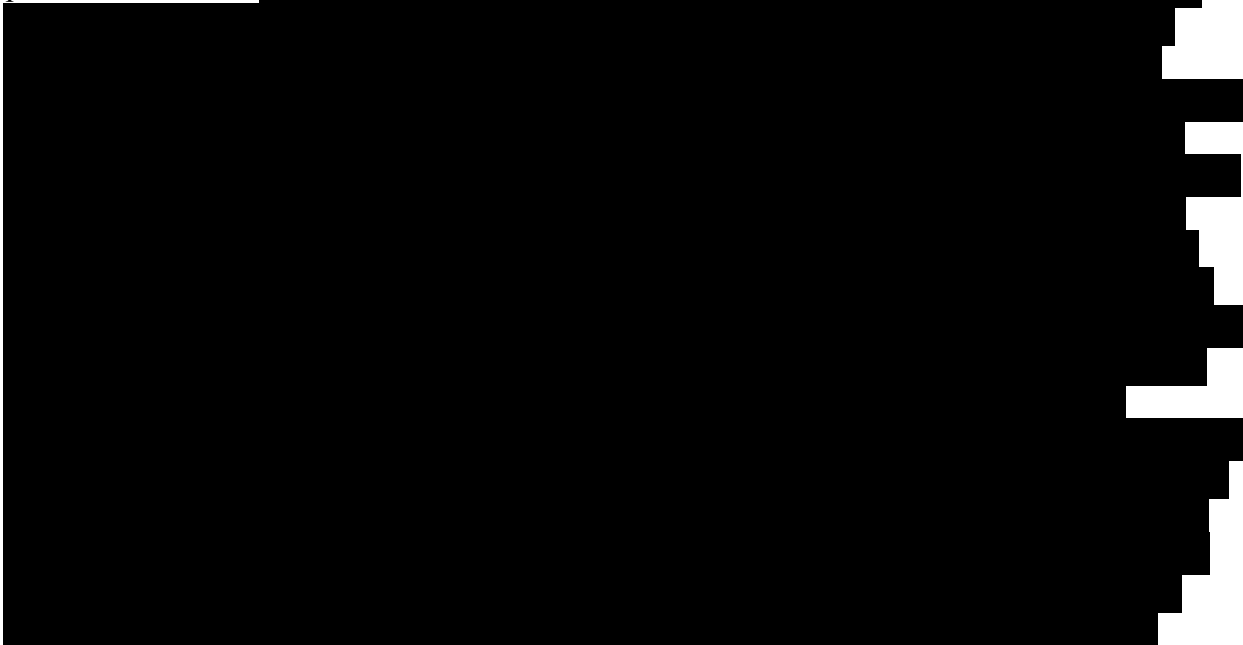
101. (b) (6) (b) (6), Touhy reg questions. (b) (6) asked what the Touhy regs were. I advised that Touhy regulations prohibit the unauthorized release of information by agency employees (or former employees) and provide a procedure for centralized agency decision making concerning as to how the agency will respond to a subpoena or other request for testimony or documents in a federal or state court proceeding. The Department's regulations are at 28 CFR 16.21-.29. (b) (6) May 4, 2009

102. (b) (6) OASG, writing an article. Before (b) (6) came into government, he spent a number of years providing pro bono assistance to an organization called [redacted], helping them draft a "model law" that could be implemented by developing countries to help attract a certain kind of investment. [redacted], which was treated as his client at the time, is an inter-governmental organization made up of member states (like the U.N., albeit with a much narrower focus). The U.S. is a member, through the State Department, and was involved in drafting this model law. They finished the model law in November 2008, and (b) (6) ceased his involvement with (b) (6). (b) (6) believes that the United States is still participating in [redacted]'s work of preparing an official commentary to the model law. [redacted] has asked whether (b) (6) would prepare a short, five-page article about the "scope" of the model law -- essentially, what kinds of commercial transactions it covers and what kinds it doesn't -- for a scholarly journal that it publishes called the Uniform Law Review. (b) (6) would like to know if he can write the article. The article would simply explain the existing text and would not comment on either the United States' involvement or the positions it advanced. The project was handled entirely by State with no DOJ involvement. I advised that if DOJ has no interest, I think he may write the article. Writing would not be considered the outside practice of law, so he would not need to seek approval for pro bono work under the Department's outside employment regulation. The standards of conduct allow an individual to write and publish an article in a scholarly or professional journal, and to include a current title along with a satisfactory disclaimer. My suggestion is not to include his current position, and to include a disclaimer that the views are his own - I think that is safest. If (b) (6) thinks there is any sensitivity to the article, or would just feel more comfortable knowing there wasn't any sensitivity to what he writes, asking the State Department to review it is a good idea, but I'm not sure it's necessary. (b) (6) May 4, 2009

103. (b) (6) OASG, WAG. I emailed the following to (b) (6) The Associate Attorney General has been invited to attend the White House Correspondents Association Dinner on May 9, 2009, at the Washington Hilton. (b) (5)



(b) (6), WAG attendance. I emailed (b) (6) the following for approval: The (b) (6) has been invited to attend the White House Correspondents Association Dinner on May 9, 2009, at the Washington Hilton, and a reception prior to the dinner. (b) (5)



(b) (6) approved. (b) (6) May 5, 2009

105. (b) (6) JMD, Contacted about new building luncheon. Fax is in log file. (b) (6) May 5, 2009

106. (b) (6) (b) (6) speaking event. (b) (6) (b) (6) will be filming the commencement and selling DVDs of the commencement. The company will be passing out flyers to the parents, etc promoting the sale of the DVDs. The company will not be advertising (b) (6) the speaker. (b) (6) has done this every year. (b) (6) wanted to make sure this was ok. I advised that it was fine. (b) (6) May 5, 2009

107. (b) (6) EOUSA. (b) (6) called regarding a possible Hatch Act violation that (b) (6) had contacted their office about in November, 2008. At that time an USA had begun to explore his options regarding running for governor of his state. The USA resigned his position however, and there was nothing to follow up on regarding the possible violations. (b) (6) said they would close their file on it in her office. (b) (6) May 5, 2009.

108. (b) (6) PAO, WAG. I emailed the following to (b) (6) for approval: (b) (6) Director, Office of Public Affairs, has been invited to attend the White House Correspondents Association Dinner on May 9, 2009, at the Washington Hilton, and a reception prior to the dinner. (b) (5)

(b) (6) approved. (b) (6) May 6, 2009

109. (b) (6) Civil, outside employment. (b) (6) called regarding a new employee at OIL who runs his own bar review course for the MD bar. She wanted to know if this fit under the teaching exception. I advised (b) (6) that this was more a question of outside employment, not an issue involving teaching. He could not use anything related to his position to advertise or try to recruit clients. One concern is that we have employees at the Department who have not yet taken/passed the bar and that he would not try to use his position here to find clients for his program. As for the teaching aspect, 5 CFR 2635.807(a) states that an employee may not receive compensation from any source other than the government for teaching, speaking or writing that relates to the employee's official duties. 2635.807(a)(2)(i)(E)(1) and (2) defines relating to an employee's official duties as "any matter to which the employee presently has been assigned or to which the employee has been assigned during the previous one year period;" or "any ongoing or announced policy, program or operation of the agency." It did not appear that the bar review course would fit this definition. Email is in the file. (b) (6) May 6, 2009.

110. (b) (6) CRT, misuse of position. (b) (6) called with a question from (b) (6) an attorney who deals with IDEA in the Civil Rights appellate section. (b) (6) was approached by an attorney in ENRD who is working pro se on his son's IDEA case in the Fourth Circuit. The ENRD attorney had gotten (b) (6)'s name from someone in the OSG who had worked with (b) (6) on an IDEA case previously. The ENRD attorney called to get some advice from (b) (6). After speaking with the attorney, (b) (6) read the case documents and thought that this might be a case that the Department would get involved with - possibly filing an amicus brief. (b) (6) asked (b) (6) if it would be ok to continue to talk to the attorney regarding this case. I conferred with (b) (6) and then asked (b) (6) if this attorney was receiving any special or different treatment than any other attorney with an IDEA case would receive. (b) (6) told her no, he had handled this as he would have handled the situation if it was any other attorney calling about a case. (b) (6) was also concerned about the OSG involvement. If CRT decides the Department should be involved, they write a memo to OSG which is signed off by the AAG, then a deputy SG and then the SG before it is determined that an amicus should be filed. (b) (6) suggested that the memo included language about how the case reached the Department to be sure everyone was aware and no special treatment given. Also recommended (b) (6) call PRAO to be sure they had nothing additional to add. (b) (6) May 7, 2009.

111. (b) (6), OSS, contractor relations. (b) (6) is the COTR for a contract in OSS. OSS is having their annual employee picnic and she wanted to know if she could invite the contractors. I advised her contractors may attend but the government will not pay for the time they spend at the picnic. Attending the picnic is not performance under the contract and therefore the contractors cannot bill the government for that time. The contract employees will have to determine with their employer (the contractor) if they may attend the picnic while being paid by the contractor, if the contractor cannot bill the government for the time. Contract employees cannot be solicited to contribute money for anything but the food/drink/costs they will incur themselves. Therefore if employees are being asked to give more than the per person cost because some employees will not be paying or because the money will be used to buy a retirement gift for someone, etc, the contract employees cannot be solicited for that extra cost. (b) (6) May 7, 2009.

112. (b) (6) post government employment advice. Mr. (b) (6) called with a follow up question regarding the post government employment restrictions he is subject to. He wanted to know if since he was in the AG's office the 2 year ban applies to everything that was active in the Department while he was here, since it is all technically "under the official responsibility" of the AG. I explained to him that only matters that made it to the AG's office while he was there and were worked on by those he supervised fit this restriction. Therefore if something was being worked on in the Civil section and it never came up to the AG level, it is not under his official responsibility. (b) (6) May 8, 2009.

113. (b) (6) ENRD, outside practice of law. (b) (6) called regarding (b) (6) who the past year-and-a-half, was represented by counsel in litigation against Montgomery County Public Schools (MCPS), in a case filed on behalf of his daughter under the Individuals With Disabilities in Education Act, 20 USC sec. 1400 et seq. (IDEA). On March 31, 2009, a federal district court in the District of Maryland ruled in his favor on that claim. MCPS has now sought review of that decision in the United States Court of Appeals for the 4th Circuit, arguing that the district court judge incorrectly applied the IDEA. The administrative and district court litigation has nearly exhausted his family's financial resources, and so he now wants to defend this case in the 4th Circuit *pro se* on behalf of his family. I have also been working with (b) (6) in CRT on this matter because of CRT's potential involvement with the case as an amicus filer. (See entry #110) I advised (b) (6) that since the Department may file an amicus brief, we need to treat this as if the Department has an interest. Therefore, he would need DAG approval. In the memo to the DAG, it should be made clear that the attorney is aware that he can only do this in his personal capacity on his personal time. Therefore if he is meeting with someone (even in the Department) during the work day, he must put in leave time. De minimis use will apply to his situation, but he should not be abusing it. If he wishes to use government resources (such as the computer) at no additional expense to the government (i.e. long distance phone calls, excessive printing, etc) in his personal time (before/after work, weekends) that would be ok. Use of Westlaw or Lexis for personal reasons does not fall under de minimis use. If he intends to do research using these services through the DOJ contract, he should seek Component Head approval to do so. (b) (6) May 8, 2009.

114. Seven employees on the Procurement Services Staff (PSS) of JMD requested approval to attend a training conference sponsored by Compusearch on April 30, 2009. Included in the conference would be hands-on training on the recently updated version of PRISM software. (b) (6) sent recommendation for approval to (b) (6) and he approved on April 29, 2009 under the widely attended gathering exception. The email approval is in the file. (b) (6) April 29, 2009

115. (b) (6) (b) (6) call with a post-employment question. He left DOJ on December 16, 2008 and is subject to the one year cooling off period. The matter he is calling about concerns an EPA possible criminal investigation of contamination of the public water supply in Crestwood, Illinois. Press reports on this matter were published by the New York Times and the Chicago Tribune on April 30, 2009. Local officials are being investigated to see if they drew off water from a contaminated well to supplement Crestwood's water supply. (b) (6)

has been contacted by a local newspaper and asked for a comment on this matter. He never worked on this while at DOJ and it was not under his official responsibility. He is not representing a client in this matter. He wanted to know if he could give the press a comment and also if he could identify himself as a former DOJ employee. I told him he could identify himself as a former DOJ attorney and that his statement for the press would not be a communication covered by 207(c) under these circumstances. (b) (6) April 30, 2009

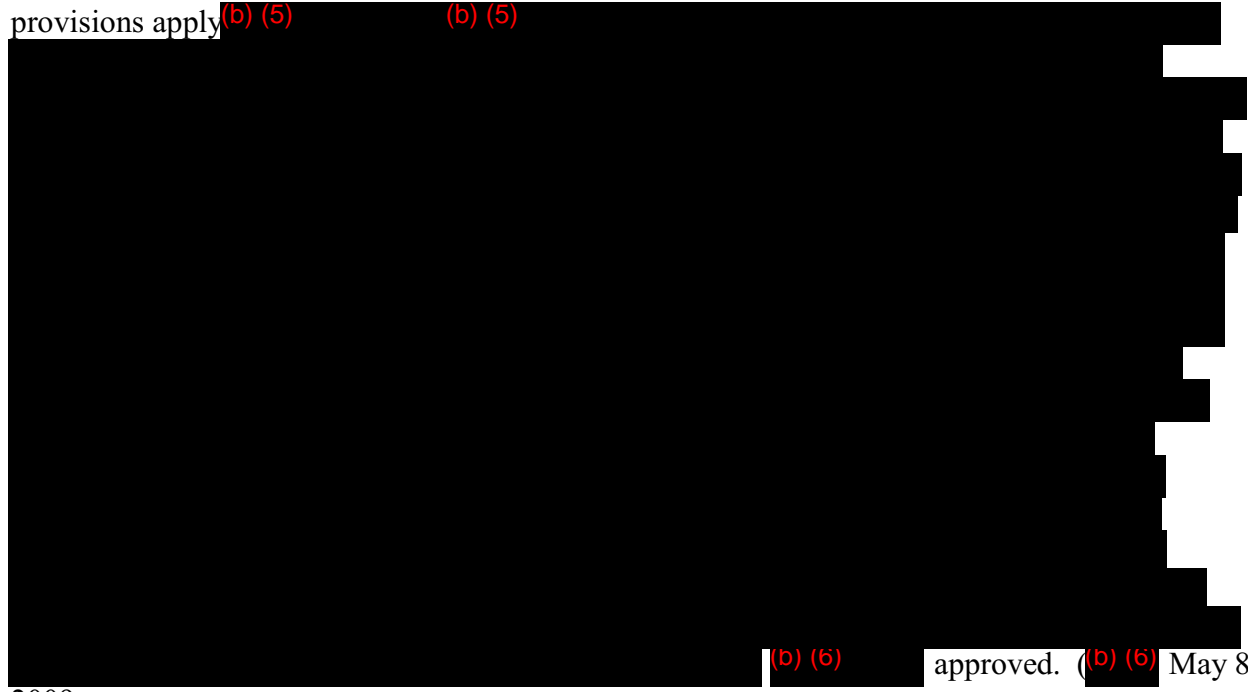
116. (b) (6) sent an email asking for our concurrence in a 502 determination for (b) (6). We had previously agreed to the determination at a time when the position of the head of Civil was still not filled. That was part of the justification for the determination. Because that circumstance had changed, Civil was again requesting a determination on the basis of current circumstances. Discussed with (b) (6). Sent (b) (6) and email saying we concurred provided the explanation of the need for his participation was developed. I said she could proceed but that we would like to see the final copy of the determination. The emails are in the file. (b) (6) May 1, 2009

117. (b) (6) sent an email with a gift question. Attorney was invited by a firm where she was a summer associate to attend the Nats baseball game and sit in the firm's box. At first (b) (6) thought it was the Caps playoff game but it was the Nats. Attorney is working on a matter in which the firm is representing a party. Partners hosting the event are not involved in the representation. One partner was a mentor of the attorney. About 20 former summer associates are attending as a kind of reunion. If she pays for everything, attendance, food, refreshments etc. is there any problem with her attending. Discussed with (b) (6). Called (b) (6) and said that under these circumstances, she could pay for the event and attend. Email is in the file. (b) (6) May 4, 2009

118. (b) (6) had a question about approval of 1353 travel. An attorney who is an expert on export controls has been invited by C5, a British company that puts together conferences, to be a speaker at a conference in Germany. Conference sponsors include some large law firms that currently have matters pending in NSD. Advised (b) (6) that law firm sponsorship of some aspects of the conference was not an absolute barrier to approval but that there needed to be a serious conflicts analysis written up that would consider all of the relevant factors: the value of his participation to the Department; the size of the conference; whether it is paid for by conference fees; the nature of the firm sponsorship; etc. The emails are in the file. (b) (6) May 5, 2009

119. (b) (6) CRM, Seeking employment question. (b) (6) asked the following: If an attorney is working on a case that involves several law firms and he has informal conversations with some of the lawyers about the hiring market for lawyers, does that trigger the seeking employment regs? I advised that it does not if it's just conversation. She also asked if the attorney asks specifically whether a particular firm is hiring, does that trigger the reg or does it not get triggered unless the firm says yes, we are hiring or would consider? I advised that if he asks and the firm says no and he leaves it there, then no, but he can't say "keep me in mind if you start hiring again" or otherwise leave the door open. If they say maybe or yes, and he says he's interested, he is seeking. (b) (6) May 8, 2009

120. (b) (6), CIV, (b) (6) 502 determination. I emailed the following to (b) (6) for approval: I am recommending that you make a determination under 5 CFR 2635.502, the impartiality standard of conduct, to authorize (b) (6) for the (b) (6), in order that she be able to attend a meeting convened by the Solicitor General this afternoon on whether the Due Process Clause or other constitutional provisions apply (b) (5) (b) (5)



(b) (6) approved. (b) (6) May 8, 2009

121. (b) (6) & (b) (6) JMD, Gift question. The contractor for the new DOJ building wants to hold a "Top Out" party and invite certain JMD & DOJ employees. It would include lunch and a free t-shirt. (b) (6) sent the following email to (b) (6): "I discussed the invitation with (b) (6). The ethics rules permit us to attend as long as the combined value of the lunch and the T-shirt is \$20 or less. (b) (6) suggestion is that we attend and accept the lunch, but decline the T-shirt. If anyone wants to accept the shirt, then we have to know the value of the lunch and the fair market value, not the bulk price, of the T-shirt and the combination must be \$20 or less. The invitation should come from the contractor so as not to portray this as a joint event. You can provide the email addresses of the component heads for that purpose." (b) (6) advised that the combined total of the tee shirt at \$9.85 and the lunch at between \$12.00 - \$15.00 is projected to be over the allowable \$20.00. Invitees will not be able to accept tee shirts. Notification has been made to invitees. (b) (6) May 8, 2009

122. (b) (6) sought approval to participate as a panelist in an upcoming Cyber Security Conference on May 6, 2009 that was sponsored by Digital Government Institute. (b) (6) her supervisor, approved her participation in her official capacity and she will be speaking on behalf of the Department as a member of the panel. I sent her an email indicating that she should obtain approval each time she has a speaking engagement and provided a description of the rules

that apply when an official speaker, when not a speaker and when speaking at an event out of town when the source offers to pay travel expenses. The email is in the file. (b) (6) May 1, 2009

123. (b) (6) sent an email with a post employment question. A former employee participated personally and substantially in a contract. That contract is about to expire. DEA will use a bridge contract (with no competition) until there can be a competition for a new contract. (b) (6) wanted to know if the bridge contract is the same particular matter as the expiring contract. Can the former employee represent the contractor in price negotiations. Discussed with (b) (6). Called (b) (6) and said we viewed this as the same particular matter. The bridge contract is the functional equivalent of an extension. The parties, subject, terms (except price and duration) are the same. The former employee cannot represent the contractor in price negotiations. (b) (6) accepted that conclusion. The email is in the file. (b) (6) May 5, 2009

124. (b) (6) (Civil) had a question about the de minimis exception. An attorney asked whether it was permissible to attend an evening at the Newseum held by AlixPartners to celebrate the opening of their new DC office. Alix provides litigation consulting services and might possibly be used in the future. The attorney has a friend who works for Alix and the friend asked Alix to send the Civil attorney an invitation. (b) (6) wanted to know if the de minimis exception could be used by simply not consuming more than \$20 worth of food and drink. Discussed with (b) (6). Told (b) (6) that is not workable. He would have to find out a per head price for the event and that would have to be less than \$20. It is unlikely that that would be the case given the description of the event. A WAG would not work because there does not seem to be a Departmental interest in his attending. The personal friendship exception might work if the friend who worked for Alix was told she could invite anyone she wanted to attend as her guest or date. (b) (6) said she would check to see if those were the facts. The email is in the file. (b) (6) May 6, 2009

125. (b) (6) (Office of Privacy and Civil Liberties) sent an email requesting clearance for a pro bono activity on Saturday, May 9, 2009. His request covered all of the issues that needed to be addressed and included the approval of his supervisor. It was for an advice and referral clinic that is on the DOJ list of approved pro bono activities. I discussed with (b) (6) and said I believed it could be approved. The email and his request memo are in the file. (b) (6) May 6, 2009

126. (b) (6) Question concerning letter of recommendation for Kent Markus, who is under consideration for a federal judgeship. I advised that (b) (6) may use her official letterhead because she worked with him in previous government service and it is a federal position which he is seeking. However, she would be more limited in what she could say, since the other aspects of his experience she could not personally vouch for while signing as (b) (6). She decided to use personal stationery. (b) (6) May 11, 2009

127. (b) (6) (OSG) called with a recusal question. She has just been assigned to work on a case under the Family Medical Leave Act. (b) (6) is opposing counsel. Until 3

months ago, her husband worked at (b) (6). Now he works at DOJ. He did not work on the case when he was at (b) (6). He was in litigation but not in the same practice area. He worked out of the DC office. The case is in the Chicago office. He was in the Chicago office for about 9 months but interacted with the DC office attorneys. He had never heard of the case when he was at (b) (6). Discussed with (b) (6). Called her back and said a 502 determination was not necessary in this case as he was no longer with the firm, the case was not his case and he had never worked on it and knew nothing about it, and his "home" office was DC not Chicago, even though he did work for awhile out of the Chicago office. So she could work on the assignment. (b) (6) May 11, 2009

128. (b) (6) COPS, outside activities. A COPS employee asked to serve as a member for the Board of Directors for the Prison Outreach Ministry in DC. The Ministry receives grants from the DC Justice Grants Administration, who receives grants from the DOJ (OJP). (b) (6) wanted to know if 5 cfr 3801.16 prohibited the employee from serving on the board because it was a sub-recipient of grants from the Department. Conferred with (b) (6) who agreed that because the grants are granted to the DC Justice Grants Administration and they determine who (including the Prison Outreach Ministry) receives a grant through their organization. I advised (b) (6) of this, as well as the restrictions the employee would have to abide by if she were going to serve - no use of official title or position, no fundraising, her name cannot appear on anything coming to the Department, she should not have contact with AUSA's through the DC Superior Court (since it was prison outreach she may have had exposure to the attorneys) and she cannot use government resources for her work on the organization. Email in file. (b) (6) May 12, 2009.

129. (b) (6) USMS, 207(c). (b) (6) emailed asking if a Marshal in (b) (6) who is a SL employee is a "senior employee" subject to the restrictions of 207(c). The Marshal does not receive locality pay, he receives OCONUS COLA. His base pay is (b) (6) and his COLA is (b) (6). (Combined this is over the \$153,105 threshold). As of April 12, 2009 SL/ST employees no longer have separate "locality pay" - it is all combined to total their base pay which is used to determine whether they meet the threshold for a "senior employee". OPM guidance on this change advised that the base pay of employees who receive COLA will be calculated only using their base pay. There is proposed legislation attempting to convert all COLA payments to locality payments. At this time, however, COLA is a separate entity from locality pay and it is not added to base pay for SL/ST employees to determine if they are senior employees. Because the Marshal in (b) (6) base pay is below the threshold, he is not subject to 207(c) restrictions. Emails in file. (b) (6) May 12, 2009.

130. (b) (6) DEA, 278 waivers. (b) (6) called regarding a SES employee who is a 278 filer. He is also an activated reservist currently deployed to Haiti. (b) (6) cannot get in touch with him but knows he is not expected back in the country by the due date for the 278 report. (b) (6) wanted to know if he could request an extension/waiver for the filer. I told him based on the circumstances it would be ok - just be sure he includes all the pertinent details/dates in the memo requesting the extension. (b) (6) May 12, 2009.

131. (b) (6) (b) (6) (b) (6) would like to know if there are any ethical restrictions on serving on an ABA committee that would review the writings of the eventual Supreme Court nominee in connection with the ABA's rating of that nominee. It would entail no direct contact with DoJ. I advised (b) (6) that I think this is fine, as long as nothing is attributed to him by the Committee, etc., that is intended to influence DOJ. I asked if the Committee's rating (or recommendation?) be a consensus one, or will there be commentary that could be attributed to him. He stated that if he chooses to proceed he will get that answer. (b) (6) May 12, 2009

132. (b) (6) JMD, gift. Aetna approached (b) (6) to set up a "choosing a health plan" seminar for "senior leadership" in the Department. Aetna would provide lunch and put on a "non-biased" presentation. (b) (6) has seen the presentation (they sent him a DVD of it) and said it is just a sales pitch. I told him that they should not do this, it has many appearance issues, not to mention gift issues for the lunch. He asked what would happen if they had accepted their offer already - I told him we'd have to look at having anyone who accepted the lunch to see if they needed to repay and that we would have to be aware of appearance issues. If we had allowed Aetna in and other insurance companies asked for the opportunity to do the same, we may have created a situation where we would have to allow all health insurance groups the opportunity. (b) (6) May 14, 2009.

133. (b) (6) ODAG, Attendance at political event. I emailed (b) (6) the following for approval: (b) (6) (b) (5)

[REDACTED]

he approved but only in passive attendance under the Department's policy. (b) (6) May 11, 2009

134. (b) (6) Tax, speaking. Ms. (b) (6) emailed me regarding speaking at the Mitchell Museum of the American Indian in Evanston, IL. Ms. (b) (6) was approached to speak on May

24 at the museum in Nov, 2008 and it has no relation to her potential position at the Department. She is a member of the Cherokee nation and will be speaking on Indian Law, a subject on which she has written a book. The Museum will pay her a \$150 honoraria but no other expenses will be paid. The museum holds these sort of events approximately once a month and stated that usually about 10-15 people attend these lectures. Because it has nothing to do with the position she is coming to the Department to fill and because she is not yet sworn in, I told Ms. (b) (6) she may speak at the museum and accept the honoraria. I advised her that her potential title at the Department should not be used in any way except as part of a larger biography. (b) (6) May 14, 2009.

135. (b) (6) (OSG) called with questions about recusal, post-employment, and financial disclosure reporting. She has received a informal offer of a job from a firm (not yet voted on by the partnership) and she plans to leave the Department. She wanted to know whether that would change the scope of her recusal. I said she is already recused under the criminal statute because she has been involved in negotiations for employment. So the fact that an informal offer has been made, doesn't change that recusal. She asked whether participating in moot court panels for DOJ cases would be considered personal and substantial participation in those cases which would trigger the permanent ban under 207. She said it might be difficult to recall the moot panels. She acknowledged that the purpose of being on a moot court panel is to make a substantive contribution to the Department's presentation of its case. I said I thought it was personal and substantial. Discussed with (b) (6) who said that it was. Told (b) (6) that she would be subject to the permanent ban on those cases that she mooted. She will work to identify those cases. Her final question concerned reporting reimbursement of job interview related expenses on her termination SF-278. For example, she was expecting to be flown to Chicago to meet members of the firm there although that trip was cancelled. She was an SF-278 filer because she entered an SL position in December 2008. She filed a new entrant report. However, her last day of work in the SL position was April 10, 2009. Beginning with the new pay period that started on April 12, 2009, she reverted to a GS-15, step 10, and thereby avoided the 207(c) restriction which would have applied to her if she had been in that position after the date when the merging of locality pay and base pay became effective. She must file a termination report for the SL position. For schedule B, she need only list reportable reimbursements that occurred prior to April 12, 2009. She indicated that the only thing the firm paid for at that point was a meal in DC and it did not meet the more than \$134 threshold for aggregation as a gift. So she does not believe she has any reimbursements that meet the reporting requirements. She did not have an agreement for future employment as of the date she terminated from the SL position. She would be going in as a partner, so the partners have to vote and approve making that offer. That has not happened so she does not to this date have a binding commitment from the firm. The people who have interviewed her have outlined the terms of an offer and she has said that if the firm formally makes that offer she will accept. I sent her an email with the PRAO advice on post-employment professional responsibility rules. The email is in the file. (b) (6) May 15, 2009

136. (b) (6) (b) (6) speaking engagement. (b) (6) will be speaking at a dinner on May 19 as part of the Sandra Day O'Connor Project on the State of the Judiciary at Georgetown Law. The dinner invitation is in the log file. The cost of the food is \$157 per person. This

the mistake and will pay what she owes. Anyone could be listed as a contact person. Discussed with (b) (6). Called (b) (6) back and left message that mere listing as a contact person did not constitute the practice of law and so did not require approval under the regulation. I had discussed the 205 concerns with representing a taxpayer in a dispute but again the mere listing of his name on the form would not be a representation. So he did not need approval under the reg or a determination under 205. (b) (6) May 19, 2009

142. (b) (6) an intern at the Commerce Department, called with a question about USAM 9-118.200K which deals with the use of forfeited property. NOAA seizes property and he was asking about the meaning of the term "official use." Sent him an email with a contact number for EOUSA. (b) (6) May 19, 2009

143. (b) (6) in (b) (6) ENRD called about seeking approval for the outside practice of law. He was unable to reach (b) (6). I told him he could also work with either (b) (6) or (b) (6) on this matter. (b) (6) May 20, 2009

144. (b) (6) of NSD called with a seeking employment/recusal question. She tried to reach both (b) (6) and (b) (6) and when she couldn't she called me. She wants to send a resume to CNN to look into the possibility of a media job as opposed to a legal job. CNN is owned by AOL. She is not currently working on any matter that involves CNN or AOL. I explained that once she sends the resume she must be recused from CNN and AOL. I sent her the DEO seeking employment memo. The emails are in the file. (b) (6) May 20, 2009

145. (b) (6) NSD, Recusals. (b) (6) asked (b) (6) to verify if we needed his wife's client list since she is a partner at (b) (6). I advised that they should keep an updated list of her current and prospective clients, and those provided with the list should be logical points to identify and screen these matters from (b) (6) - so, the DAAG's, and the AAG should have it if he would know of something that didn't come thru the DAAG's. I asked her to consider whether section chiefs need it. If he deals directly with ODAG on matters that will not have been screened by NSD those contacts need to know too. The same group needs to know he is out of (b) (6) and if he has conflicting stocks. Only those who serve in this gatekeeper/screening position need to have the list, and they don't have to be told what the list is - just that any matter in which the listed entities are or represent a party or would be significantly affected by a matter- (b) (6) is presumptively recused from and should be raised with another DAAG or someone else identified in the notice. (b) (6) May 20, 2009

146. (b) (6) CRM, ABA conference/WAG. The Admin Law Section of the ABA is putting together a conference on rulemaking. It is open to anyone. One of the breakout sessions is geared towards agency general counsel. If the ABA offers to allow all government counsel to attend the breakout session for free, could this be accepted as a WAG? If it can be accepted as a WAG, (b) (6) wanted to confirm that political appointees could not accept under the ethics

pledge. If the ABA charges a fee for the breakout session, which is determined as the fair market value of the one session, could political appointees then attend? I advised that I think it could qualify as a WAG - I don't recall looking at individual sessions at a conference that way, but I don't see why not. Since they are a registered lobbying organization, the appointees could not go unless they were speaking (if it were free). If there was a charge, it's not a gift and attending would not be prohibited. (b) (6) May 20, 2009

147. (b) (6) SEC, Program question. (b) (6) wanted to know if DOJ had any real time tracking in place for trades to ensure compliance with prohibitions on holding conflicting financial interests. No, and I don't see it happening. Suggested she talk to FBI as they have expanded the scope of their compliance effort in the past two years and might have some more reporting in place for certain positions but it won't be real time tracking. (b) (6) May 20, 2009

148. (b) (6) JMD/OCIO, Contractor gifts question. The Program Manager for (b) (4) sent out an invitation (in log file) to some government staff (employees and managers) in OSS to join his contractors for lunch tomorrow. (b) (6) inclination is to tell government staff this is against Ethics rules, but she wasn't sure if it was explicitly against the rules or open for interpretation. (b) (4) is the largest contractor within OSS, so her inclination is to tell government staff they should not attend. I advised (b) (6) that the \$20 rule applies, so if she verifies that lunch is no more than \$20 per head, the rules allow the employees to accept. However, the give-away and door prizes likely would push it over the cap, so they shouldn't accept those. As to whether this is a good idea, I think it is not, especially since OSS is having their annual picnic in Rockville in 3 weeks to which all DOJ and contractor employees are invited, but it is up to (b) (6) and (b) (6) whether they want to advise employees or managers that it would be better not to go. Also, (b) (6) needs to tell her on-site managers to let her know about this earlier - apparently it has been in planning for a few weeks, but this was the first (b) (6) was told of it. (b) (6) and (b) (6) composed an email to the employees which is also in the log file. (b) (6) May 20, 2009

149. (b) (6) OLA, (b) (6) would like to write a recommendation letter for someone to be the USA for Los Angeles. She would like to write it on DOJ letterhead since it is a work related connection. I advised (b) (6) that this was permitted by the rules, but she should give a read on whether the Committee might object to getting a letter on letterhead, as they have a few times in the past. I don't see a problem here because the employee seems very sensitive to the pitfalls, and aware the letter would be limited to her actual knowledge of the individual. And she is not recommending someone to be her boss, which we advise against. (b) (6) May 21, 2009

150. (b) (6) (CRT) had a question about Foreign Gifts Act reporting. He wanted to know if the gift is valued at less than \$335 is it reportable. I referred him to the reg at 41 CFR 102-42.85 which states that gifts of less than minimal value are not reportable. His email is in the file. (b) (6) May 21, 2009

151. (b) (6) a former senior employee who left the Department on February 19, 2009 and who is now a partner with (b) (6) is working on a retainer agreement to represent a possible target of a criminal antitrust investigation. (b) (6) was in (b) (6) until May 2008 and (b) (6) until February 2009. The 207(c) restriction would not bar him from contacting the Antitrust Division. However, he would have to be careful and avoid a communication that would be attributed to him being raised to a component that is covered by the restriction. He could not make the communication if it was foreseeable or likely that it would be passed on to a covered component. The exchange of emails is in the file. (b) (6) May 21, 2009

152. (b) (6) (OSG) had a 207 question. The firm that she is going with wanted to know which post-employment restrictions she is subject to. Sent her an email describing them including 203. She said that the firm now is going to put her on salary for 12 months instead of 18. I said that is probably sufficient time to deal with the 203 concern. The email is in the file. (b) (6) May 22, 2009

153. (b) (6) (JMD, Asset Forfeiture) had a question about assisting taxpayers in preparation of their tax returns. He is a CPA and wanted to know the scope of the restrictions on his doing this. I told him that he could assist in preparation and could even sign as the tax preparer but that he could not represent the taxpayer in a dispute with the IRS. He seemed to feel that would preclude him from doing the work. I said that was the restriction and that it allowed work that did not involve representation but that he could not make any kind of communication on behalf of a client in a dispute with the IRS. He also had a question about participating in political activities related to opposition political parties in Ethiopia. I told him I would have to research this question and get back to him. (b) (6) May 22, 2009

154. (b) (6) (OPR, (b) (6)) had a question about a conference that (b) (6) is scheduled to participate in. The National Association of Criminal Defense Lawyers is holding a conference on "Defending White Collar Crimes" on October 1-2, 2009. She is scheduled to be a panelist at 1:30 p.m. on October 1, 2009. The registration fee for NACDL members is \$695. Non-members pay \$895. NACDL and Fordham Law School are holding the conference. Event sponsors include West, Zuckerman Spaeder, Navigant Consulting, and ThemeVision, LLC. NACDL would reimburse her travel expenses. She would not get a speaking fee. (b) (6) determined that she was going in an official capacity. We discussed getting approval under section 1353 and I directed him to that section of our DEO website and the format for the request. She will travel up on October 1, give her presentation that day, stay overnight and come back the next morning and not attend the second day of the conference. We discussed the conflicts analysis under 1353. I also said we would not want to see her listed on the website as a "featured presenter" and she should avoid being associated or linked to any of the event sponsors. Her participation should not be used to promote the event or to suggest any endorsements. (b) (6) will write it up and send to (b) (6). The background on the event is in the file. (b) (6) May 15, 2009

155. (b) (6) (b) (6) confidential assistant), OSG, official work. (b) (6) called to find out when they could use the "frank" to send out letters from (b) (6). She knew she could use it for official business on letterhead but she said (b) (6) often liked to write certain letters on (b) (6) cards. These were official business matters that could have been on letterhead if not for the (b) (6)'s preference. I told her so long as the notes were official business, she could use the frank to mail them. (b) (6) May 21, 2009.

156. (b) (6) ENRD, ethics violation. (b) (6) emailed regarding an attorney in ENRD who had used his government email account to solicit individuals to sign up for "LifeCamp" seminars. The seminars are free to attendees but the attorney would receive a commission for all the people he got to sign up. The people he solicited included a client and a potential witness in an active case. Management had spoken to him about his actions and that they were inappropriate. (b) (6) wanted to know if more action was required. I advised she should refer it to OIG and OPR for investigation and those offices would determine if anything else were necessary. Notes in file. (b) (6) May 26, 2009.

157. (b) (6) OSG, outside employment. (b) (6) is a paralegal specialist in the OSG who cite checks briefs for the office. She previously worked at Tycko and Zavareei as an administrative assistant and has been asked to provide document support to the law firm again in preparation for an upcoming intellectual property case in Texas state court. She would work approx. 5 hours/week and be paid hourly. The law firm has no matters before the Department and (b) (6) told me their practice did not have matters before the Department at all. Prepared approval memo for outside employment for (b) (6) to sign. Notes in file (b) (6) May 27, 2009.

158. (b) (6) OSS, gifts. (b) (6) is preparing a flier for a retirement party and wanted to know if she could include a suggested amount for people to give for food. I reviewed with her the gift rules, discussed infrequent special occasions and made sure no one in a supervisory position was handling the collection. After reviewing all that I advised that she could put on the flier that donations for food and gift could be given to the POC on the flier, instead of stating a per person cost since the money had to be voluntary - and they could not restrict those who did not wish to give. (b) (6) May 27, 2009.

159. (b) (6) OAG, Reception invitation. (b) (6) was invited (along with several other admin staff) to attend a reception at the British embassy tonight. The invitation is just showing appreciation for assisting them in setting up a meeting and greeting/escorting the Home Secretary and Delegation up to meet with (b) (6). I advised that I think it's fine for her to attend, and I recommended that (b) (6) approve. (The other staff are not able to go). (b) (6) approved. (b) (6) May 27, 2009

160. (b) (6) a (b) (6), called with some financial disclosure questions. She started on May 4, 2009 and is working on her new entrant report. She asked whether the funds in her 401(k) were EIF's. Specifically, she asked about the Janus Overseas Fund. I said that it met the requirements of an EIF. I confirmed that she did not have to report her TSP. She is coming from a position as a partner with a small firm in San Francisco and she will be getting payments of her capital account over the course of a year. I said that agreement should be reported. Also if she does not cash out of the 401(k) account with the firm, that should also be reported on Schedule C. She has reported the funds on Schedule A. She was concerned about reporting her \$5,000 clients on Schedule D. Particularly if they were individuals. I said they had to be disclosed unless a confidentiality agreement was part of the original retainer. She said that she may have to contact her clients and obtain their consent and that consequently she might need additional time to file. If so, she would request an extension. She asked if she had to disclose her spouse's clients. I said no, but she would need a list of his personal clients for screening purposes. I sent her a follow up email on May 26, 2009 indicating that a client identity under seal would not have to be disclosed and that she would not have to disclose the nature of the matter she worked on but could indicate "legal services." The email is in the file. (b) (6) May 22 & 26, 2009.

161. (b) (6) (b) (6), (b) (6) called with a recusal question. His name is being put forward for the position of U.S. Trustee. (b) (6) (b) (6) referred him to our office. Members of the (b) (6) bar are supporting his candidacy. He thought that a letter was being prepared on his behalf and might have already been sent. He believed that he would have the support of nearly all of the firms that have a practice before the Trustee's office. He has a personal caseload of 7 or 8 cases but he is in charge of the office so everything is under his official responsibility. He wanted to know what, if any, recusal obligation he would have with respect to the firms and attorneys who endorsed him. Discussed with (b) (6). This is a noncareer position. He should not solicit any support from firms. However, the fact that firms sent a letter which was not in his control would not trigger recusal as it would put too much power in the hands of outside parties and make his job difficult. I called (b) (6) (b) (6) (b) (6) and (b) (6) (b) (6) to discuss what the impact of recusal would be. She said if only one firm or a few firms were involved that it might be possible for his staff to screen those matters and have someone else work on them for a short period of time. However, there could be a problem if the selection process got bogged down and he was stuck with a recusal. She said that in the past a former trustee in (b) (6) sought reappointment and reached out for support but she did recuse herself from matters in which the supporter was involved. I spoke to (b) (6) again on May 20 and he said that the only action he has taken is to submit his resume to the Director of EOUST for the job and advise his supervisor. He said that one attorney had approached him and asked if he was interested but that other firms were on board. He said it could affect everything he worked on. He said the person who now is "acting" also wants the position. I talked to (b) (6) again on May 26, 2009 and told him that the support letter would not trigger a recusal obligation for him. He should not solicit any support from members of the bar. He said he would like to document this advice. I said send an email and we will respond and it can be documented in that fashion. (b) (6) May 18, 19, 20, 26, 2009.

162. (b) (6) (JMD, (b) (6)) had a question on participation in opposition foreign political parties in Ethiopia. He has only a general question at this point as to what activities are permitted. He is a U.S. citizen but still has family members in Ethiopia and he is concerned about human rights abuses in Ethiopia. He had questions about making contributions to or being a member of an opposition party. He did not have any specific political party in mind. I said we would need specific facts to be able to advise him and that he should not become involved in any foreign political party or the activity of such a party without consulting us. I told him that some types of activities may require registration and that an executive branch employee is subject to criminal prohibitions under 18 U.S.C. 219 on certain activities. Also told him he had to be certain that the organization was not listed as a Foreign Terrorist Organization by the State Department. He said he would not engage in any activity involving foreign organizations or political parties without prior consultation with us. He asked about simply attending a rally or demonstration supporting human rights in Ethiopia. I said that provided the event was lawful, i.e., necessary permits were obtained, activities were lawfully conducted, etc., that I was not aware of any law or rule that would prohibit him from attending. But he would need to ensure that his conduct was lawful, i.e., not get arrested or violate any rules. (b) (6) May 27, 2009

163. (b) (6) (sp.?) (b) (6)) who is a new confidential assistant to (b) (6) who was asking about a dinner that (b) (6) be attending at (b) (6) this weekend. She will not be giving a speech and it is a personal trip. (b) (6) faculty will honor her. She wanted to know if (b) (6) could reimburse the Department. I said that authority (1353) was not used in this type of event. The two options would be for (b) (6) to reimburse (b) (6) for the trip and then she would report that next year on her 278. Or she could simply pay for the trip herself. Discussed with (b) (6) Called (b) (6) back and she said (b) (6) had decided to pay for the trip herself. (b) (6) May 27, 2009

164. (b) (6) (EOUSA, (b) (6)) asked for our no objection determination in connection with a waiver of the prohibition on outside practice of law in 3801.106. This waiver is part of the overall settlement of an appeal to the MSPB of a removal action that was filed by former (b) (6). (b) (6) also sought a clearance from PRAO on professional responsibility issues. As part of the settlement agreement, (b) (6) would be reinstated as a DOJ employee and would be on the payroll for a short period of time this summer until August 24, 2009 but would perform no official duties. She is now employed as an attorney by the State of New Hampshire Attorney General's Office and so she would need a waiver of 3801.106. She does habeas cases. She has no litigation in which the United States is a party. I sent (b) (6) our comment on the memo from (b) (6) to the DAG. (b) (6) incorporated the conclusion under 3801.106 but did not mention the habeas cases and did not provide the discussion of facts and analysis under the standard that we had requested. It went out in final on May 26 before we reviewed it. We got a copy on May 27 and the copy and relevant emails and background are in the file. (b) (6) May 27, 2009

165. (b) (6) (OSG) called (b) (6) regarding her departure from DOJ. (b) (6) discussed financial disclosure with her. (b) (6) does not have to file a termination report. She has received the 207 summaries. She has the PRAO memo. I reviewed the applicable 207 restrictions with her. Her last day is June 5, 2009. She will start at (b) (6) on June 8, 2009. (b) (6) will not announce that she is joining the firm until June 8. I sent her an email confirming that she had her exit ethics briefing which is in the log file. (b) (6) May 28, 2009.

166. (b) (6) (OVW, 4-0052) called with a question about a speaking event that the Justice Libraries (JL) was hosting in conjunction with Lexis Nexus to be held on July 8. JL would bring in a speaker on the subject of human trafficking. The speaker works for the Polaris Project. Polaris Project is a grantee of OVW and has currently applied for a grant using Recovery Act funds. JL has invited OVW to be a co-host of the event. Discussed with (b) (6) and researched the background of this speaking series in the advice log. See log entries for April 2008, May 15, 2008 and August 15, 2008 for background. Lexis and West both provide speakers series for their big customers. They pay the out of pocket costs for the speakers but apparently do not give them a speaking fee. The speakers are authors of their books. JL participates in the speakers program. It appears that this activity is now written into the contracts to avoid dealing with it as a gift. Discussed again with (b) (6) who said that they would like to be a co-host unless it would present a problem. I said the concern was that Polaris has a pending grant application for Recovery Act funds. (b) (6) said that the decision on that application would be made before the event. At the DDAEO lunch on May 28, (b) (6) brought up the question and (b) (6) explained the sensitivities of Recovery Act funding and said OVW could encourage people to attend but should not co-host. (b) (6) agreed. (b) (6) May 18, 19, 26, & 28, 2009

167. (b) (6) JMD library. (b) (6) was asked by (b) (6), a CRT attorney, to do some research for an upcoming case. (b) (6) then asked if (b) (6) would be willing to testify if necessary, regarding the methods she used in gathering the information. (b) (6) called to see if there would be an ethical issue. I spoke with (b) (6) who said she asked only to be sure (b) (6) was willing to do it, not because she saw an ethical issue or a reason why (b) (6) would not be able to. I emailed (b) (6) and told her that we saw no ethical reason why she could not testify regarding her research. Notes in file. (b) (6) May 28, 2009.

168. (b) (6) invitation. (b) (6) (b) (6) emailed and asked if her firm could throw her a going away party. (b) (6) has had her hearing but has not been voted on yet. I advised that the party (which will be at one of the partner's homes) would be ok so long as it was held before she was sworn in. I asked her to call back if she thought the going away event would be after she was appointed. (b) (6) May 29, 2009.

169. (b) (6) CIV, gift. (b) (6) was invited to the Sidley Austin Women in Leadership event on June 17, 2009. It will be at a restaurant and feature a celebrity chef speaking about business relationships. The event is sponsored by the firm. (b) (6) was invited by a partner at Sidney who she went to law school with - they are personal friends, attended each other's weddings and see

each other socially. She asked the partner if they could invite anyone they wanted to the event and she said the only restrictions Sidley placed was that it could not be an attorney from another firm. Spoke with (b) (6) on it and he felt that the personal relationship was strong enough to base the invitation on and that the restrictions of no attorneys from other firms did not change that. I told (b) (6) she could accept the gift of attendance based on the personal friend gift exception. (b) (6) May 29, 2009.

170. (b) (6) JMD/OCIO, reference question. (b) (6) would like to write a reference letter for a friend applying to the federal government (in Florida) that is currently a contractor for the USMC. (b) (6) would like to verify that he can use his title as long as his friend is applying for a federal job. I advised (b) (6) that he could as long as the job does not report to him. (b) (6) June 1, 2009

171. (b) (6) (CIV) called on May 29 with an outside practice of law question. An attorney in Civil has a sister who is about to be arrested in a State criminal matter and be prosecuted by the District Attorney. (b) (6) was asking what she could do in the way of supporting her sister that was beyond purely moral and emotional support but was less than the practice of law which would require a waiver under 3801.106. For example, could she discuss the terms of a plea agreement that might be offered to her sister. He wanted to know if there were any OLC opinions on this question. Discussed with (b) (6) Called (b) (6) back on June 1 and confirmed that the sister in trouble will have a lawyer to represent her in the matter. The Civil attorney could explain the terms of a plea agreement but could not do things like assist in planning negotiation strategy on a plea. She could accompany her sister to a meeting with her lawyer and answer any questions that her sister might have. As a hypothetical, (b) (6) asked whether she could say anything if there was a charge that on its face appeared to be barred by the statute of limitations. I said she could probably tell the sister to bring that up with her attorney. I said she also had the option further down the road that if something came up that looked like it might be the practice of law, then she could seek a limited waiver for that particular activity. (b) (6) said they could cross that bridge when they came to it. We also discussed how they would have to look to the bar rules and opinions of the jurisdiction to determine what might be the practice of law. (b) (6) June 1, 2009

172. (b) (6) (b) (6) called because she had received an email from the Tax Division that had the heading (b) (6) on it and she was not sure whether she should even open it. (b) (6) was a client of her former firm, (b) (6), who represented (b) (6) in high stakes insurance defense matters, but was not her personal client. She was a bond lawyer at (b) (6). I told her to open the email. It was an FYI email that a tax hearing was being scheduled on July 17 in a matter in which (b) (6) is seeking a refund. (b) (6) is aware of the pledge restriction on any communications with her former firm or her former personal clients. (b) (6) June 1, 2009

173. (b) (6) (b) (6) (b) (6) called with a question about a matter that came up in an investigation. In her original call she said that (b) (6) had told her to call about the guidelines and procedures for when a possible Hatch Act matter should be referred to OSC. After several calls back and forth, it turns out that the facts of the matter are as follows. (b) (6) is doing the legal review of the Report of Investigation in an investigation that has been completed. The main thrust of the investigation did not involve any Hatch Act matters. But in the course of the investigation it was learned that several employees during the campaign season last fall had had political discussions in a bullpen type setting. Two employees had discussed their political views which were opposed to the candidacy of then Senator Obama. There were allegations that derogatory and threatening remarks were made. The investigation was not able to substantiate any threats to candidate Obama. However, a noose was hung over one cubicle. Discussed with (b) (6) There was not enough facts on which to base a referral to OSC. OSC limits its inquiry into such matters to the scope of the Hatch Act and recently in another case did not look into other related behavior that might be inappropriate. So in this instance, the facts did not provide a sufficient basis to make a Hatch Act referral. Called (b) (6) and left a voice mail message that no referral was required. (b) (6) June 2, 2009

174. (b) (6) ODAG, Conference attendance. (b) (6) would like to know if she may participate in a conference that CCIPS is holding with industry to talk about general issues with copyright infringement, etc.; an attendee is (b) (6), (b) (6) former employer. The format of the meeting is fairly informal and based on the possible issues for discussion, I conclude the topics are matters of general applicability, and that a wide range of interested persons have been invited, so it fits the exception under the Pledge for communications with a former employer in the OGE memo. (b) (6) said that (b) (6) is involved in a major civil case which she worked on which they may mention just because it is such an important case, but DOJ is not and will not become involved in it so I don't think it's an issue. Just to be safe if there is an extended discussion I advised that she may want to step out; she should not have any conversation on substance with the (b) (6) employees there. (b) (6) June 2, 2009

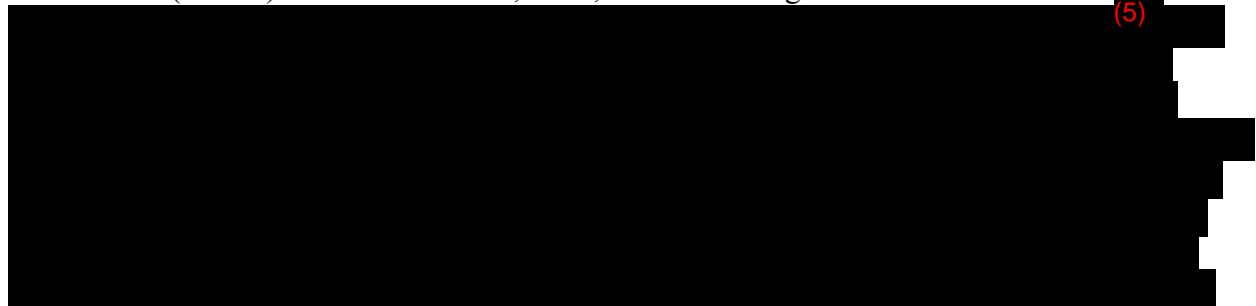
175. (b) (6) (b) (6), Gift acceptance/speaking invitation. The French Government invited (b) (6) to France to learn about their legal system for a week, when he was a law professor. He went, and during the course of the visit with the equivalent of the Chief Justice, they proposed teaching him French when he got back to the States. He agreed to do it, but forgot about it. They just called, reminding him that they have a private French tutor available as per their agreement. He told them that since he was in the Government, he wasn't sure if he could take French lessons from the French Government. I advised that as a federal employee you may not accept a gift from a foreign government that exceeds the de minimis cap of \$335. In determining whether a gift falls within the de minimis amount we use fair market value. I would imagine that private tutors cost at least in the \$100/hour range, so he would not be able to accept more than a few lessons. (b) (6) then asked the following: (b) (6) Northwestern has an annual meeting where they want him to speak in his nonofficial capacity on a subject of his choice. He was supposed to go last year but couldn't do to his Georgetown teaching schedule. There is an honorarium. They can schedule it for any time in the Fall. He would be interested in doing this invitation. There are no pending matters involving this alliance, and he would recuse from

anything involving Northwestern f need be. I then advised (b) (6) that compensated teaching, speaking or writing that relates to an employee's official duties is prohibited, unless an exception is met. 5 cfr 2635.807. Speaking or writing "related to official duties" for a noncareer SES appointee includes the general subject matter area, industry or economic sector primarily affected by the programs and operations of the employee's agency. For him, (b) (6), the agency is the entire Department. 5 cfr 2635.807(a)(2)(i), 5 cfr 3801.103(b). Compensation for covered speeches is prohibited, and compensation does include, for noncareer SES officials, payment of travel expenses. 5 cfr 2635.807(a)(2)(iii)(D). He remains subject to the cap on outside earned income which is \$26,550 annually. So, as long as he doesn't speak on a topic that relates to the work of the Department, he may accept compensation. He would be recused from any matter in which the (b) (6) a party (which does seem unlikely). And, a reminder that they may not use his DOJ title except as part of a biography which does not give it greater prominence than other biographical facts. He should let the (b) (6) know in case she has an objection if he has not done so already. (b) (6) June 3, 2009

176. (b) (6) (b) (6), Gift acceptance. (b) (6) were invited to attend a play at the Holocaust Museum by friends of theirs. See attached invite. (b) (6) is going in his personal capacity as they've been friends of the (b) (6) for a long time and (b) (6) are very good friends. I advised that we needed to figure out the cost of the tickets and that gifts above a certain amount have to be reported no matter who the source is or whether they are from personal friends given to him because he is (b) (6). It turns out there is no cost, there are two performances of the play, this one by invitation and another one free to the public, so this has no reportable value. I advised that there is no problem with accepting it as a gift based on a personal relationship. (b) (6) June 3, 2009

177. (b) (6) CIV, Hatch Act. (b) (6) emailed regarding a Federal Programs trial attorney who would like to serve on the board of a PAC for an organization that will lobby the US on Haitian issues. He does not handle any immigration issues for the Department and he would not be doing any lobbying for the PAC. (b) (6) was concerned this would be a Hatch Act violation. I found an OSC opinion which states service on the board of a PAC is not a Hatch Act violation for employees who are not further restricted. They cannot accept or solicit any donations and their names should not be on any material (including websites) that solicit for donations. I sent (b) (6) the opinion. (b) (6) June 4, 2009.

178. (b) (6) (b) (6) attendance. I sent the following email to (b) (6) for approval: The Attorney General has been invited to attend the Radio and Television Correspondents Association (RTCA) dinner on June 16, 2009, at the Washington Convention Center. (b) (5)



(b) (5)

[REDACTED]

[REDACTED] approved.

(b) (6) June 4, 2009

179. (b) (6) OAG, AG summer associates. I advised (b) (6) that as we had discussed (b) (6) has been asked by his former firm to speak to the summer associates about his career, and his experience in government. (b) (6) like to do this and encourage the summer associates to serve in government or in the public sector. We have decided that this would be within the scope of the ethics rules with a few conditions which are intended to avoid the possibility that accepting the invitation is, or appears to be, special access by the firm which is not enjoyed by other firms or groups, to ensure that it is not perceived as an endorsement of the firm, and that the appearance clearly serves the Department's interests, not the firm's. In addition, since some of the same concerns may be present, the conditions also should apply to similar appearances he makes at other firms or organizations. The conditions are: the former firm is not the only group of law students he speaks to; he does not endorse his former firm or assist in the recruitment efforts; it is not a regular appearance, i.e., he would not go back next summer to his former firm; the firm may not publicize or promote his appearance, before or after the meeting (other than notification the summer associates), and should not record the appearance. (b) (6) stated that (b) (6) proceed with the conditions that I set forth in my email. (b) (6) June 4, 2009

180. (b) (6) EOUSA, Outside practice of law. (b) (6) sent an email to request a waiver for outside practice of law for (b) (6) who is currently the (b) (6). He has requested permission to engage in the outside practice of law by representing his daughter in a traffic-related proceeding before a Municipal Court in Shenandoah, Texas that is not considered a criminal matter. He had previously requested approval to represent his wife and it was granted. I recommended approval of this request. (b) (6) June 4, 2009

181. (b) (6) (ATF) had a question about ethics issues that needed to be considered in connection with co-sponsoring events with an employee organization, the Former ATF Agents Association. Other organizations such as the associations for FBI and Secret Service have receptions in connection with the annual meeting of the International Association of Chiefs of Police. This group would like to do something like that. The IACP meets again in 2010. But the ATF group might want to do something this fall. They are thinking about having a retirement seminar. The group has funds for a speaker and a room but they wanted to know if ATF could support a social event. I told (b) (6) this was an appropriated funds question. I discussed with

(b) (6) Talked to (b) (6) again and said the soundest approach would be to identify projects/activities that ATF wanted to support and that are mission related and then see about partnering with a group. At this point (b) (6) was just trying to scope out the potential issues. I sent him the powerpoint slides from the co-sponsorship panel at the OGE conference and he said that would be very helpful and he would get back to us when he had specific issues. The emails are in the file. (b) (6) June 4, 2009

182. (b) (6) had asked for some clarification of the Pledge restrictions on communications with a former employer or former client and I sent him the following email which he shared with (b) (6) and with (b) (6): I don't believe that you are reading the restrictions on an appointee on communications with a former client under the Pledge too broadly. The (b) (6) refers to some of the regulatory language in 5 C.F.R. 2641.201(h) that defines "particular matter involving specific parties" for the purpose of the 2 year restriction on communications with a former employer or former client. But he may have overlooked the language in section 2(h) of Executive Order 13490 that broadens the regulatory definition of the matters covered to include "any meeting or other communication relating to the performance of one's official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties." This language clearly precludes one-on-one communications, meetings, contacts by an appointee with a former client or former employer on any matter that relates to the performance of official duties. So it would cover general policy matters including general law enforcement policy on Indian reservations.

An appointee covered by the Pledge may have a communication or meeting regarding a "particular matter of general applicability", i.e., policy matters that affect an identifiable class of persons as opposed to matters that involve specific parties, that includes a former client, provided that that event is "open to all interested parties." The Office of Government Ethics has provided guidance on when an event is open to all interested parties and determined that "such meetings do not have to be open to every comer, but should include a multiplicity of parties." Memorandum to Designated Agency Ethics Officials, "Ethics Pledge: Revolving Door Ban--All Appointees Entering Government," (DO-09-011, March 26, 2009). OGE further advised that "if an agency is holding a meeting with five or more stakeholders regarding a given policy or piece of legislation, an appointee could attend such a meeting even if one of the stakeholders is a former employer or former client; such circumstances do not raise the concerns about special access at which the Executive Order is directed." So you could participate in a meeting discussing law enforcement policy on reservations at which NCIA was in attendance provided that at least 5 distinct stakeholders were present.

There is one other situation in which an appointee subject to the Pledge is permitted to communicate with a former client. OGE has advised that the Pledge's expanded definition of a specific party matter is not intended to bar an appointee from consulting with experts at educational institutions and "think tanks" on general policy matters, as long as those entities do not have a financial interest, as opposed to an academic or ideological interest. In this case, it does not appear that (b) (6) is a think tank like the Brookings Institution or the Brennan Center. And so this exception for communications with a think tank expert would not permit the one-on-one communication with (b) (6). Thus, the one available option is the 5 stakeholder event to discuss policy.

The relevant emails are in the file. (b) (6) June 4, 2009

183. (b) (6) sent an email exchange that he had with (b) (6) regarding (b) (6) request to speak to the North Carolina Rehabilitation Association in October 2009 and accept a \$2,500 speaking fee and reimbursement of travel expenses. He would do it in his personal capacity. The performance of his duties would not substantially affect the group. (b) (6) considers the group to be a prohibited source for the Division. He would not use nonpublic information. I discussed with (b) (6). Talked to (b) (6) and asked him to follow up with (b) (6) on 3 issues. First, what is the subject of his speech. (b) (6) is going to ask (b) (6) for a synopsis or outline. Second, what were the exact circumstances of the invitation to speak. Did he have a prior relationship with this group? Is it clear that the invitation was not primarily because of his official position? And third, are there any matters currently in CRT that could affect this group or that it is a party to? I suggested that (b) (6) talk with us after he gets this information before giving (b) (6) an answer about whether he can or can't accept this speaking engagement. The emails are in the file. (b) (6) June 4, 2009

184. (b) (6) (b) (6) WAG. (b) (6) has agreed to speak at the Vera Justice Address. (b) (6) will be introducing him and Nicholas Katzenbach will also be in attendance. I advised that this is fine, although this one raised some issues. They are a lobbying organization, but fortunately only at the state level and not required to register under the federal Lobbying Disclosure Act, which is what we use to determine whether a person or organization is a lobbyist. This also raised an issue for (b) (6) who was on the board of the Vera Institute until this past January. There is a general prohibition on participation/communications with a organization which an official formerly served as a director; however, there is a exception that allows speeches where the organization does not have a financial interest in the official's participation. Since the event is not a fundraiser and they are not charging anyone admission, I've determined that they do not have a financial interest in (b) (6) speech, and therefore no financial interest in (b) (6) (b) (6) also participating as the person introducing the AG. My remaining question is whether anyone is accompanying (b) (6) other than (b) (6). If so, and if they will attend reception, they will need approval under the WAG exception. (b) (6) will be attending with him. (b) (6) June 5, 2009

185. (b) (6) OLA, Use of title. (b) (6) contacted me in a situation in which (b) (6) would like to use his title in a videotaped tribute to a former law professor. (b) (6) and I conferred that his DOJ title should not be used as set forth here (emails in log file). Since his authorship here derives from his personal capacity and has nothing to do with DOJ, his DOJ position should be set forth only in a footnote with language along these lines: (b) (6) currently serves as the (b) (6) at the Department of Justice, but the views expressed herein are his personal views only. (b) (6) June 8, 2009

186. (b) (6) CRS, Letter of recommendation. (b) (6) called to ask if a conciliation specialist in Boston who used to be an AUSA in the Virgin Islands could write a letter of recommendation on CRS letterhead using his title. While there he worked with another AUSA who is now seeking a judgeship. I advised that he could because they worked together while he was a federal employee, and if this is a federal judgeship that would also allow him to use

letterhead and his title. He just needs to be clear in the letter that it is a personal recommendation based on his knowledge of the candidate. (b) (6) June 5, 2009

187. (b) (6) OAG, WAG. I emailed (b) (6) the following for approval: (b) (6) (b) (6) is giving the keynote speech at the Vera Institute of Justice's Third Annual Justice Address on July 8 or 9, at the McGraw-Hill building in New York. Approximately 375 attendees are expected, including leaders of the New York business, legal, government and non-profit communities. No fee is charged to the attendees. The organizations's website contains this description of its mission: The Vera Institute of Justice's combines expertise in research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety. [REDACTED]

[REDACTED]

June 8, 2009

188. (b) (6) OLA, Gifts question/conflicts question. (b) (6) sent a list of ABA positions he currently holds or has held during the financial disclosure reporting period. (List in log file). He would like to know which of these he needs to report on his SF and which of these positions may present a conflict of interest. With regard to his attendance at tomorrow's Whitman-Walker

benefit, he would like to know if he needs to report this somehow. I advised that he would only report the ticket(s) as a gift if he accepts more than \$335 from the donor during 2009, and only if a ticket(s) is over \$122. I advised that he would report gifts next May on his annual 278, and the threshold is \$335 but he only aggregates individual gifts that are over \$122 for purposes of determining whether he has passed the \$335. (b) (6) June 8, 2009

189. (b) (6) OAG, WAG. I emailed the following to (b) (6) for approval: “(b) (6) (b) (6), has been invited by (b) (6) Bar Association of the District of Columbia (BADC), to attend the organization's annual meeting and luncheon tomorrow at the Mayflower Hotel. (b) (5)

(b) (6) approved. (b) (6) June 10, 2009

190. (b) (6) OAG, WAG/Gift acceptance question. (b) (6) has been invited by (b) (6) Bar Association of the District of Columbia (BADC), to attend the organization's annual meeting and luncheon tomorrow at the Mayflower Hotel. (b) (6) is a friend of (b) (6). The invitation comes from BADC. The AG is speaking at the event. I advised (b) (6) that approval is not needed based on the personal relationship exception. (b) (6) June 10, 2009

191. (b) (6) PAO, Recommendation letter question. A month or two ago (b) (6) met with a graduating senior from her Alma Mater for an informational interview. She just emailed (b) (6) to let (b) (6) know she's interviewing for a paralegal position at Justice, and asked (b) (6) to put in a good word for her. (b) (6) is happy to do so, but wanted to see if that was ok. (b) (6) doesn't know the individual except for the informational interview. Since it is a career, not a political, position for which the individual applied, I advised that (b) (6) shouldn't involve herself in the hiring process. If she had personal knowledge of the individuals qualifications or experience, she could serve as a reference for her, but to write a recommendation or contact the hiring officials could be a misuse her position. She agreed. (b) (6) June 10, 2009

192. (b) (6) ASG, Political event attendance. I sent the following email to (b) (6) for approval: “(b) (6) (b) (6) requests approval to passively attend a political fundraiser this evening. (b) (5)

(b) (6)

(b) (5)

(b) (6) approved. (b) (6) June 10, 2009

193. (b) (6) OAG, Conference attendance. The ACCD group would like (b) (6) to speak on 6/24 and would like to announce to their members that (b) (6) is participating. I advised that this is fine and they can tell their members. (b) (6) June 8, 2009

194. (b) (6) (Civil) sent us a draft 502 determination and asked for our concurrence. The memo would authorize (b) (6) to participate in the Chrysler bankruptcy. (b) (6) (b) (6) (b) (6) is a tax partner with (b) (6) which represents BAE Systems, one of many parties to the the bankruptcy. (b) (6) is not involved in case and works in a different office of the firm. (b) (6) (b) (6) is the Treasurer of the (b) (6) which has an interest in the bankruptcy. We asked (b) (6) for more information regarding (b) (6) stake in the bankruptcy and the role of the Treasurer's Office, especially in light of the State of Indiana's request for a stay by the Supreme Court. They decided to hold off on pursuing a 502 determination at this time. (b) (6) had also asked if a 502 determination would even be needed for the GM bankruptcy. Again (b) (6) has a stake. We advised that a 502 determination would be needed. The emails and the draft determination are in the file. (b) (6) June 8, 2009

195. (b) (6) Library Staff, Hatch Act. (b) (6) wanted to know if a Department employee may volunteer to work as an electoral judge in Maryland. I told her that the staff member will be able to volunteer as an electoral judge. The Maryland State Board of Elections website describes the position as being a volunteer position that is non-partisan, therefore there are no Hatch Act issues. In regard to the leave issue presented by the matter, federal employees may use annual leave, credit hours, compensatory time off, etc to participate in such activity. Administrative leave may be appropriate, but that is a management question. (b) (6) June 9, 2009.

196. (b) (6) OSDBU, post government restrictions. Mr. (b) (6) was contacted by (b) (6) a former employee of the Department OIG, who had recently left the Department and started his own business. He contacted Mr. (b) (6) to discuss possible contract work for his company. Mr. (b) (6) was concerned that (b) (6) was restricted because of his recent employment. I spoke with (b) (6) who said that prior to leaving the Department (b) (6) received all the pertinent ethics advice regarding his business and did not do anything unethical in approaching Mr. (b) (6) I told Mr. (b) (6) that our office has no objection to you speaking to or working with (b) (6) and the usual internal processes of his office should be used to determine how to handle (b) (6)' request. (b) (6) June 10, 2009.

197. (b) (6) post government employment. Ms. (b) (6) recently left the Department and requested a "post government employment" letter for use while interviewing - apparently one was specifically requested by Booz Allen Hamilton. We prepared a general letter for her based on her work at the Department and what restrictions would apply. Letter in the file. (b) (6) June 10, 2009.

198. (b) (6) (Civil) called with a recusal question. He wanted to know if (b) (6) could participate in (b) (6), a civil action filed by (b) (6) against (b) (6) personally. (b) (6) had no involvement in that matter. However, he did represent (b) (6). (b) (6) is mentioned in a memo that was referred to in the (b) (6) complaint.

(b) (5) Discussed with (b) (6) Sent (b) (6) an email saying that we agreed that (b) (6) should not participate in any way in issues relating to the memo which discusses his former client. At this time, it is not clear how central the memo might be to the lawsuit and so we did not believe (b) (6) should participate in the lawsuit based on the information we have now. (b) (5)

emails are in the file.

(b) (6) June 10, 2009

199. (b) (6) called to request approval to attend a reception sponsored by TechAmerica. We requested and (b) (6) approved the request on June 10, 2009. The request was as follows:

(b) (5)

of these subjects at this event. In addition, the speaker is a prominent person in the field. (b) (6)

(b) (5)

(b) (6) approved by reply email and I informed (b) (6) that she could attend. (b) (6) June 10, 2009

200. (b) (6) (b) (6) called because the person who took over her bond practice at (b) (6) sent her an email requesting some assistance and (b) (6) wanted to know what the parameters of her response could be. She had not opened the email but she was anticipating that it might ask for some assistance in locating a file, etc. I told her that would be ok. She asked if she could explain historically what the firm had done in a matter. I said that was ok. She then wanted to know if she could explain why the firm did what it did. I said that was beginning to approach the line and that she would not want to communicate that in such a way that it could be construed as advice as to how the firm should proceed in a matter. She understood that she had to avoid giving any advice. She decided to send a reply email setting some strict parameters on such communications. She raised a second question about whether she could communicate directly with the general counsel of a hospital authority about outstanding debt. I said she should avoid communicating directly with a former client. She agreed. (b) (6) June 10, 2009

201. (b) (6), OASG, gift. Helaine was invited to dinner and to "The Color Purple" at the Kennedy Center with her husband by one of his business associate's. To the best of her knowledge the business associate, Occidental, had no matters before the Department. Her husband was invited with spouse. I told her she may accept the invitation because she was invited based on her husband's employment, not her position with the Department. (b) (6) June 11, 2009.

202. (b) (6) CRT, WAG approval. (b) (6) called regarding the Washington Lawyer's Committee annual luncheon. A number of members of the CRT division wished to attend the luncheon, where the Department usually sponsors a table and the AG would be speaking. I was concerned about the large number of people who wished to attend, but after speaking with (b) (6) we determined that this year all who attended last year may attend and that the numbers will be reduced in the coming years. Emails are in the file. (b) (6) June 11, 2009.

203. (b) (6) (b) (6), (b) (6) attendance. (b) (6) (b) (6) would like to know if it would be acceptable for him to attend Renaissance weekend. I asked (b) (6) to find out whether he knew the (b) (6) who invited him well and if he had been invited in prior years. Due to his position as (b) (6) it would need to qualify for a WAG where it would serve in the Departments interest and I also advised that DOJ rarely approves spouses or families to attend a multiple day event. (b) (6) (b) (6) will decline the invitation. (b) (6) June 11, 2009

204. (b) (6) OASG, WAG. I emailed the following to (b) (6) (b) (6) for approval: "I am requesting that you approve (b) (6) to attend the dinner on June 15, 2009, at which you will be speaking, at the National Association of Attorneys General (NAAG) meeting. (b) (5)

(b) (6)

(b) (5)

(b) (6) approved. (b) (6) June 12, 2009

205. (b) (6) OCIO, post government conflicts. (b) (6) called regarding (b) (6) who is a program manager with OCIO. Prior to coming to the Department, she worked for (b) (6) for 19 years (ending in May 1996) and then (b) (6) from Sept 2003 - Feb. 2008 as an independent contractor to the Department. (b) (6) wanted to know if she could be the COTR on contracts involving both of these companies. I told (b) (6) that with (b) (6) - we see no conflicts with (b) (6) serving as the COTR on this contract because she has limited financial ties to her former employer and it has been almost 15 years since she worked for them. If she encounters any matters that may effect the willingness or capability of (b) (6) to maintain her defined benefit plan, she should recuse herself from such. (b) (6) - we see no conflicts with (b) (6) serving as COTR on this contract because she has no financial ties to (b) (6) and the one year cooling off period has already passed since her employment with this company. Emails in the file. (b) (6) June 12, 2009.

206. (b) (6) (OSG) had a 502 question. She has been assigned to brief Bilski, a high profile patent case. Her (b) (6) is an associate at (b) (6) and the firm participated as an amicus below and it is anticipated will file an amicus in the Supreme Court case. Amicus briefs might start to come in in mid-July. (b) (6) has never worked on the case and will not be working on the case. He works in the antitrust area. He is in the DC office. The person expected to handle the matter for the firm is also in the DC office but not in (b) (6) practice area. I talked with (b) (6) and sent her an email describing the process for getting a 502 determination if the firm does end up filing an amicus brief. The email and her response are in the file. (b) (6) June 12, 2009

207. (b) (6) (Civil) called to ask whether we thought it was necessary to do a 502 determination under the catch-all provision. An attorney (b) (6) (b) (6) who he considers a close relative who was once the general counsel for Glaxo but has not been employed by Glaxo for several years. Glaxo settled a case with the United States that involved a VA doctor who had prescribed Paxil for a patient who subsequently committed suicide. Glaxo is no longer a party. The United States won the case and the family has appealed. The question is whether the attorney could review the brief being written in this appeal. (b) (6) did not think a 502 determination was necessary. I agreed. Checked with (b) (6) who also concurred. Told (b) (6) a formal determination was not necessary and he could review the brief. Any possible appearance concern is remote and attenuated under these facts where (b) (6) no longer worked for Glaxo and Glaxo was no longer a party in the case. The email is in the file. (b) (6) June 12, 2009

208. (b) (6) (ATF) had a specific follow up question (log entry #184 of 6/4/09) about ATF co-sponsoring activities with the Association of Former ATF Agents (AFATFA). He wanted to know whether refreshments provided by AFATFA at a retirement seminar/conference would be considered a gift to the agency or a gift to individual ATF employees. I said it was a gift to the agency and so the standards and procedures for using agency gift authority should be

applied. He is second question was whether the event could be hosted at ATF HQ. I said there was no objection to that. AFATFA is made up of both current and former ATF employees. There may be some current employees who serve on the board. The emails on in the file. (b) (6) June 12, 2009

209. (b) (6) (b) (6), invitation to (b) (6) to speak at middle school graduation next May at the Washington Jesuit Academy. Straightforward graduation ceremony, not a fundraiser, (b) (6) is familiar with the school. Fine. (b) (6) June 12, 2009

210. (b) (6), OSG, Conflicts question. He has concerns about a conflict in a case that is on a very short deadline in which the Office of the Solicitor General has been asked to authorize amicus participation in the court of appeals. This is a case involving judgment creditors of Iran who are seeking, in partial satisfaction of their judgment, an order from a U.S. court assigning to plaintiffs the right to collect money that a French company, (b) (6) owes (b) (6). The potential conflict involves a separate proceeding in the same enforcement action to which (b) (6) was an interested party, which proceeding is now concluded and not subject to appeal. The judgment creditors separately sought to have the district court assign to plaintiffs rights that Iran might have numerous financial institutions, including (b) (6). (b) (6) (b) (6) is employed at (b) (6) as a (b) (6). (b) (6) has never worked on any matters involving Iran. Because (b) (6) own assets were never at issue (the only question being whether Iran could be compelled to assign its rights to certain assets), that part of the case was separate from the attachment proceeding with respect to the French company that is presently on appeal, because the proceeding involving (b) (6) is now closed and no longer subject to appeal, and because the action could not possibly have had any impact on the financial interests of his family, this does not strike (b) (6) as a genuine conflict. I advised (b) (6) that I do not see this as a conflict for him, so there is no bar to him participating in the pending matter. (b) (6) June 15, 2009

211. (b) (6) (CRT) called with a 502 question. The criminal section of CRT is investigating a (b) (6) who is the brother of (b) (6). (b) (6) said he knows the brother through the work done on the Jena 6 case. Through that case (b) (6) had substantial contact with the chief of the criminal section. Even on these facts the potential appearance problem is somewhat remote as the chief would not be working with (b) (6) but rather with people in Texas. However, in order to avoid any question at a later time, this investigation of the sheriff is being handled by a (b) (6) of the section who has no association with the brother or the sheriff. I agreed with (b) (6) that this certainly went the extra mile in avoiding any question of lack of impartiality. (b) (6) asked about documenting it. I said he could indicate the steps that were being taken out of great prudence and caution but that there was not even a need to analyze under the catch-all provision (b) (6) supervision of the investigation. (b) (6) June 15, 2009

212. (b) (6) (Civil) sent an email with a draft memo recommending that (b) (6) approve (b) (6) attendance at a widely attended gathering hosted by the U.N. High Commissioner for Refugees at the Newseum. The event qualified as a WAG. Sent (b) (6) an

email saying we concurred provided that he add a sentence to the memo which indicates specifically how (b) (6) attendance at this event is in the interest of the Department. The emails and draft memo are in the file. (b) (6) June 16, 2009

213. (b) (6) (b) (6) sent an email asking for advice regarding post-employment restrictions. He will be joining the (b) (6) law firm in a few weeks and they have asked if he would be barred from participating in (b) (6) v. (b) (6), a multi-district class action involving allegations of bid rigging in the market for municipal derivatives. (b) (6) was certain that he had never personally participated in any related matter when he was at DOJ. He was asking for assistance in determining whether the matter would ever have been pending in the (b) (5)

(b) (5)

(b) (5) able to confirm that the antitrust matter was never pending in Criminal and therefore was not under his official responsibility. Accordingly, he was not barred by 207(a)(2) from participating in the case when he got to the firm. (b) (6) responded by asking us to see if this matter might have been in the (b) (6) when he was the (b) (6). I spoke with (b) (6) on June 12, 2009. She could not recall this matter ever having been in (b) (6). (b) (6) was in her portfolio so she would have been the person most likely to have seen it. (b) (5)

(b) (5)

(b) (5) will get more specific facts on that case and get back to us. The emails are in the file. (b) (6) June 16, 2009

214. (b) (6) OAG, Political contribution question. A close friend of (b) (6) who is a state senator in Colorado, has asked her to be a bundler for his reelection and to use her network to raise about \$2000 for him. She would like to know if this is acceptable. I advised that she may make a personal contribution but is prohibited from soliciting, accepting or receiving political contributions, as well as any other active participation in partisan activities. (b) (6) June 17, 2009

215. (b) (6) ATR, official speech question. (b) (6) former firm contacted her to meet with its client, which also is her former client, the industry association for the paper industry which is having its annual meeting of general counsels in September and would like her to talk about ATR issues. We considered this under the Pledge and .502, and determined that she would be precluded from considering the request from her former firm on behalf of its client under the Pledge because the firm has a financial interest in being able to obtain (b) (6) appearance at its client's meeting. However, if the association contacted her directly, their financial interest may not be present, and the main consideration would be if it served a Department interest for her to meet with this industry at this time. Also, this is an ongoing education process for us all to determine the reach of the Pledge prohibitions with respect to former employer and former clients, especially regarding official speeches. (b) (6) June 17, 2009

216. (b) (6) (Civil) called with a question regarding the Executive Order. An appointee (whom (b) (6) did not identify but who he said was not a DAAG) has been invited to have a meal with the father of a former client. (b) (6) said that he would treat the situation as being the same as if the former client had made the invitation although he did not explain why. He was not asking about gift restrictions and we can assume that each would pay for his own meal. What (b) (6) wanted to know was what they could talk about and if the executive order meant that they could not talk about anything involving official business. I said the restriction on talking about anything relating to the performance of one's official duties put all matters that had to do with official business off limits in such a one on one setting. (b) (6) said that was how he read the executive order but he just wanted to confirm that it was that broad. (b) (6) June 18, 2009

217. (b) (6) (Civil) called with a question about judicial endorsements. An attorney is on the board of an Hispanic bar association for DC. The attorney wanted to know if he could participate in endorsements of judicial candidates by the association. A committee makes a recommendation and then the board votes on whether to adopt it. In the past he has abstained from participating in these decisions of the board. Now he would like to do so. He would do this in his personal capacity and there would be no indication of his affiliation with the Department. Discussed with (b) (6). Called (b) (6) back and said it would be okay to participate in the decision but that he should not be the one signing the letter from the bar association. It would be okay if the names of board members are listed on the letterhead. (b) (6) said he would advise the attorney in accordance with those guidelines. (b) (6) June 19, 2009

218. (b) (6) (b) (6) (b) (6) attendance at reception hosted by Ambassador of Canada. (b) (6) would like to attend a reception hosted by Ambassador (b) (6) Ambassador of Canada, on the Occasion of the Visit to Washington of Canadian Deputy Ministers - June 29, 2009. I advised that this was fine to attend. (b) (6) June 18, 2009

219. (b) (6) EOUSA, Outside activity question. (b) (6) would like to know if under 3801.106(b)(ii), does doing volunteer work for the Bedford Teen Court "involve" a criminal

matter? Their view is that since this is a diversion program, and pre-indictment, that it does not involve criminal matters. However, arguably because the teens have been arrested for something, it could be viewed as a criminal matter. I advised that I think this does come within the scope of 3801. I believe we had another AUSA or Attorney who also was doing this some years ago, and it was approved. I would definitely recommend approval since we don't handle juveniles and it is a diversion program. (b) (6) June 19, 2009

220. (b) (6), (b) (6) letter. (b) (6) sent a letter that was a short congratulatory note from (b) (6). She wanted to know if it was ok for (b) (6) to send. I advised that it would not be appropriate to send congratulations as (b) (6), because there is no official DOJ interest in the recognition as Father of the year. Even if there was, you would have to vet him to make sure there was not anything to weigh against it, or which could embarrass the Dept. If (b) (6) knows him well enough that he wants to send a personal congratulations on personal stationery and without using his title, that's ok. (b) (6) June 22, 2009

221. (b) (6) (JMD) sent an email indicating they were beginning the planning for next year's IT Security Conference. I responded to let us know if he needed assistance. The email exchange is in the file. (b) (6) June 23, 2009

222. (b) (6) EOUSA, publication. (b) (6) sent an article written by an AUSA for a Department of State publication. I advised (b) (6) our office had no objection and included the suggested standard disclaimer language. (b) (6) June 23, 2009.

223. (b) (6) Civil, 207 question. (b) (6) called regarding a former Civil attorney from the False Claims Act section who is not working for private practice. While at the Department he worked on a settlement regarding a False Claims Act case, which was settled in Dec 2007. He is now being asked to work on another case with the same defendant but a different False Claims Act matter and a different whistleblower. The defendant, who the attorney would be representing this time, is claiming that certain issues raised in the new case were settled in the Dec 2007 settlement. I told (b) (6) he could not work on the new case because of his prior involvement. (b) (6) June 23, 2009.

224. (b) (6), conflict of interest. (b) (6) was asked to sign a GSA conflict of interest form because of her service on the Technical Evaluation Board. She was concerned that she may have a conflict because (b) (6), who she lives with, has (b) (6) worth of (b) (6) stock. We looked at her personal holdings, as well as (b) (6) holdings, and determined she did not have a conflict. Emails in file. (b) (6) June 23, 2009.

225. (b) (6) (Community Relations Service, (b) (6)) called with a question from the new (b) (6). (b) (6) has a fixed term and is a holdover from the previous administration. (b) (6) is a new Schedule C appointee. (b) (6) has asked her to assist (b) (6) in an EEO matter involving a complaint by a disappointed job applicant that alleges various bases of discrimination including age, race,

affiliation with the NAACP, and religion. (b) (6) wanted to know if there was any policy that prohibited a person in a political slot from being involved in an employment matter. The complaint went to JMD EEO which hired a contractor to gather the facts. The question was whether she could assist (b) (6) in that process. I sent (b) (6) an email asking whether she was in a 905 series and what the involvement of (b) (6) was in the hiring decision. (b) (6) called back on June 24 and said that she was brought on as a (b) (6) series. He said they would look further at the appearance concerns of having her involved in the investigations phase of the complaint. The emails are in the file. (b) (6) June 24, 2009

226. (b) (6) (b) (6) wrote a letter asking for guidance on a post-employment question. We requested and he provided some additional information by email. Based on the information that he provided, we were unable to say that he would not be barred by section 207(a)(2) from representing his law firm in a disqualification motion that might be filed in connection with an anticipated lawsuit brought by a former firm client against a current firm client. We provided the following advice: (b) (5)

(b) (5) we agree with your conclusion that you are not barred by section 207(a)(1) from participating in the disqualification proceeding. We also agree that based on the information that you have provided you are not prohibited from participating in the disqualification proceeding by sections 207(b), (c), (d), or (f). The question that remains is whether you are prohibited from participating in the disqualification proceeding by section 207(a)(2). Section 207(a)(2) provides that no former employee for two years after his service terminates may: (1) knowingly (2) with the intent to influence (3) make any communication to or appearance before (4) an employee of the United States (5) on behalf of any other person (6) in connection with a particular matter involving a specific party or parties (7) in which the United States is a party or has a direct and substantial interest and (8) which the person knows or reasonably should know was actually pending under his official responsibility within the one year prior to the termination of his Government service. In this case there are two issues under section 207(a)(2): (1) whether the matter in which you would represent the firm in connection with a disqualification motion is the same party matter as the investigation and plea involving Party A; and (2) whether the United States has a direct and substantial interest in that matter. (b) (5)

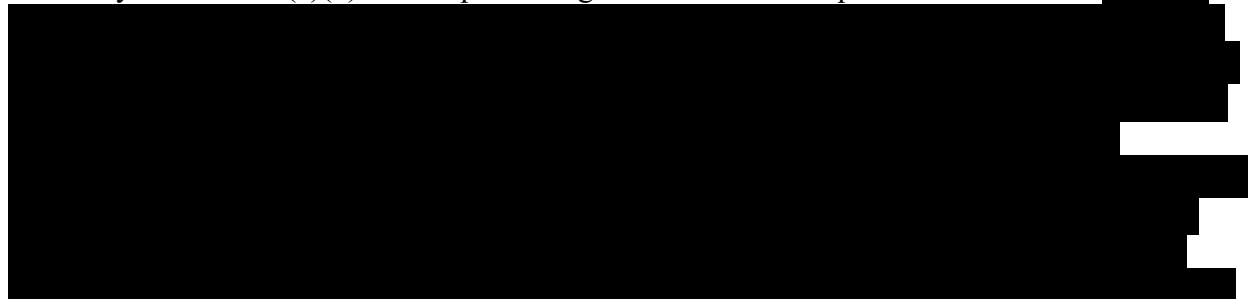
(b) (5)



(b) (5)



Based on the information available to us at this time, we cannot say that the United States does not have a direct and substantial interest in the civil lawsuit. Consequently, at this time we do not have sufficient information to be able to say that you are not barred by section 207(a)(2) from representing the firm in the disqualification motion. (b) (5)



The letter and emails are in the file. (b) (6) June 24, 2009

227. (b) (6) (OSG, (b) (6) had a question about an invitation to speak at Illinois Wesleyan University in October. When (b) (6) worked at Wilmer Hale he was involved in the Boumediene case. He was invited to give a talk on habeas jurisprudence. In addition to Boumediene, he might talk about other recent cases - Rasul, Hamdi, Padilla, Hamdan etc. We

went through an analysis under 807 as to whether the subject of his speech related to his official duties and thus prohibited him from accepting the \$1,000 honorarium. The remaining question was whether the speech concerned an “ongoing policy, program or operation” of OSG. There are currently several matters relating the to the habeas rights of Guantanamo detainees pending in the OSG. We advised (b) (6) that his speech did concern a policy, program or operation of the OSG and thus he could not accept the honorarium. He could give the speech in a personal capacity and could accept travel reimbursements which he would have to report next year if it met the reporting threshold. Also we advised on the use of his title and position. The emails are in the file. (b) (6) June 24, 2009

228. (b) (6) (JMD, (b) (6) [cell]) called with a question about a conference. OMB is the chair of a federal interagency IT group. A Navy IT executive is a co-chair. And (b) (6) is a co-chair. They were interested in a 2-3 conference in October on the subject of cyber security. A company called (b) (6) was interested in doing all of the conference arrangements, logistics, etc. They have done conferences in the past on “defending cyberspace”. GSA has some money (about \$48K) to pay for space. They were interested in the space at the Ronald Reagan Building. (b) (6) had questions about ethics issues this might raise and also wanted to know what legal instrument would be used to spell out the respective roles and responsibilities, MOU, cooperative agreement etc. I said she would need to talk to JMD OGC about the legal arrangement and she agreed. She would be on a steering committee that would set an agenda, select and invite speakers, etc. The steering committee would have both government and private sector people on it. It was expected that the conference would be free to government employees. About 600 persons would attend. They would expect to continue to do this type of conference once or twice a year. (b) (6) wanted to know to what extent DOJ could be a resource for this activity. (b) (6) had a meeting on June 24 and after the meeting she called to say that the event is on hold for the moment. Navy wanted to consider the possibility of the government simply doing the event itself. (b) (6) said that she did not need any further assistance from DEO at this time. She said she would certainly keep us informed when the planning of this event resumes. (b) (6) June 24, 2009

229. (b) (6) (EOUST, (b) (6) called with a book question. They are hiring a trial attorney and have two finalist candidates. One candidate is writing a bankruptcy for dummies type book and his co-author is a bankruptcy judge that he would appear before if hired. The judge is one on only three judges in that region. The book is at an advanced stage and may even be at the point of reviewing page proofs. It is expected that all work on the book will be completed in July, with a September publication date. For the purposes of this question it is assumed that he will not be doing any substantive work on the manuscript after he would become a Department employee. (b) (6) did not know what the likelihood might be of future editions of the book. The candidate and the judge would receive royalties. (b) (6) wanted to know what kind of recusal might be necessary. Discussed with (b) (6) Called (b) (6) back and said he could not do any work on subsequent editions of the book after he became an employee. He could not do any paid writing on that subject. If they are going to consider him further, he needs to understand this and to know what he would be giving up. He would have a covered

relationship with the judge because of this business relationship. If the book were complete and there was no further work being done on it, he should be recused for at least one year and possibly longer given the appearance concerns. However, if there were a second edition and the judge did the updates and he was going to continue to share in royalties, there would again be a need for recusal. (b) (6) agreed with this. She did not think they would go forward with an offer. (b) (6) June 25, 2009

230. (b) (6) Civil, contractor. (b) (6) forwarded an email from (b) (6) who is a full time employee with the Department and owns her own fitness/wellness business. She wanted to contract with the VA to do fitness/wellness work with veterans. I advised (b) (6) that the FAR section 3.601 prevented any business solely or partially owned by a government employee to contract with the government. (b) (6) June 25, 2009.

231. (b) (6) OLP & (b) (6) OASG, Attendance at political event. I sent the following email to (b) (6) & (b) (6) for approval: "I am writing to request approval, for (b) (6) (b) (6), and (b) (6) (b) (6), to attend a thank you dinner for members of the Obama campaign's National Finance Committee (NFC), on June 29 at the Mandarin Oriental Hotel. It is described as a "campaign reunion dinner" and it is sponsored by the DNC and Organizing for America (OFA). The President will attend. There is a meeting of the DNC NFC the following day to which attendees also are invited. Neither (b) (6) nor (b) (6) will attend the meeting. I am seeking approval under the Department's policy that political appointees may passively attend political events with approval. The invitation was extended based on both of their service on the NFC, and therefore the gift is permitted under the standards of conduct governing gifts, either based on the exception for an outside business relationship, or the exception for a gift from a "527" political organization. I would note that the exception for gifts from 527 organizations allows employees who are permitted by the Hatch Act to actively participate in political activities, to accept a gift from a political organization. Both (b) (6) and (b) (6) are permitted by the statute to be politically active and therefore to use this exception. Under the Department's policy for political appointees their political activity is more restricted than by the statute. However, since Department policy allows them to passively attend political events, I believe this exception may be applied to them and the invitation. We have permitted employees to accept such gifts in the past. The DNC and OFA are not registered lobbying organizations, so the restriction in E.O. 13490 on accepting a gift from a lobbying organization does not apply. Under the Department's policy (b) (6) would seek approval from the Associate AG, and (b) (6) would seek approval from ODAG, which is why I am emailing both of you. I believe the dinner is appropriate for approval under the Department's policy, with the understanding that neither will participate actively in the dinner, e.g., they are not on the program, will not be introduced, etc. I recommend that you approve their attendance." (b) (6) & ASG (b) (6) approved their attendance. (b) (6) June 25, 2009

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234. (b) (6) CRS, new schedule C, had questions concerning her assisting career atty

(b) (6) with EEO complaints against CRS. She faxed her PD, which is for "Senior Counsel" and which does read more like a legal advisor to the Director, CRS, rather than the more usual attorney advisor. She asked if there was problem with her, as a new administration appointee, serving in this role for a holdover appointee; also whether a political should be assisting with personnel/EEO matters. I told her there was nothing that prohibited a political from participating but that in many components these matters were handled by career attys. Also, nothing would preclude her from advising the director even though he was appointed by prior administration; we don't distinguish between political appointees in this way, although it's less common to have a new appointee advising a holdover. CRS is so small, however, there really isn't any other way to organize the work, just not enough people. My concern is whether, if she is viewed by the director and others as "his" counsel, it is appropriate for her to participate in complaints in which his actions are at issue, which must be the case with some matters in CRS, again given the size of the component. I told her I would do some consulting and get back to her. Spoke to (b) (6) in OGC and we both spoke to (b) (6) in Fed Programs. Confirmed that there are no prohibitions on her assisting (b) (6) but we all agreed that she should be encouraged to consult with either (b) (6) or (b) (6) if there were questions she had with procedures/processes or her participation; also agreed that her role would not be "reporting back" to the director in any sense. Also, if a situation arose where she felt the director should not be making the decision, e.g., settlement of the complaint, she could seek their advice and assistance with that as well. (b) (6) and I talked through a few particulars, and she will consult as needed. (b) (6) June 25 - 29, 2009

235. (b) (6) (b) (6), post-employment. (b) (6) firm, (b) (6), represents Northwest airlines in a criminal antitrust matter regarding air cargo being investigated by the Antitrust Division. (b) (6) understanding is that this matter has been pending within DOJ since at least 2006. He does not recall ever hearing about this matter while he worked in the Attorney General's Office, nor while he worked in the Criminal Division. Based on his last exchange with (b) (6) (with regard to another antitrust matter), (b) (6) is assuming that he is free to represent Northwest airlines in the above matter, including interacting with antitrust division attorneys, but wanted to check with us first. I advised (b) (6) that the matter was not pending in the Criminal division during his time as (b) (6), and we have no reason to conclude that it was raised with OAG. Based on our inquiries, combined with his recollection that he did not hear about or participate in the matter while serving as deputy chief of staff, we concluded that he is not prohibited from representing Northwest Airlines. (b) (6) June 30, 2009

236. (b) (6) OAG, received a written release for (b) (6) to sign for his taped remarks to the ABA, accepting the pro bono award they are giving the Dept's program. It was fine; I explained the limitation we routinely give anyone when it comes to written materials we give, which cannot be copyrighted by anyone else. (b) (6) June 30, 2009

237. (b) (6) OSG, recusal issue (b) (6) and Harvard. Case involving FERC order re electric rates in New England; Harvard was one of a consortium of large users who filed objections the order. Most of the objecting parties, including Harvard, settled the matter, but case continued and remaining issue at S CT is whether FERC could impose a higher standard of

review for any future change to the rates for the non-settling parties. Harvard is not affected by this legal issue; also, Harvard is not disproportionately affected by the rates or FERC Order, so I don't think there is any financial interest that will be affected by the S.Ct, and if so, it fits the regulatory exemption for matters affecting an employee on a leave of absence from an educational institution where effect on employer is only as part of a class. (b) (6) June 30, 2009

238. (b) (6) ATR, ABA survey. ATR employees are being asked to complete an ABA survey and (b) (6) wanted to make sure that it was ok as long as they were not asked non-public information. I advised that I did not see a reason why not with the non-public caveat. (b) (6) June 30, 2009

239. (b) (6) SEPS JMD, post-employment issue. SEPS and CRM received solicitations from retiree (b) (6), formerly the security officer for (b) (6), promoting his business now that he is retired. Other components likely have received it, too. The solicitation states that the Department has security vulnerabilities/violations in transmitting sensitive but unclassified information for transcription which only his company is qualified to fix. Told (b) (6) that we had confirmed earlier that (b) (6) is not violating any post-employment restrictions, specifically he is not a senior employee and this is not in connection with any contract or procurement in which he participated or for which he had official responsibility. I asked (b) (6) if (b) (6) has any specific restrictions on disclosing the information that he includes in his solicitation, after leaving DOJ, e.g., is it classified or was he subject to any specific limitations on information as a security officer. (b) (6) thinks not. But some of what he says in the emails, especially to CRM, is not accurate per (b) (6). In sum, he is not violating any rules although this is a poor way to market his product. Obviously, no component has to use his services, and (b) (6) who worked with him for a long time, may get in touch to suggest that he tone down the language. (b) (6) June 29-30

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DEO Counsel Log, Third Quarter, 2009 (July 1 - September 30, 2009)

1. (b) (6) BOP, asking if DOJ had an agency policy on allowing family members to ride in GOV's with employees. No, I think it's been left to individual components to authorize this as they deem appropriate. It essentially means the dept assumes the risk of injury, etc. to the non-employees, and obviously it has to be justified by specific occasion and not a general allowance for them to accompany spouse. BOP's policy is no; that's fine, it's up to them to determine. (b) (6) July 1, 2009.
2. (b) (6) ENRD, gift/assistance. (b) (6) emailed regarding an ENRD attorney working on a water rights adjudication on behalf of the US as a trustee for an Indian tribe who is a co-party in the litigation. The attorney was scheduled to have a meeting between the tribe and the DOI negotiator and the tribe had planned a 1-2 hour flight over the river basin to allow those involved to be acquainted with the area to better understand the issues involved. A non-profit group called Sustainable Northwest was donating the flight the conjunction with another non-profit called Light Hawk, which provides aircraft and pilots to partner organizations in the environmental field. (b) (6) wanted to know if this would qualify as assistance and if they could accept it and the attorney could go on the flight. She said it would aide in the attorney's understanding of the case and this was the most efficient way to gain this knowledge. She also reported that the flight and support were gifts to the tribe, who was offering to share it with the government officials. Based on these facts we determined that it would be assistance from a co-party since the tribe has received the assistance from the third parties and is sharing it with the government. Notes in file. (b) (6) July 1, 2009.
3. (b) (6) OJP, about the (b) (6) who has been fined by her home city of Hartford for failure to maintain her property. (b) (6) and I discussed this a few weeks ago. The reg requiring employees to pay just debts applies; if she contests the fine she should provide documentation that she has contested it through appropriate procedures with the city. Apparently there has been press coverage in Hartford criticizing her given that one of the (b) (6) program's purposes is revitalizing neighborhoods. (b) (6) July 2, 2009
4. (b) (6) CIV, misuse of position and speaking issue. Spoke to him about webinar issue OGE raised with us. The CIV atty can either withdraw from the webinar he was giving in his official capacity with GOV training institute, or try to see if he can speak on the topic in his personal capacity. I think it will be difficult and he will have to get guidance within DOJ on what non-public information he may use. It is complicated by the fact th this is for the profit of an outside organization and thus would be more restrictive given the reg on misuse of information. (b) (6) July 1, 2009
5. (b) (6) OASG, Speaking invitation. (b) (6) emailed to ask whether she may be a panelist for a program in the San Francisco area, sponsored by the American Constitutional Society (ACS) Lawyer Chapter for the Bay Area. The likely date is August 3, 2009 or July 31, 2009, a lunchtime event (unclear if it is brownbag or lunch served). The program topic has not been determined yet and the organizers are agreeable to our input -- (b) (6) has suggested something such as, "Careers at the Justice Department," although she understands that the

organizers are interested in learning more about what is happening at DOJ these days and what kind of changes have occurred with the new Administration. The ACS is not a registered lobbyist. No gift or honorarium. The audience typically consists of mostly younger lawyers, and these summer events attract one-half to one-third summer associates. The two other panelists would include former AAG (b) (6) and former DOJ official (b) (6). MCLE (continuing legal education) credit may be offered. The Associate has approved her speaking invitation and asked that she clear it through Ethics. While ACS is not a partisan organization, some regard it as a progressive counterpart organization to the Federalist Society. Two weeks ago, Administration officials and DOJ's DAAG of OLP (b) (6) spoke on a panel at ACS's national convention, here in Washington D.C. (b) (6) is not an ACS Board member nor member and ACS is not paying for her trip. (b) (6) flies to SF most weekends, so she was going to pay. Since they would want to identify her with your DOJ title, she might want to discuss official business, she should consider her participation to be in her official capacity. (b) (6) July 2, 2009

6. (b) (6) ATR, travel/gifts. The annual ABA antitrust conference will be held in CA and all those in leadership positions who attended previously have had their travel expenses paid by the Department and traveled in official status. The ABA would then reimburse the Department for hotel and food. However, this year it has been determined that only some people will have their travel paid for by the Department. The others will be told they will have to attend in their personal capacity. The ABA is still willing to reimburse them for the lodging and food expenses. (b) (6) wanted to know if they could accept these reimbursements personally. I conferred with (b) (6) and we determined that since they would be attending in their personal capacity, the gift of travel from ABA is given to them in their personal capacity and not based on their official Department position. Therefore they may accept the reimbursement. Notes in file. (b) (6) July 2, 2009.

7. (b) (6) ATR, gifts. (b) (6) called with a question about training and gifts. Georgetown University has a 1 week CLE course on electronic discovery. It is very pricey, \$2000/person for the course. If an organization sends 3 people, Georgetown will reduce the third person's costs by \$500. (b) (6) at ATR knows the person who runs the CLE at Georgetown. (b) (6) wanted to know if he could try to work out a deal for ATR employees to attend the course. I told him that (b) (6) could inquire if there is a government discount that the CLE regularly offers, but he could not ask for a special price for ATR. (b) (6) then asked if (b) (6) were to be offered free attendance at the course, could he take it. I asked if the free attendance would be based on his official position, (b) (6) said yes it would be to let him "try" the CLE and then use it as future training for ATR. I told him (b) (6) could not accept the gift because it would be based on his official position and would be from a prohibited source. (b) (6) July 2, 2009.

8. (b) (6) formerly in OSG, Post-employment advice. (b) (6) became a partner in a law firm, King & Spalding, a couple weeks ago. At the firm, he would like to start working on a series of products liability cases that were brought against a drug company. The potential issue is that, when he was in the Solicitor General's Office, he worked on other cases involving other parties and other products that raised one of the same basic legal issues (federal preemption of

the state-law claims). He wants to verify that the bar does not apply here because we are talking about different cases with different parties concerning different products. I verified that he was correct that the basic post-employment statute, 18 U.S.C. Section 207(a)(1), would not prohibit him from working on a different matter from those he participated in while serving in OSG, even though the same issue is present in the matters. However, given the presence of the same issue, he would need to be mindful not to disclose client confidences that he obtained in the course of his representation here, in the course of representing current clients. We do not specifically advise on the rules of professional responsibility, so my suggestion was to review the rules for the relevant jurisdictions (in which he is licensed and in which he practiced for DOJ) for the scope of client confidences and the limitations on disclosure and use. (b) (6) July 6, 2009

9. (b) (6) OAG, gifts. (b) (6) called with a question regarding an employee who wanted to give a gift to (b) (6). I told her gifts to superiors were not allowed but asked about the circumstances. She said this employee had just written a book and won an award and would be meeting (b) (6) and wanted to present him with a copy of the book because (b) (6) had inspired him to write it. The book was self-published. I told her in special infrequent occasions a small gift (no more than \$10) appropriate to the occasion may be given and that in this case, the book sounded like it would be ok. (b) (6) July 6, 2009.

10. (b) (6) OSG, 502 approval to participate in (b) (6). I emailed (b) (6) for approval for (b) (6) to participate in this case. The question presented in this case is as follows: Whether NFLP, the NFL, and the teams functioned as a "single entity" when granting the company an exclusive headwear license and therefore could not violate Section 1 of the Sherman Act, 15 U.S.C. 1, which requires proof of collective action involving "separate entities," *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752, 768 (1984). (b) (6) former firm, (b) (6), represents (b) (6). The United States is not a party to the case; it will be participating as amicus curiae. Mr. (b) (6) did not work on the matter while he was at (b) (6), has never represented (b) (6), and has no client confidences regarding the company. Mr. (b) (6) has no outstanding payments or ongoing arrangements with (b) (6) with the exception that he has an undistributed amount in a flexible spending account he funded while with the firm. Mr. (b) (6) has a covered relationship with his former firm, (b) (6). The fact that members of (b) (6) former firm represent (b) (6), and that Mr. (b) (6) was an associate with the firm until very recently, may cause a reasonable person to question his impartiality in the matter. (b) (6) participation is important due to his substantial antitrust experience and the unavailability of other OSG staff with similar experience. (b) (5)

[REDACTED]

[REDACTED]

[REDACTED] (b) (6)

approved. (b) (6) July 7, 2009

11. (b) (6) ODAG, Gift acceptance. (b) (6) (b) (6) met with (b) (6) (b) (6) (b) (6) on May 7, 2009. (b) (6) presented (b) (6) with a crystal round bowl (b) (6) engraved. JMD had the bowl appraised, value being

\$60.00. (b) (6) would like to keep the gift. I advised that was within the \$335 de minimis amount for a gift from a foreign government and (b) (6) (b) (6) may keep it. (b) (6) July 8, 2009

12. (b) (6) former (b) (6), post government employment. (b) (6) called with a question regarding contact with the Department. He is now with (b) (6). Prior to coming to the Department he represented (b) (6) in a False Claims Act matter which involved Civil. That settled in March 2007. In Aug 2007 he joined the Department, becoming (b) (6) in Aug 2008. He left the Department Jan 20, 2009. While he was at the Department the line attorney on the (b) (6) matter had a question and contact (b) (6) referred him to the associate at his former firm that was handling the matter and did not discuss it with the Department attorney further. Now (b) (6) has come back to (b) (6) and asked for help in negotiating an agreement related to the settlement. He wanted to know if he could work on it. I told him that because he is still under the 1 year cooling off period, he would not be able to talk to Civil about this matter but he could work behind the scenes. No communications with the Department could be related back to (b) (6) or attributed to him. He did not work on the matter while at the Department and therefore the lifetime and two year bans do not apply in this case. (b) (6) July 7, 2009.

13. (b) (6) OAG, AG speaking event tickets. The AG is giving remarks at the Vera Institute on Thursday. The event is ticketed but free and open to the public. (b) (6) wanted to ask Vera to set aside 2 tickets for her parents so they can attend the lecture. Vera had not just offered to set aside the tickets. The public may get tickets for this event by request. I advised that since this is not an official request, it would not be appropriate for OAG staff to ask because I think that would be viewed as official, but if (b) (6) wanted to ask them herself, making clear that it is a personal request, it's alright. (b) (6) July 8, 2009

14. (b) (6) CRM, Writing a tribute. (b) (6) has asked whether he can write a tribute that would appear as a preface to an autobiography of (b) (6) (b) (6) was a law professor and (b) (6) who (b) (6) has known and admired for many years. (b) (6) recently died. Essentially, (b) (6) tribute would focus on (b) (6) contributions to international criminal law, during and since (b) (6), and his devotion to the pursuit of justice on behalf of the victims of crimes (b) (6). (b) (6) would not offer any appraisal or endorsement of the book. (b) (6) also spoke last year in his official capacity at a tribute dinner honoring (b) (6) while (b) (6) was still alive. If he were permitted to write the preface, he would essentially mirror the remarks he made at the tribute dinner. He would like to use his title if possible. I advised (b) (6) that he could write a personal foreword/preface for the book, not using his title, and it would be okay to mention DOJ as necessary within the personal tribute, but it needs to be clear that it is not a DOJ endorsement of the individual, because we can't separate the book from the individual here. (b) (6) will review it. Also, he must obtain in writing an agreement from the publishers that they will not use his name or title to promote the book. (b) (6) July 8, 2009

15. (b) (6) (b) (6) conflict of interest. Mr. (b) (6) is a private attorney with (b) (6) currently but has just accepted a position with Tax starting in November. He has been representing (b) (6) He is one of the associates on the team

working on this matter. OPR suggested he contact us to see if there were ethics issues. Currently he is working on comments on a draft report - the final is due in a couple of weeks. I told him there were not any ethics restrictions but he should probably talk to the DC Bar Counsel or his firm's bar counsel to determine if there were any bar rule restrictions. He said he already had written consent of his client to keep working but that he would reach out to the bar counsel.

(b) (6) July 8, 2009.

16. (b) (6) OASG, Profile for a newsletter. (b) (6) is seeking approval to be the subject of a short profile for the National Asian Pacific American Bar Association's upcoming newsletter publication. They are highlighting Asian Pacific American lawyers in the Administration.

(b) (6) understands they have also asked (b) (6) (b) (6) as well and that he has received approval. The Associate has ok'd this request. I advised that this was fine with one caveat - please don't let her remarks be an endorsement of the organization (express or implied) which would not be appropriate in these circumstances given the focus on the article, i.e., her official position. (b) (6) July 9, 2009

17. (b) (6) (b) (6) (b) (6), JMD, outside employment. (b) (6) (b) (6) staff requested approval to work part-time for a consulting firm, (b) (6). This request was disapproved by (b) (6) (b) (6) July 9, 2009

18. (b) (6) CRT, investigation. (b) (6) called regarding a District employee who was working on case with CRT. While involved with the matter, she applied for a position within the same section of CRT. She claimed that she had a waiver from the District, but it turned out that she did not. She was offered a position but turned it down. (b) (6) wanted to know what her reporting responsibility was. (b) (6) advised that she should contact the DC ethics office because it was their employee and Public Integrity would not investigate it. (b) (6) called back and stated that another employee involved in the situation had already reported it to OIG because he felt that there was misconduct on the part of Department employees. I told (b) (6) she could touch base with the OIG but that they should be left to investigate at this time. (b) (6) July 9, 2009.

19. (b) (6) (b) (6) Post government restrictions. (b) (6) called regarding a case he has been asked to work on at his new private practice. He left the Department in Jan 2009 - he was (b) (6) until April 2008 when he became (b) (6). He has been asked to help write a response to a grand jury subpoena from the (b) (6). He does not believe he had any involvement in this case at all while he was at the (b) (6), he knows nothing about it. He wanted to know if he could work on it. I discussed the one year ban with him and that he could not communicate with the USA for one year from when he left the Department but that he may be able to work behind the scenes. I told him if he truly had no recollection of the case and no client confidences or information, it should be ok for him to participate in preparing the response. He was going to check the press releases from (b) (6) during his time there to see if he saw anything about the case. (b) (6) July 9, 2009.

20. (b) (6) EOUST, writing. (b) (6) emailed about a paralegal who was writing a NALA outline on bankruptcy. She would not be getting paid for the work. I advised that attorneys are responsible for the work of their paralegal, so her supervising attorney should review the outline

to be sure that everything is factually and accurately reported. I also discussed the paralegal's use of title - that it may be included in biographical information but cannot be highlighted. Also mentioned that the standard disclaimer should be included with the outline. (b) (6) July 9, 2009.

21. (b) (6) JMD/SEPS: Discount. Can he avail himself of the 15% fed employee discount offered by AT&T on a new Iphone? Yes. He provided his fed email as verification of his fed employment - actually he provided not his DOJ email address, but his "navy.mil" email address - he is a reservist currently on active duty. Is that OK? Yes - our office has advised that this very limited use of the DOJ email address for the one time employment verification is permissible: AT&T sends an email to the provided DOJ address, and, when its receipt is confirmed thereby confirming it as an active email address of a federal employee, the discount takes effect. However, (b) (6) should change his contact email address to his personal one for any further commercial transactions and communications with AT&T. He has already done so - the navy reserve gave him the same advice about the email address. He was primarily double checking with us about accepting the discount as a DOJ employee: I told him it is permissible under 2635.204 (c). (b) (6) July 10, 2009

22. (b) (6) CIV, (b) (6) recusal check. (b) (6) asked that for purposes of the lifetime post-employment ban is it "personal and substantial participation" for a (b) (6) to have had his name on a Supreme Court brief (in the absence of any other information about his involvement (including that he ever actually saw the brief). Also, if (b) (6) read and signed off on a memo to authorize an appeal at a prior stage of the case, was she correct in presuming that would be personal and substantial participation. I advised that that is personal and substantial participation. I also advised that it's not a great position for (b) (6) to have his or her name on a brief to the Supremes and then for us to say he/she had no involvement (per her first question). The higher one is the less one has to do in order for action/inaction to be personal and substantial. If, as (b) (6), he was briefed on the case and had an opportunity to approve, disapprove or advise on the representation, that may constitute p & s participation by (b) (6) given his responsibilities. Also, if his name is on the brief and there is an absence of other documentation demonstrating whether or not he did participate, I think the presumption has to be that he did participate, not the reverse. In order for him/us to conclude that he did not participate, he would have to have a well-founded good faith belief that he did not participate, and standing alone the fact that he did not recall participating would not be sufficient. There may be other facts that would support non-participation but we would have to consider them specifically. (b) (6) July 9, 2009

23. (b) (6) CRM, Recusal question. (b) (6) is represented by (b) (6) at Wilmer Hale in her (b) (6) matter, which is still pending. They filed a motion to vacate (b) (6) in early June, but Judge (b) (6) has done nothing with it. (b) (6) is not under investigation by (b) (6) (court-appointed special prosecutor). Her section is currently working with the Solicitor General's office in a case now before the Supreme Court, (b) (6), which involves a challenge to a DC Code provision that allows victims of domestic abuse to charge and prosecute their abusers for violations of court protective orders without the involvement of the Executive Branch. Robertson argues that this "private prosecutor" statute is unconstitutional. She would like to know if she can work on the case.

██████████ is represented by the D.C. Public Defender Service, and they have hired (b) (6) at (b) (6) to help them formulate their arguments before the Supreme Court. It is (b) (6) understanding that (b) (6) (and hence (b) (6) role) is one of behind-the-scenes consultation. (b) (6) has not entered an appearance in the case. (b) (6) has, to his point, sat on the sidelines in (b) (6), but would like to know if that is necessary. I advised that she would need a determination authorizing her participation under the impartiality regulation. Under the regulation, she is recused from a matter in which someone with whom she has an outside business relationship (her representation by (b) (6)) is a party or represents a party. Although (b) (6) is working behind the scene, we consider him to be providing representational services to ██████████ under the reg. However, the fact that he is only consulting, and that he does not personally represent her, would weigh in favor of authorizing her participation. She then advised that she would not participate in the matter. (b) (6) July 9, 2009

24. (b) (6) OAG, (b) (6) speech. (b) (6) was seeking approval for an (b) (6) speech to GMU law students in September in order to schedule it. I advised that it looked fine. (b) (6) July 9, 2009

25. (b) (6) ODAG, serving on a committee. (b) (6) wanted to confirm that there are no ethics issues in her serving on the reunion committee for a law clerks reunion for the judge for whom she clerked. Her role wouldn't entail raising any money, it would just be to help with logistics, help organize the event, confer with the caterer, etc. I advised that it was fine. (b) (6) July 9, 2009

26. (b) (6), ODAG, gift question. (b) (6) is speaking at an event in Colombia, SC at the Univ of South Carolina on Monday, 7/20. The event will be to announce the Palmetto Project, a collaboration between DOJ's NAC and the USC to expand the training space/capabilities at the NAC. The USC President (who will also participate in the press conf) has invited (b) (6) to attend a light luncheon buffet following the event. (b) (6) would like to know if (b) (6) may attend. I advised that if the cost is \$20 or less (sounds like it from the description), it's fine. (b) (6) July 9, 2009

27. (b) (6) PRAO, official travel. (b) (6) emailed regarding (b) (6) the Pro Bono Program Manager, traveling to Chicago to accept the ABA's pro bono award on behalf of the Department. She was approved for official travel and the ABA has offered to reimburse DOJ for airfare, ground transportation and per diem. (b) (6) wanted to know how to determine that these met the requirements of 41 CFR 304-44. I told her that if the values seem appropriate, it was in line with normal reimbursements. She also wanted to know what sort of conflict check she needed to do. I told her with the ABA it was a little easier, but she should check with (b) (6) to be sure she was not working on any matters with the Department that involved the ABA (b) (6) July 10, 2009.

28. (b) (6), OCIO, outside activities. Ms. (b) (6) contacted our office regarding the proposed outside work of one of her employees. (b) (6) is the deputy program manager for the JABS Program Management Office. The JABS system provides booking stations to the law enforcement components of DOJ, to collect fingerprints, mug shots, etc. Mr. (b) (6) office helps to link this system to the FBI to match fingerprints. He had previously worked with a

private group called Infocon International and was still owed money for work he completed prior to joining the Department. The payment was tied up in tax administrative proceedings and he wanted to know if he could still accept it. Infocon has no work with the Department and no matters before it. I told him there was no conflict in accepting the payment for work already completed. Mr. (b) (6) also wanted to work for a company part-time. Leagle is a dot com start up focused on legal research. They do not have business with the Department and have no matters in front of them. Mr. (b) (6) would be doing web design for the company. I advised that there appeared to be no conflict between the two and the Mr. (b) (6) could work for Leagle but advised him on the restrictions on using government resources for Leagle work, as well as the restrictions on communication with the Federal government for any matters involving Leagle. Email in file. (b) (6) July 10, 2009.

29. (b) (6) FCSC, post government employment. Mr. (b) (6) is the (b) (6) of (b) (6) and beginning to look for post government employment. He was going out to lunch with an old friend who has known for more than 10 years and who works for a private firm. He wanted to know if the friend could buy lunch, even if Mr. (b) (6) may also apply for employment with the firm. I told him if the lunch was based on a personal relationship, his friend could buy lunch. If it was more based on a future employment situation, they may buy lunch if it is what they normally do for prospective employees. He has previously spoken with (b) (6) regarding conflicts and other post government employment issues. (b) (6) July 10, 2009.

30. (b) (6) OSG, 502. (b) (6) called to discuss a potential 502 conflict and we determined she should request a waiver. She was an associate at (b) (6) until January 2009. Since coming to the OSG she had worked extensively on the (b) (6). Once the OSG decided to file as amicus, she began to work on the case again, at this time discovering that (b) (6) had also filed an amicus in the case. Based on her extensive knowledge of the facts of the case and the time she had already put into it, a lack of financial interest with the firm, she had never worked on this case at (b) (6) had no client confidences and no need to communicate with her former firm on this matter, we recommended a waiver and (b) (6) emailed the (b) (6) granted the waiver. Email in file. (b) (6) July 13, 2009.

31. (b) (6) ENRD, post government employment. (b) (6) emailed with a question from the (b) (6) (b) (6). He is now with a private firm, (b) (6). The FBI had posted a RFI for procurement of legal services in which the FBI would seek advice on the application of environmental and worker safety laws for shooting ranges. While (b) (6) was at ENRD, he was involved in a case where the FBI was being sued on claims of environmental damage caused by shooting ranges. He had personal involvement in the matter. He wanted to know if he could work on the matter and help respond to the RFI. Because the RFI is dealing with the general subject matter of the previous case and not the facts of the case or the same specific matter with parties, it does not come under the lifetime ban. However, (b) (6) left the Department on Jan 16, 2009, so he is still under the 1 year cooling off period. He may work behind the scenes on the matter, but could not communicate with the Department. He inquired if his name could be on the RFI response, stating he would be working on it. I conferred with (b) (6) and she said that would be a communication with the intent to influence and he should not do that. We encouraged (b) (6) to find out how billing would be handled, in case (b) (6)

name needed to be disclosed for those purposes and if so, who would see it. Email in file. (b) (6) July 13, 2009.

32. (b) (6) (b) (6) who left the Department on January 20, 2009 called with a post-employment question. She wanted to know if she could represent the Kansas City Police Department in a current employment investigation by CRT. The threshold question was whether this investigation existed within the Division as of January 20, 2009. I contacted (b) (6) who determined that the investigation was not in the Division as of that date and in fact only came into existence in June 2009. Consequently, the matter was not under (b) (6) official responsibility. For the same reason, the permanent ban does not apply. (b) (6) is not subject to the one year cooling off period because she did not make the requisite amount of income. I told her she was not prohibited by section 207 from representing KCPD in this investigation and reminded her that she would have to check with appropriate bar authorities to determine what her responsibilities to her former client, the Department, are under applicable bar rules. The emails are in the file. (b) (6) July 13, 2009.

33. (b) (6) (b) (6), was contacted by a reporter from a Minnesota newspaper who wanted to interview her. (b) (6) was asking if there were ethics restrictions that would apply in that situation. She has been active in ABA initiatives and the reporter wanted to discuss with (b) (6) the topic of women of color in the legal profession and more specifically in law firms. I told (b) (6) that there were no ethics rules that would prohibit her from agreeing to be interviewed but that there might be other considerations in light of her pending confirmation. I sent an email to (b) (6) to let her know that (b) (6) had called. (b) (6) was going to call (b) (6) to discuss. The emails are in the file. (b) (6) July 14, 2009

34. (b) (6) (CRT) called with a question about an honors attorney who wanted to serve on the board of the Washington Council of Lawyers. I said that would need to be approved as an outside activity. He also asked more generally about approval to participate in bar activities. I said that employees should get approval for leadership positions in bar groups even when they are not an officer or board member. (b) (6) July 14, 2009

35. (b) (6) (JMD). (b) (6) had sent an email asking if there were any procedures for an appeal if her request for approval of outside employment as a consultant were denied. I called and told her there were no special procedures under the ethics rules for appealing such a determination. She did not indicate that she planned to pursue the matter further. (b) (6) July 15, 2009

36. (b) (6) Civil, award. (b) (6) (b) (6), is going to be given an award by the Santa Clara County Commission on the Status of Women. Prior to coming to the Department, (b) (6) was the (b) (6) for Santa Clara. The award is based on her work in her prior position, not on her work or position at the Department. She will pay for her own travel. (b) (6) wanted to know if she could accept the award. I told her she could, but that it would be in

her personal capacity, her title should not be used (other than in a general biography). (b) (6) July 15, 2009.

37. (b) (6) OAG, Gifts. (b) (6) received a gift from (b) (6), a sword that exceeds the \$335 de minimis. (b) (6) originally wanted to purchase the gift and then decided to accept on behalf of the Department to display in his office and forward to JMD property when he departs. He also received (b) (6) from (b) (6) of the U.S. Embassy, which exceeds \$20. (b) (6) will coordinate with the Embassy staff for him to reimburse them for the cost. (b) (6) July 15, 2009

38. (b) (6) CRM, recusal question. (b) (6) & (b) (6) are recused from Kellogg, Brown & Root (KBR) matters. KBR is a former subsidiary of Halliburton (Halliburton spun off KBR in 2007). To the extent a new matter were to be initiated against Halliburton, (b) (6) would like to know if (b) (6) and he may participate. (b) (6) had represented an executive of KBR, which was a subject/target in an FCPA investigation. I advised (b) (6) that he does not have a conflict unless Covington is representing Halliburton, since KBR was not his former client. (b) (6) would only be recused if the Halliburton matter could affect the operations of KBR, so (b) (6) will confirm this for any Halliburton matter that arises (and as long as Covington is not representing them). (b) (6) July 15, 2009

39. (b) (6) ATR, employee presentation disclaimer-personal capacity. ATR has an attorney who will be giving a presentation in his personal capacity in a program sponsored by George Mason University. It is a general presentation about antitrust and he has submitted his powerpoint presentation to their FOIA office for clearance. It does not raise any confidential information issues. The one thing that has come up is that the first slide identified him as DOJ and had a disclaimer. (b) (6) told him that he may not be identified as DOJ except in a biographical paragraph of which it was one fact among many. The disclaimer should also appear there. He was fine with that and proposed adding a slide at the very beginning that has the bio and disclaimer and changing the existing intro slide to say "Attorney, Washington, DC". ATR's FOIA officer still has concerns. The attorney will be handing out paper copies of the slides and their FOIA officer thinks the bio slide may get separated from the rest and that the disclaimer should also appear on the intro slide to the substantive material even though his DOJ affiliation will not appear on that slide. (b) (6) and I agreed that the disclaimer mentioning DOJ should not go on the title page since his title would not be included there. (b) (6) is going to tell the FOIA officer that we object to including it. (b) (6) July 15, 2009

40. (b) (6) OSG, Conflicts question. Emailed about a possible conflict arising from his decision to explore the possibility of moving to the private sector. He is planning to speak with (b) (6) about possible employment. In connection with the constitutional challenge to Section 5 of the Voting Rights Act (VRA) - Northwest Austin Municipal Utility District No. 1 v. Holder -- (b) (6) co-authored an amicus brief (but was not counsel of record) on behalf of former officials of the Department of Justice. The amicus brief was limited to arguing that certain substantive amendments to the VRA in 2006 were not

properly before the Supreme Court, but that if they were, those substantive amendments were constitutional. The Supreme Court did not address the 2006 substantive amendments in any way, limiting its analysis to the scope of the VRA's coverage and the clause that permits covered jurisdictions to apply to terminate coverage. The Supreme Court held that Northwest Austin was eligible to bailout of coverage, and suggested that a robust bailout provision was essential to the VRA's constitutionality. (b) (6) was the (b) (6) with primary responsibility for drafting the government's brief in Northwest Austin. In light of the Supreme Court's decision, DOJ is considering what legislative steps, if any, are advisable to ensure that the VRA will withstand future constitutional challenges. Today, (b) (6) received a draft memo about possible legislation and an invitation to a meeting to discuss it. (b) (6) (b) (6) on the case, would (b) (6) to attend. (b) (5)

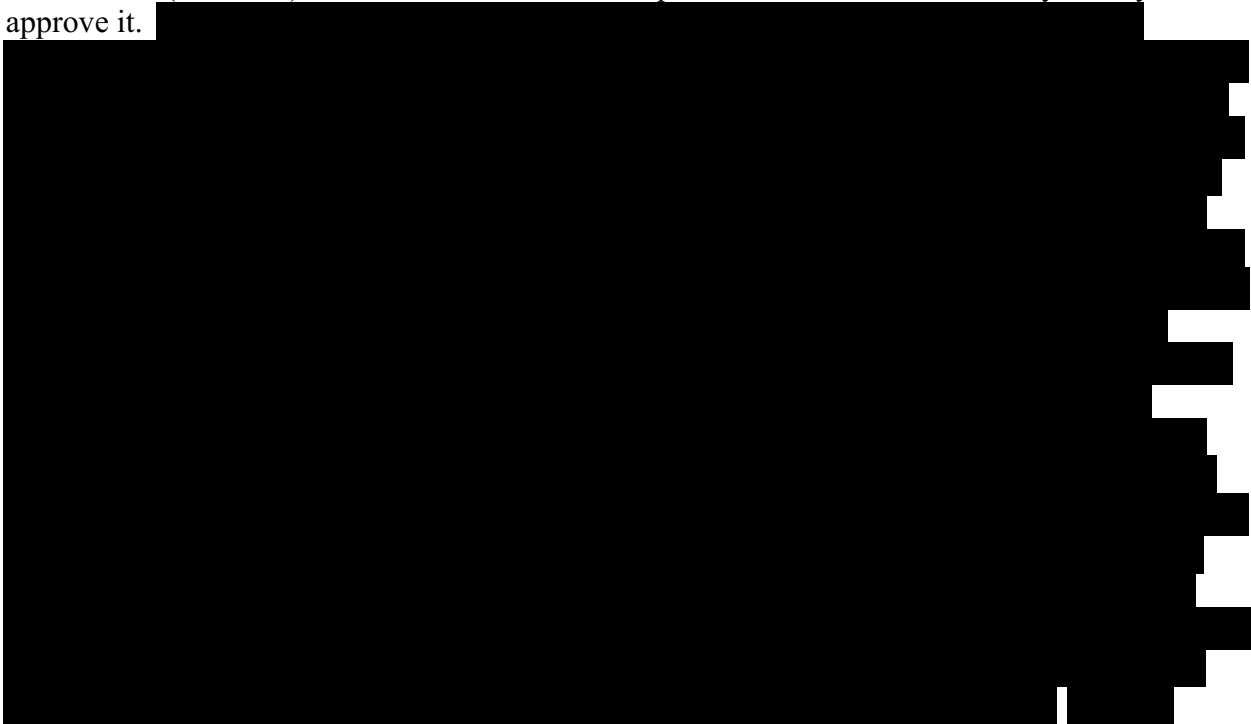
(b) (6) particular case does not strike him as a conflict, because of both the limited participation that (b) (6) and its clients had in the Northwest Austin case and the nature of the legislation that is being considered. I advised that I thought it was fine to attend the meeting but if legislation is pursued that we should revisit the issue. (b) (6) July 16, 2009

41. (b) (6) (OPR, (b) (6) called with a Hatch Act question. He asked whether an email sent by an employee in one U.S. Attorney's Office to an employee in another U.S. Attorney's Office violated the Hatch Act. It was sent from a Department email account. (b) (6) had not seen the entire actual email itself. However, a sentence in the email stated something to the effect of "I sure hope 'X' wins." The email was sent around the time of a primary election in 2006. (b) (6) asked whether it was merely an expression of opinion as opposed to political activity, i.e., a statement directed toward the success of a party or candidate. I discussed with (b) (6) and sent (b) (6) an email indicating that OSC considers it necessary to assess the full context of a statement in order to determine whether it might constitute political activity as opposed to opinion. The entire email would need to be reviewed to make that assessment. My email to (b) (6) is in the file. (b) (6) July 17, 2009

42. (b) (6) (OIG) called with a letter of recommendation question. An agent set up a conference and obtained a speaker whom the agent thought made a very good presentation. The agent is writing a letter of recommendation for that person. The person is not applying for a federal job. (b) (6) wanted to know if the agent could use official letterhead and sign using his official title on the basis that he had gained personal knowledge of the person's ability in the course of federal employment. I told (b) (6) that I did not think "course of federal employment" covered such circumstances and therefore he could not use official stationery and sign with his title. She agreed and will so advise the employee. (b) (6) July 17, 2009

43. (b) (6) OCIO, WAG approval. (b) (6) would like to attend the Second Annual Senior Government Executive Dinner sponsored by the Young Armed Forces Communications and Electronics Association (YAFCEA). Deloitte, Pragmatics and SAIC are all listed as sponsors of the event as well as on the dinner's website. The purpose of the dinner is to offer industry attendees the opportunity to speak with senior government leaders to discuss topics related to the federal government and information technology including the challenges and needs of the government. (b) (6) will be speaking on cybersecurity and law enforcement. He will not be addressing the audience as a group, but will be seated at a table of attendees. YAFCEA has offered him, as they do for all speakers, free attendance at the dinner. The cost of registration for the event is \$115. Mr. (b) (6) has stated that attendance at the dinner will be a benefit to the Department because it will position and portray the Department as one of the leaders in IT in the federal government as well as Cybersecurity and Law Enforcement. When Mr. (b) (6) first received the invitation to participate, this office and the Office of Government Ethics (OGE) had concerns with the dinner and specifically how it was marketed. The Department and OGE spoke with YAFCEA, who agreed to change their website and seating policy so as not to advertise the officials that were to be in attendance. The dinner satisfies the requirements of the widely attended gathering exception. I recommended (b) (6) approve with the provisions I listed in the email (attached to log) and he approved. (b) (6) July 17, 2009

44. (b) (6) (b) (6) requested approval to serve in her personal capacity as a member of the Steering Committee and as Vice Chair of the Intellectual Property Section of the DC Bar. (b) (6) sent (b) (6) an email indicating that he could approve the request which he did.. The following is the email: (b) (6) has requested approval to serve in her personal capacity as a Member of the Steering Committee and as Vice Chair of the Copyright Committee of the Intellectual Property Section of the District of Columbia Bar Association (D.C. Bar). We have reviewed this request and have concluded that you may approve it.



(b) (5)



(b) (5)

The email with (b) (6) approval is in the file. (b) (6) July 16, 2009

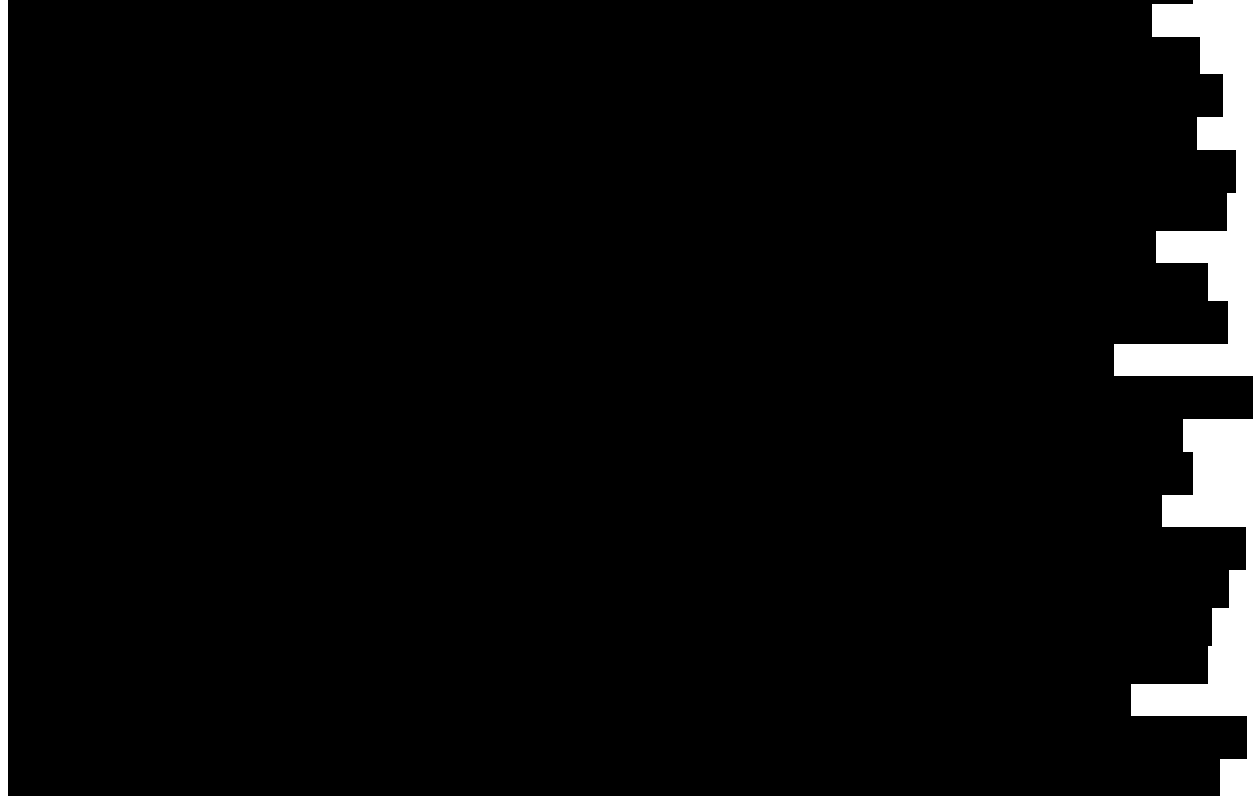
45. (b) (6) CRS, Web 2.0. (b) (6) called with a question regarding the use of Facebook and other “new media” to speak to groups such as the Black Panthers, Ku Klux Klan, etc, that are involved in their mediation efforts. Many of these groups are using new media to communicate and organize. I conferred with (b) (6) OGC and ORM. I told (b) (6) that using these tools may be ok so long as they stay in line with their mediation mission - and not become involved in investigation. I also told him that if they were going to communicate with these groups, they must be open about who they are and why they are contacting them - it must be clear it is the DOJ/CRS. I also told him that there is a freeze on any Department organizations using these tools until the Department wide guidance is released and advised that they should wait on any implementation until they see the guidance, which will cover areas such as privacy, records and other issues. (b) (6) July 20, 2009.

46. (b) (6), Budget, group. (b) (6) emailed about setting up a "Budget Office Alumni" group for networking purposes. She hoped to have former or senior members of the Budget office speak at brown bag lunches to younger employees. She wanted to have social aspects of the group and use LinkedIn to communicate and organize the group. There is no official Department policy on these sort of groups. They are not "official" groups but clearly have a relationship to the Department and its employees. The brown bag lunches would be permissible because any employee group can request a conference room or other space for such an event. The only limitation would be who could enter the building - if some of the speakers no longer work for the Department, they may need to be escorted to the conference room, etc. (b) (6) mentioned inviting the alumni group to the annual Budget picnic. This will be determined by the Budget office policies - if non-employees are invited to attend, then the alumni group may be invited. If it is strictly an employee event, then being a member of the alumni group does not grant special status to its members and allow them to be part of the picnic. I advised she should be careful about contractor relations. If former budget employees now work for a contractor, they should not be invited to speak at brown bag lunches or participate in any way that involves their official status as a contractor. Lastly, they wished to use LinkedIn as the main method of communication for the group. At this time all Department use of "web 2.0" media, including LinkedIn, Facebook, Twitter, etc is frozen until the official Department guidance is released by the Web 2.0 committee. Therefore I advised that they not use this form of communication until the official guidance is released. (b) (6) July 20, 2009.

47. (b) (6) JMD, outside activities. (b) (6) has recently been appointed Executive Administrator of her church. Her church applies for federal grants for faith based organizations and wanted to know if there were any restrictions because of her position. I told her there were no restrictions on her work at the church but that she could not communicate with any federal agency on behalf of the church - including signing her name to any grant applications. She asked about fund-raising and I explained to her the restrictions on fund-raising within the workplace or using her official position but if she did so outside the workplace in her personal capacity, it would not be a problem. (b) (6) July 20, 2009.

48. (b) (6) JMD/FASS, free attendance. Can she accept a free ticket to the opening reception of Association of Law Librarians' annual meeting? (b) (6) was a AALL member long ago and has many friends in AALL who will be attending the reception. A ticket to the reception will go unused by its intended recipient at another agency, and it has been offered to her by a friend at that agency. Value is \$40. Called AALL show management, (b) (6) and spoke to (b) (6) who checked with AALL management. It is fine for (b) (6) to attend as a substitute attendee and personal guest of her friend with the reception ticket which would otherwise go unused. (b) (6) works now for DOJ/FASS, and is not working on any matters involving AALL or any of the private sector sponsors of AALL's annual meeting or receptions. It's fine for her to go - cleared with (b) (6) as well. (b) (6) July 23, 2009

49. (b) (6) (OSG) asked whether (b) (6) could participate in a case involving the application of bankruptcy law to student loans in light of the fact that Harvard does hold some student loans. We advised that the case would not have a direct and predictable effect on Harvard's financial interest and that (b) (6) was not disqualified from participating in the case. The following is the email which (b) (6) sent to (b) (6) (b) (5)



(NSD, (b) (6) sent an email about the participation of (b) (6) (ODAG) in a briefing on a section 2511 matter, i.e., a certification by the AG that a communications company's participation in assisting the Government is lawful. (b) (6) worked for Verizon until last week. I discussed with (b) (6) and said that I agreed that the E.O. did not bar his participation. Nor did 502. It might possibly be considered under the catch-all provision. (b) (6) had worked at DOJ before and has great expertise in this area. The briefing did not involve Verizon in any way. However, it was possible that purely legal issues might be considered which would establish a precedent that might later apply in a matter involving Verizon. For example, this matter might lead to the development of a paragraph that would become standard boilerplate in future documents. I told (b) (6) that I thought he could participate in the briefing. Later discussed with (b) (6) Called (b) (6) and discussed with him and said he should not be involved in any matter in which Verizon was involved without ethics clearance. He agreed and said that he intended to avoid any matter involving Verizon. (b) (6) incoming email is in the log file. (b) (6) July 21, 2009

51. (b) (6) (OJP, (b) (6) (b) (6) and (b) (6) had called on 07/17/09 to discuss issues relating to a recently hired employee. (b) (6) has been recently hired (July 2009) in a temporary position not to exceed one year to work as an advisor in the budget office. She is an "appropriations liaison" and her job is to build better relationships with the Hill. She had retired from an (b) (6) position with (b) (6) in 2003. She works for the (b) (6) (b) (6) one of the larger grantees of OJP that gets about \$75 million. (b) (6) is a Florida based nonprofit research and training organization that specializes in law enforcement, juvenile justice, criminal justice and homeland security issues. She is on a leave of absence from (b) (6) which is unusual as such arrangements are usually only with academic institutions. She does not continue to be compensated by (b) (6). The only ongoing benefit that she would receive is that (b) (6) will pay the cost of telecommunications services that are set up in her home in (b) (6). The monthly bill is approximately \$240. The services are internet based because broadband service is not available at her home location. (b) (6) had worked for (b) (6) when she was previously at DOJ. She listed (b) (6) as a reference when she applied. She also listed some other high ranking persons such as a former Clerk of the House of Representatives. (b) (6) thought that bringing her on as an IPA might have been a better way to hire her. I discussed with (b) (6) on 7/17. I called (b) (6) on 7/20 and left a message and again on 7/21 when we further discussed the issues. (b) (6) said that she is sensitive to ethics concerns and indicated she will personally pay for the telecommunications services. (b) (6) thinks she may be able to use them for personal matters as well as for (b) (6) business. She intends to have the provider bill her directly and she will pay the bill herself rather than reimburse (b) (6). The result is that she will not be receiving any benefits whatsoever from (b) (6) during her DOJ employment. I told (b) (6) the chief concern was that she not do any work for, or have any substantive interaction with, (b) (6) during her DOJ employment. (b) (6) agreed. And of course she cannot participate in any particular matters that would affect (b) (6). For example, she cannot work on a matter that might involve an (b) (6) earmark. (b) (6) agreed. (b) (6) July 21, 2009

52. (b) (6) (OARM, (b) (6)) called to ask if anyone in the office had been assigned to work on a hiring question that had been raised by OLP. No one had. I discussed with (b) (6). I called (b) (6) back and he said that OLP was eager for an answer. I told him we would follow up next week. He said in the meantime he was going to send OLP and opinion by the Office of Legal Counsel. (b) (6) July 21, 2009

53. (b) (6) had sent a draft of the no cost contract between DOJ Information Technology Security Staff and Federal Business Council to provide services in connection with a January/February 2010 Cyber Security Conference. The first such conference was held in 2009 and there were a number of ethics issues raised by the original proposal that were resolved. In this second conference, the ethics issues have been adequately addressed in the draft contract. The vendor expo will be kept separate from the conference. I had a few questions regarding the draft contract which (b) (6) answered. DOJ will be able to review the FBC informational posters to make sure they comply with ethical requirements. The "ample time" to visit the exhibit

referred to in the draft contract will occur as break time around the sessions and during the lunch break. All exhibitors, including government if there are any, pay a fee. (b) (6) said DOJ is not an exhibitor. She was not sure the issue would even come up as she is not sure there would be any government exhibitors. The contract will be reviewed by JMD OGC. The email exchange and the draft contract are in the log file. (b) (6) July 21, 2009

54. (b) (6) Civil, outside activities. (b) (6) (b) (6), asked about fundraising activities in her personal capacity. Prior to joining the Department, (b) (6) had committed to sponsoring a table at the BAYMEC Annual Dinner. BAYMEC is a gay rights advocacy group. I advised that she could still sponsor the table so long as her official title was not used in any way (in materials, when thanking her, when telling others about the gift, etc) and went over the fundraising restrictions, such as no fundraising in the office, no fundraising using her official title, etc. (b) (6) July 21, 2009.

55. (b) (6) (OSG) called with a recusal question. United States v. Stevens is a Supreme Court case that involves a criminal prosecution for the depiction of animal cruelty. He has never been involved in the case. His father is a First Amendment lawyer affiliated with the (b) (6) and the (b) (6). He may file an amicus brief. If he does, (b) (6) wanted to know if he could still participate in a moot court panel. I told him that we would treat an amicus as a party. He has a covered relationship with his father. So he would not be able to participate in the moot court if his father filed as an amicus unless there was a determination allowing him to do so. He asked if that would be true going forward for other cases in which his father might file as an amicus. I said it would but that he should contact us if there was a need for him to be involved to see if a determination would be appropriate. (b) (6) July 22, 2009

56. (b) (6) Civil, 502. (b) (6) emailed with a question regarding a possible 502 conflict. (b) (6) has just been assigned a case in which the plaintiff is the National Treasury Employees Union (NTEU). His wife is employed at FDA where she is a member of a bargaining unit represented by NTEU. She is not currently a dues-paying member of NTEU, but she has considered becoming one and could do so during the pendency of the litigation. She does not have any direct stake in the outcome of the case, which concerns the Federal Career Intern Program, and that wouldn't change even if she became a member of the union. (b) (6) asked if he needed a 502 waiver. I advised that while (b) (6) has a covered relationship with his wife, she is not an employee, officer, trustee or attorney for the NTEU and would not be affected by the litigation, therefore I did not think a 502 waiver was necessary. (b) (6) July 22, 2009.

57. (b) (6) JMD, gifts. (b) (6) is now handling gifts to the Department and called looking for (b) (6) signature for two gifts. One was a defibrillator given to the FBI by a class of state and local law enforcement officers. (b) (6) had previously sent an email stating DEO had no objection to the gift and (b) (6) signed the cover sheet. The second gift was the use of a non federal

facility for training by the USAO in the (b) (6). They would be using a state judicial facility for three days of training and would be staying in their dorms. This same request was approved last year and I found (b) (6) approval from 2008. (b) (6) reviewed and signed the cover sheet approving this year's acceptance as well. (b) (6) July 23, 2009.

58. (b) (6) JMD/Procurement, gifts. (b) (6) called regarding a social event procurement wanted to have to celebrate the end of a project. Her manager suggested to her that they allow the contractor who assisted on the project to cater the event. I advised that they could not accept a gift from the contractor and then advised her on other limitations regarding hosting such an event with contract personnel. They may be invited, but if it is a social event, the government cannot be billed for the time. They cannot be asked to donate money or food, but if they showed up with food, it may be accepted. (I advised this meant if someone showed up with a plate of brownies, not if they showed up with a whole catered meal or a large amount of food.) (b) (6) July 24, 2009.

59. (b) (6) Civil, post government employment restrictions. (b) (6) emailed with a question from (b) (6), the (b) (6). He left in October, 2008. He had previously been advised by (b) (6) (who had conferred with (b) (6) that in his new position at a private law firm he may work on a case "behind the scenes" but his name could not appear on any filings or other communications to the Department because the Department had filed an amicus. He was following up to that advice asking if he could appear in the case once the one year cooling off period had expired - in October 2009. The Department did not become involved in this matter until after he had left so he was not involved personally and substantially and it was not under his official responsibility. I told (b) (6) based on those facts, he was only restricted by the one year cooling off period and therefore could appear when the one year was up. Notes in file. (b) (6) July 24, 2009.

60. (b) (6) and (b) (6) (ENRD) called on July 22 to discuss a request they had received from two former ENRD attorneys, (b) (6) and (b) (6), who are now in the Solicitor's Office at the Interior Department. They had been asked by the Secretary of the Interior to develop a premier ethics program for the Interior Department. (b) (6) did not know if they had talked with (b) (6), the DAEO at Interior. They were asking (b) (6) to discuss the initiative. (b) (6) asked if I could also talk with them. (b) (6) set up a conference call with her, (b) (6) and I on July 23. (b) (6) talked about some ideas (b) (5)

(b) (6)

(b) (5)

(b) (6) July 23, 2009

61. (b) (6) BOP, gifts. (b) (6) called with two gift questions. 1) An employee recently lost a family member and his office wanted to take a collection for flowers. They had already sent an email. I advised that a non-supervisory employee should be the one handling the collection and that emails are generally inappropriate for this purpose. I advised one sign may be put in a public location identifying who people should see if they wished to contribute. I told her \$10 was the maximum recommended donation and the total amount collected should be appropriate to the occasion. She asked if they could give the cash instead of flowers to the employee and I told her cash gifts were not allowed. 2) Shoe Carnival, a local shoe store, offers a discount to any office or organization that signs up. The group signs up for one night a week when they may shop in the store and receive 30% off - the store is closed to all other customers for this time. This BOP office wanted to do it in time for back to school shopping. I told her since it was widely available to any group (not just government or law enforcement) it would be ok, but again advised against the use of emails to advertise. One sign in a public place would be appropriate but nothing more. (b) (6) July 27, 2009.

62. (b) (6) Civil, speech. (b) (6) (b) (6) is receiving an award in her personal capacity for the work she did at her previous position as counsel for Santa Clara County. She wanted to know if she can discuss her responsibilities at the Department in her speech. I conferred with (b) (6) who advised that she may generally discuss her responsibilities and position at the Department but that it should be part of a larger discussion of other topics. (b) (6) July 27, 2009.

63. (b) (6) OPR, personal capacity/misuse of position. (b) (6) was a (b) (6) and obtained a murder conviction which was overturned with DNA evidence, after the Defendant served 16 years. The case was (b) (6) Prior to becoming a career DOJ attorney with OPR, Mr. (b) (6) was interviewed many times about the (b) (6) case. He has been recently contacted by the TV show "On the Case with Paula Zahn" with a request for an interview. They are preparing 13 episodes to air in the fall - and would like to interview Mr. (b) (6) about the (b) (6) case for one of them. (b) (6) and I talked about it (b) (5)

Discussed with (b) (6) - Mr. (b) (6) needs to clear this through Public Affairs first. If the interview passes PAO's vetting, (b) (6) should counsel him as his ethics official as to misuse of position - his title cannot be displayed or discussed. It is personal capacity. Mr. (b) (6) must confirm any limitations placed on the scope of the interview by ethics officials or PAO at the outset of the arrangements. I summarized this for (b) (6) by email and gave him the staff contact list for PAO. (b) (6) July 27, 2009

64. (b) (6) (for (b) (6) CIV, (b) (6) is meeting with some LGBT groups on an upcoming trip to San Francisco. One of the potential invites is a partner at (b) (6), where (b) (6) was a partner before coming to DOJ. (b) (6) would like to know if there is any conflict with (b) (6) former partner attending the meeting. I advised that there are limits on his contacts with his former firm, among others. He may only communicate with them about a matter of general applicability and only if at least 5 different parties are in attendance. (b) (6) advised that it is more than 5 people and I confirmed that it was 5 distinct parties, not just several individuals from an organization. However, they decided not to include the (b) (6) attorney because litigation will definitely be discussed at the meeting by other attendees at least. (b) (6) July 29, 2009

65. (b) (6) BOP, gifts. Follow up to previous question. Wanted to know if office could collect money and then deposit it in a fund at the credit union for the family. I talked to (b) (6) and then advised (b) (6) that if there was already a fund set up for the family by a third party, they may donate the money to that fund. However, the office could not create a fund and they could not administer a fund for the employee or their family. (b) (6) July 28, 2009.

66. (b) (6) Civil, speaking. (b) (6) emailed regarding a Civil Frauds attorney who has been asked to speak at a conference sponsored by the Federal Computer Week, which is a publication out of Northern Virginia. An AUSA was scheduled to speak but had to pull out due to a family emergency. There are many other federal speakers scheduled for the event, including another DOJ speaker. It's a one day event, admission is \$250 for private sector and \$95 for government, that includes breakfast and lunch. The Civil attorney will only speak and then leave, not stay for any of the other events. His panel is moderated by a private attorney from Mayer Brown and another attorney from that firm is on the panel. The fourth speaker on the panel is from the Federal Acquisition Institute. The panel is discussing the future regulation of IT. I told (b) (6) that if Civil feels it is appropriate to send someone from Civil Frauds and that this is a topic they want to discuss, it appears to be an appropriate venue and I do not think the cost is outrageous for an event such as this. (b) (6) July 28, 2009.

67. (b) (6) OSG, potential 502. (b) (6) emailed regarding Ms. (b) (6) who is joining the OSG. She is currently an associate at (b) (6). She has been working on a matter for (b) (6), who has filed an amicus in a case in which the US is a party, joining the US' side. She was concerned about any potential conflict or ethics issue. I advised her on the 502 determination process and how her involvement with the matter at (b) (6) would be a contributing factor in the 502 determination. I advised her to contact PRAO or her bar counsel to discuss possible bar rules implicated and whether she would need her client's permission to continue working on the matter while at (b) (6) since she has accepted employment at the Department. Emails in file. (b) (6) July 28, 2009.

UPDATE: (b) (6) emailed me back and asked if this meant she should not work on the case while at (b) (6). I told her that there were no ethics rules that would prevent her from

continuing to work on the matter for [REDACTED]. I reviewed with her again how the 502 process works and explained that working on the case at (b) (6) would be a significant factor to overcome in a 502 determination. I again advised her to speak to PRAO or bar counsel regarding this to be sure she had no client conflicts or bar rule issues.

68. (b) (6) JMD, teaching. Mr. (b) (6) recently joined the Management and Planning staff as a management analyst. Prior to joining the Department he was an adjunct professor at the University of Maryland and would like to continue. Mr. (b) (6) has his PhD in Latin American Economic History and teaches on this topic. He may also teach a survey of world history. The classes would be in the evening and may be online. I advised that since the topic he would be teaching is not related to his official duties at the Department, he did not need further approval. I advised that he may not use government resources in any way to assist in his teaching or his work for the university, as well as telling him he could not use his official title. I told him if he expanded the topics he was teaching on, he should contact us again. (b) (6) July 29, 2009.

69. (b) (6) OLA, Administrative Leave. (b) (6) asked about my experience with granting administrative leave for conferences, especially in the context of DOJ employees who serve in a personal capacity with outside organizations whose activities may be related to the work of the Department. I advised that, as she knows, most activity by DOJ employees in outside professional organizations is in a personal capacity. In a limited number of cases a DOJ official may be designated as the Department's representative to an outside group. This requires approval by ODAG. (see, link below to Holder memo of May, 2000). In addition, where a Department official is attending a conference primarily in a personal capacity (e.g., where the employee has a position or is active in a personal capacity in the organization), I know that employees on occasion have been approved for admin leave to attend portions of such a conference where those sessions are clearly of benefit to DOJ or the employee, e.g., as training or professional development. However, we take pains to counsel employees who are active in organizations whose activities relate to the work of the Department that they must not "wear two hats," i.e., that they must be clear as to whether they are participating in an official capacity or in a personal capacity. In particular, an employee may not represent the outside organization to the Department, because such activity may violate the ban on representation, 18 USC 205, or be a misuse of position. A more general consideration is that the Department should not be supporting the personal activities of an employee for the simple reason that they are the employee's personal activities and not official government business. Again, the circumstances where some support such as granting administrative leave, is appropriate, are fairly narrow and are tied to a direct Department interest such as training of the employee. Additionally, as the Holder memo notes, the Department has no official interest in the management or internal workings of an outside organization so it is inappropriate for a DOJ official to participate in those types of activities in an official capacity, on official time, etc.. (b) (6) July 30, 2009

70. (b) (6) (JMD, OGC (b) (6) called to discuss the (b) (6) advice of February 6, 2009 (log entry #102) regarding a [REDACTED] request for comment about recusals of incoming officials. She is handling a (b) (5) FOIA request for ethics advice

provided to the new administration up to April 30, 2009. (b) (5)

(b) (6) She said that she would talk to (b) (6) before sending anything on to OIP. (b) (6) July 23, 2009

71. (b) (6) (CRM) called on 7/24 with a 502 question. (b) (6) represented (b) (6) in connection with his participation as a non-testifying witness in the William Jefferson prosecution which is expected to reach a verdict in EDVA next week. (b) (6) wanted to know could he appear at the press conference and congratulate the prosecution team and would that require a 502 determination. Discussed with (b) (6) on 7/27 and she will follow up with (b) (6) (b) (6) July 27, 2009

72. (b) (6) (ODAG) called on 7/23 with a recusal question. JMD and the leadership offices are looking into new software for a unified Case Management System (CMS). It seems this is a project that has some history. (b) (6) wanted to know if she could participate in this project and begin to attend meetings. (b) (6) works at (b) (6) and is the manager of a sales consultant staff that deals with the public sector. We did not discuss other financial interests he might have in (b) (6) such as stock, bonuses or profit sharing. The project would involve the use of (b) (6) software. I asked (b) (6) what were the potential financial benefits to (b) (6). She was not sure. I said that she should not participate in the project until we had some additional information. I told her that she would need either a determination under 502 or a waiver under 208 in order to be able to participate. She made a call to JMD simply to check on what was involved in the project. (b) (6) would at least get a maintenance fee and might benefit in other ways from the project. After making that call (b) (6) concluded that she should not participate in this project. She had one further question which is whether she could remain in a general meeting or briefing if the subject of the CMS project came up provided that she did not participate. Or should she leave the room. I told her that I thought she should not attend that portion of the meeting but that I would get back to her next week. Discussed with (b) (6) on 7/27 and sent (b) (6) an email to confirm advice that she should not attend a portion of a meeting or briefing that dealt with CMS. She called with a further follow-up question as to whether she could write the overall intro to a document dealing with the budget impact of policy issues which were CMS, e-discovery, wireless network, and funding for health care fraud. I advised advised that she should not write the overall intro. The email is in the log file. (b) (6) July 23, 2009

73. (b) (6) called on 7/22 with a post-employment question. He was the (b) (6) until January 18, 2009. He is now with (b) (6). He was asking what he would be permitted to do with respect to representation of the (b) (6)

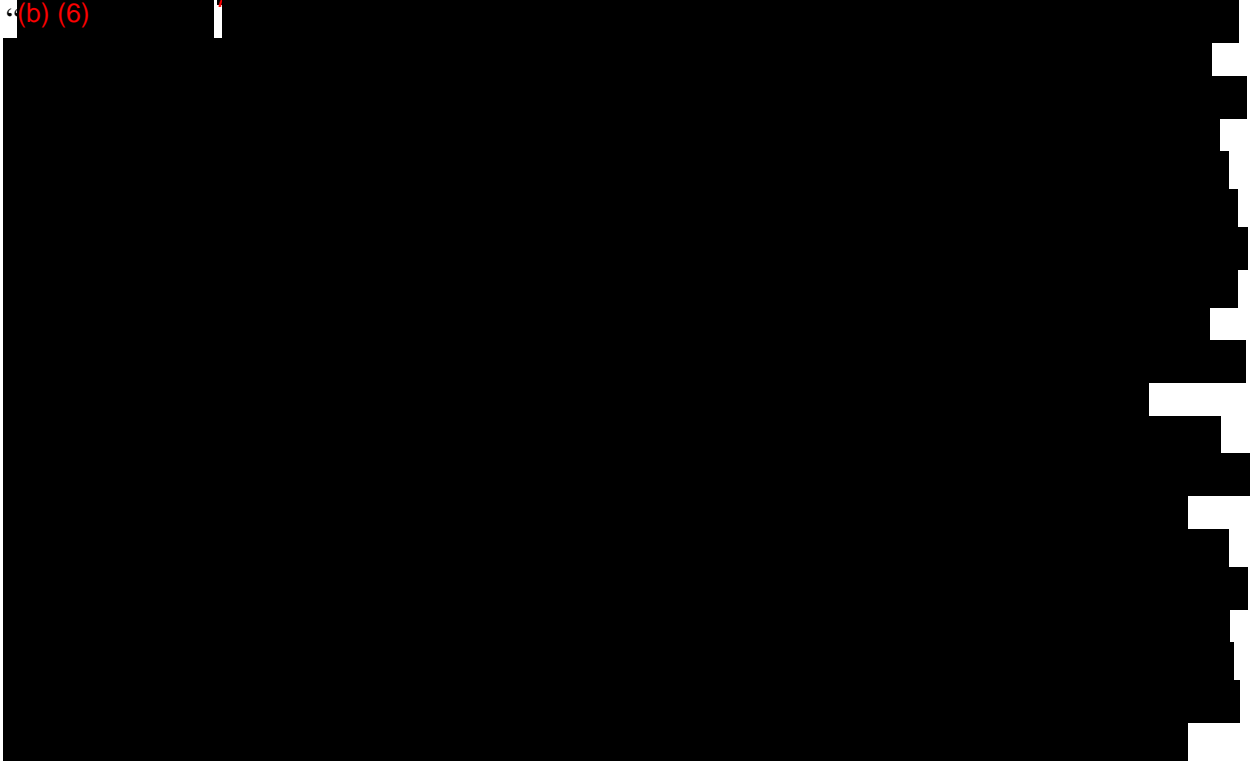
(b) (6) The case is essentially a FOIA lawsuit that arises out of an international child custody dispute. (b) (6) and his daughter are now in Greece (Crete) and

he is trying to obtain certain information. (b) (6) asked two questions: (1) can he do behind the scenes work on behalf of (b) (6); and (2) can he appear as counsel of record on behalf of (b) (6). I sent an email advising that he could do behind the scenes advice, consistent with his obligations under the bar rules. I reminded him of the restriction in 207(f) that barred even behind the scenes work on behalf of a foreign government or foreign political party. I advised that he could not enter an appearance in the case because the Department was a party and therefore filings or communications that he made would be to or before a Department employee. The email is in the file. (b) (6) July 27, 2009

74. (b) (6) (CIV) sent an email with two questions. Can (b) (6) allow a (b) (6) (his former firm) associate to provide his name as a reference in connection with an interview for a job in a U.S. Attorneys Office. I sent (b) (6) an email on 7/24 saying this was permissible as the person is applying for a federal position. I later discussed with him on 7/27 and he said the interview was on 7/25. His second email question which (b) (6) also asked is what rules apply to (b) (6) participation in a reception in his honor hosted by the California Association of Black Lawyers. I later advised (b) (6) on this issue. The email is in the file. (b) (6) July 27, 2009

75. (b) (6) (ODAG) sent an email asking about a determination that would allow her to work on a FOIA matter. I told her we could have a determination for her on July 27. On July 27, I discussed with (b) (6) and sent the following email to (b) (6) which he approved:

(b) (6)



(b) (5)

The email chain is in the file. (b) (6) July 27, 2009

76. (b) (6) (cell phone: (b) (6) home phone: (b) (6) former Congressman from Ohio who retired from Congress in December was referred to our office by (b) (6) of the House Ethics Committee and he called on 7/21. He has a finder's fee question. A friend who is a lobbyist working for a lawyer called him. (b) (6)

(b) (6) told him where they could be bought. The friend said if the deal goes through the lawyer will get a fee and he will get part of that. He would like to share a portion of that fee with Hobson for providing the referral. Hobson asked whether he may accept such a payment. I discussed with (b) (6) I called him on 7/28 and explained that our office does not provide ethics advice for former Members of Congress. He said he was inclined not to accept the fee. (b) (6) July 28, 2009

77. (b) (6) of the Finance Staff called with a follow up question relating to the acceptance of a gift of training facilities by local law enforcement agencies to the (b) (6) (b) (6) for a conference. We had earlier cleared this gift. The gift was the same as the gift of training that they had received last year. (b) (6) said people on the Finance Staff had asked whether it was necessary to obtain approval to accept the gift this year since the very same gift was approved last year. I told her that each time the gift was made it was necessary to obtain specific approval for that gift in order to assess potential conflicts, etc. She understood and said she would tell the staff. (b) (6) July 28, 2009

78. (b) (6) (b) (6) called with a question about FISA certifications which (b) (6) followed up on. (b) (6) July 28, 2009

79. (b) (6) (CRT, (b) (6) sent an email with a question from (b) (6) a new (b) (6). He worked on the Brown case on a pro bono basis when he was a law professor. The Brown case is not close. The Department was not involved in Brown. Now he wants to know if he can review a brief in the Arlington case that is due on August 4. The State of Tennessee is a party in both cases and both are disability cases although they involve different issues, different plaintiffs, etc. (b) (6) wanted to know if the Pledge would be applicable to working on the Arlington brief. (b) (6) provided some additional information and we were able to determine that

the Arlington case does not involve his former employer (the law schools), his former client, or any organization that he might have served in a fiduciary capacity or as a consultant. We advised (b) (6) that the pledge did not apply. (b) (6) will send an email to (b) (6) and memorialize her analysis that a 502 determination is not necessary. Although there is some overlap in the two cases as they both concern the same defendant (Tennessee) and are both disability cases, they are not sufficiently related to conclude they are the same matter. The emails are in the file. (b) (6) July 29, 2009

80. (b) (6) Civil, outside organizations. (b) (6) emailed asking if (b) (6) (b) (6) may be a member of the ABA and the NBA. I told her so long as he was only a dues paying member and not holding any leadership position it was fine. She and (b) (6) asked why section 806 is reserved and I explained that there had been a proposed section 806 but there were so many comments on it, they decided to remove it and simply reserve the section. It is not expected that there will be a section 806 in the future. (b) (6) July 29, 2009.

81. (b) (6) NSD, gifts. (b) (6) emailed regarding two gift issues. 1) A supervising attorney is leaving the Department and his section wanted to take a collection for a gift. She wanted to know if they can do this. I advised her on the special infrequent occasions gift rule and highlighted that a non-supervisory employee should handle the collection. She asked if an attorney could ask for a donation from a secretary that he does not supervise. I advised if the attorney was in a nonsupervisory position, yes he could collect, but that we suggest that one notice be given to the office that a collection will be taken and then let anyone interested donate as they wish. 2) An NSD attorney has been invited to speak by a USAO at a conference on terrorism financing and money laundering, which is being sponsored by that USAO and a few private corporations. The conference is a public/private effort to train bank investigators and federal and state law enforcement. One of the private co-sponsors owns a hotel and has offered free lodging at that hotel for one night to all of the speakers at the conference who will have to spend the night. (b) (6) wanted to know if he could accept the accommodations. I conferred with (b) (6) and she advised that a 1353 analysis would have to be done to determine if the travel gift may be accepted. (b) (6) July 29, 2009.

82. (b) (6) OPCL, official capacity. (b) (6) has been asked to co-chair the planning committee for the International Association of Privacy Professionals (IAPP)'s government conference. The committee would be her and two other government privacy officials. The event would be a two day conference the Willard Hotel in Washington, DC. While it is targeted at government employees and IAPP members, anyone may attend if they pay the registration fee. (b) (6) said most planning would be done by phone conference, and all in DC, no travel necessary. One of the sponsors of the event is Booz Allen Hamilton, who requested as part of their sponsorship that a speaker spot be reserved for them. I conferred with (b) (6) and we felt that there was not a problem with (b) (6) serving in this role. (b) (6) was concerned with the blank reservation of a spot for BAH and said that they should come up with a topic they wished to speak on or something they are particularly involved in and then if it fits with the topics of the panel discussions, they may be included. The government planning committee should not be

involved in fulfilling aspects of the sponsorship contract. Emails in file. (b) (6) July 29, 2009.

83. (b) (6) (ODAG, (b) (6)) called because he was contacted by (b) (6) who wanted to meet with him. (b) (6) had gotten his name from (b) (6), an employee of Verizon where (b) (6) had been employed. After he called me, (b) (6) spoke with him and answered his question. His email is in the file. (b) (6) July 30, 2009

84. (b) (6) (CIV) called about an invitation that (b) (6) received to attend a reception in his honor held by the California Association of Black Lawyers (CABL). We advised that the \$20 exception would probably not cover the value of the reception and that the social event exception was not intended for this kind of event. The WAG exception might be available assuming that all of the criteria for a WAG are met. If he attends in his personal capacity using the WAG exception, he cannot use section 1353 to accept reimbursement for official travel expenses. If it can be determined that this would be an appropriate group and occasion for an official speech, then he would be able to use 1353, assuming that the conflict analysis allows it. However, they should also take into account the fact that he would be returning to his home city. The emails are in the file. (b) (6) July 30, 2009

85. (b) (6) sent an email with a question about the write up for a nomination to be submitted by a contractor for an award to JMD. We advised that the write up raised issues because of the statements in it promoting ArcSight, a contractor. We also advised that there were other problems with the process and with the inter-related self-interest of the contractor and the sponsor of the award. We advised that the Department should not participate in this award nomination. The emails are in the file. (b) (6) July 30, 2009

86. Memorandum dated 07/31/09 sent to (b) (6), DEA, providing guidance on ethics rules relating to the hiring of a relative. The memo is in the subject matter file on "Nepotism." (b) (6) July 31, 2009

87. (b) (6) had a question about the use of official title in a professional bio posted on an organization's website. (b) (6), a new (b) (6) is a Commissioner on the Montgomery County Commission for Women (CFW). The Acting AAG has approved this outside activity. She asked how she could identify herself on the website. I discussed with (b) (6) and advised (b) (6) that because of the overlap in areas of interest between CFW and CRT, that she should not list her title and Department affiliation but could identify herself as a federal attorney. This question is fact specific. If the

organization had no relationship to the Department or the employee's work, then a more specific identification might be permissible. The email string is in the file. (b) (6) July 31, 2009

88. (b) (6) EOUSA, writing. (b) (6) had previously emailed (b) (6) asking for guidance on an AUSA who was asked to be interviewed by a Philadelphia Inquirer reporter who is ghostwriting a book about a former FBI agent with whom the AUSA had worked on a number of art crimes with the FBI agent. At that time (b) (6) asked EOUSA to produce something for us to review as far as what the AUSA would be able to discuss. After talking to PRAO, (b) (6) sent us a memo which allows AUSA (b) (6) to speak to the reporter, who will not quote (b) (6) but simply fact check the FBI agent, (b) (6), story. (b) (6) laid out the restrictions on (b) (6) interview and stated that the (b) (6) and the (b) (6) - the districts involved in the cases to be discussed - must both give their consent to (b) (6) speaking to the reported, since they were his client. Emails in file. (b) (6) July 31, 2009.

89. (b) (6) conflict. (b) (6) is a Bristow fellow who just started this week and approached (b) (6) with two questions following the NET. 1) She is applying for a USSC clerkship, does she have to be careful of what she works on while at the OSG? Since she will be potentially going from one government position to another, the post employment restrictions do not apply. The USSC does not have an "interest" in the cases (they will hear them but have no financial interest, etc) and so there is no potential conflict. 2) A former professor has asked her to write a letter of recommendation for a federal judgeship, can she? I told her she could write the letter based on her personal experiences with the professor. I told her while technically ok to use OSG letterhead, we generally advise that personal stationery be used, especially since she has been with the Department for such a short time. She said she did not plan on using official stationery. (b) (6) July 31, 2009.

90. (b) (6) ATR, 278 question. (b) (6) is assisting a new entrant with his SF 278 and had a question on reporting law firm income. He wanted to know if clients needed to be listed on Schedule A and Schedule D, part 2, or just Schedule D. I reviewed how to report firm income on Schedule A and that clients who paid over \$5000 for the filer's services should be listed on Schedule D, part 2 but not on Schedule A. (b) (6) July 31, 2009.

91. (b) (6) (Office of Information Policy, (b) (6)) called to follow up on two FOIA matters that she had sent to our office that involve requests by Politico and the National Right to Work Legal Defense Foundation. Checked with (b) (6) and advised (b) (6) to speak to General Counsel's Office. (b) (6) July 31, 2009

92. (b) (6) OLC, Senior employee question. (b) (6) would like to know if we have resolved the question whether a former employee in a cooling off period who files an amicus brief in the Supreme Court can serve the US if the US is just an amicus? He is going to advise a former

OLC employee who he expects would accept prudential guidance, and the issue may not arise in any event because (b) (6) thinks he might be able to file before the US is in the case (assuming it decides to file). I advised that it is not completely settled in our minds, but we've been consistent in advising that they not serve the US. In the recent situation I had that we talked about I advised the former employee not to serve the US and the former employee did not. (b) (6) August 3, 2009

93. (b) (6) OASG, Recommendation letter. (b) (6) is writing a letter of recommendation for a junior lawyer whom he used to work with and who is applying for a Supreme Court clerkship. (b) (6) would like to know if it is appropriate for him to use his DOJ letterhead. I advised that he may use it - since this is an application for a federal position, which is one of the two permissible circumstances. My standard advice is that he should be familiar enough with the individual's qualifications to write the reference on letterhead - otherwise it may appear to be a misuse of title/position if it looks like the purpose of the letter is the gov't position rather than personal knowledge of the applicant. It's always ok to use personal stationery. (b) (6) August 3, 2009

94. (b) (6) (CRT) had a webinar question. An Acting Section Chief (GS-15) has been invited to participate in a webinar on August 5. I discussed with (b) (6) and then with (b) (6) (b) (6) obtained additional information. There are multiple presenters including other government agencies, private practice, and public interest groups. The webinar and taped copies are free. She will participate in her official capacity and will not be compensated. I sent (b) (6) the email to DDAEO's that dealt with webinars. This webinar is not a problem. Emails are in the file. (b) (6) August 3, 2009

95. (b) (6) (CIV) sent an email with a recommendation question. See log entries #74 and #84 for related entries. (b) (6), who works for the Bar Association of San Francisco, has asked (b) (6) for a reference in connection with her application for a position as the West Coast Director of Equal Justice Works. Discussed with (b) (6) Advised (b) (6) by email with a copy to (b) (6) that because this was not for a federal position that he should use personal stationery and not sign with his title, although he could refer to his title/position in the body of the letter. He should also have some basis of personal knowledge of the person's qualifications and should consider whether the potential employer has any matters with the Department such as litigation. The email is in the file. (b) (6) August 3, 2009

96. (b) (6) DDAEO, Interpol, fundraising. (b) (6) USNCB's General Counsel submitted for (b) (6) approval an email he wanted to send to the component asking for donations to a charitable fund drive for Innova Hospital to purchase a bloodmobile. (b) (6) is fundraising for this cause through his personal role as a hockey coach, and has been tasked with raising \$1,000 for this cause. (b) (6) wanted our confirmation that this is impermissible because it is charitable fundraising not part of CFC, and (b) (6) is a high level official so it is coercive

for him to solicit from subordinates. All correct. I confirmed all of this for (b) (6) and sent him our website cover page describing the fundraising prohibitions and containing the cite and link to 5 CFR 2635.808. (b) (6) August 4, 2009

97. (b) (6) (ODAG, (b) (6)) called with a question about references. A colleague that she knows from working with her at a former firm (not her most recent employer) is interested in a career position with the Federal Programs Branch. She may already have applied on-line for the job. (b) (6) wanted to know whether she could contact someone she knows in Federal Programs in support of the applicant and/or allow the applicant to use her name for a reference. Discussed with (b) (6). Advised (b) (6) that as a political appointee she should not make a personal contact on behalf of an applicant for a career position. It is fine if the applicant has already listed her as a reference in her application. And, if at a later point in the process, the applicant is asked to provide references, she could use (b) (6) name. But she should not become otherwise involved in the hiring process for a career position. (b) (6) August 5, 2009

98. (b) (6) INTERPOL, seeking employment. (b) (6) called regarding a SES employee at INTERPOL who is retiring soon and seeking post government employment. A potential future employer would like to fly him out for an interview and put him up in a hotel. (b) (6) wanted to know if this was allowed. I asked if the potential employer had any business with the Department/INTERPOL. (b) (6) said no, it was a new contracting firm that would be doing policing in Afghanistan. I told him the employee could accept the benefits if this was what the employer was doing for all people it was interviewing, not just the INTERPOL employee. If it was common practice, it would be ok. I spoke with (b) (6) about the restrictions and discussed that since the employee is seeking employment, he cannot be involved with any groups/businesses he is interviewing, sending resumes to, etc. If any of the places the employee is seeking employment with have business with INTERPOL, the employee may have to recuse himself. He said he would speak to the employee about the other places he was seeking employment but that the place involved in this question had no business with the Department. (b) (6) August 5, 2009.

99. (b) (6) (USADC, (b) (6)) called because her ethics officials are on vacation. Called her back and left message and sent email. (b) (6) replied that in the meantime she had been able to reach her ethics official. The emails are in the file. (b) (6) August 6, 2009

100. (b) (6) PRAO, using Westlaw for Pro Bono work. (b) (6) got a call from an AUSA in New York who was told that he could not use Westlaw for pro bono work because it was excluded under the contract. This runs contrary to what she has been telling people for years. She asked me to verify that this was permissible. I advised that it was and checked with the contracting office where they advised that it was permanently added into the SOW for the current group of contracts. (b) (6) August 5, 2009

101. (b) (6) OSG, National Institute of Military Justice event. (b) (6) has been invited to

participate in a panel discussion on the Court's decision this past Term in United States v. Denedo (a case that he argued on behalf of the US), sponsored by the National Institute of Military Justice (NIMJ) at American University's law school. I advised that it sounded fine if the SG would like him to participate. (b) (6) August 5, 2009

102. (b) (6) (OVW, (b) (6) called on 08/03 regarding an email that the former Director, (b) (6), sent to the current acting director, (b) (6) and to a grants person, (b) (6). (b) (6) now works for Vital Voices, a nonprofit group in DC. She left in January and is subject to the one year cooling off period. (b) (6) had received an email from (b) (6) in the Dallas DA's office because they had not heard anything on a requested grant extension. (b) (6) asked (b) (6) "Do you have any advice at all on what to do?" (b) (6) who was in Cambodia, sent an email to (b) (6) and (b) (6) asking them to call and check on the grant extension request. Discussed with (b) (6) on 08/03 and advised (b) (6) to contact (b) (6) and tell her not to send these kinds of emails during the one year cooling off period and to retrieve it if possible; also to tell (b) (6) and (b) (6) not to respond to the email and that this type of communication should be avoided during the one year restriction. (b) (6) did so. She also said that no steps would be taken that would affect the processing of the grant extension. The process would proceed as it normally would proceed. This is grant season and the workload is heavy. I told (b) (6) we would get back to her on what further steps should be taken. (b) (6) called on 08/05 to check on the status and I said we were still working on the issue. On 08/06 I discussed with (b) (6) I called (b) (6) and said that we looked closely at the question of whether (b) (6) communication had been made "on behalf of" any other person within the meaning of 5 C.F.R. 2641.201(g)(i). There was no indication in the emails that (b) (6) had been acting as an agent or attorney on behalf of another person. Moreover, it was not clear from the emails that she was acting with the express or implied consent of another person and was acting subject to some degree of direction or control of another person in relation to the communication. There was no direction or express request to make the communication. Consequently, not all of the elements for a 207(c) violation are present and it is not necessary to make a referral. The email chain also indicated that (b) (6) was sending newsclips to (b) (6) I discussed this with (b) (6) She said she would advise (b) (6) on the need to be cautious and prudent about this kind of communication in order to avoid inadvertent problems. (b) (6) said she would so counsel (b) (6) She also said she would counsel (b) (6) on the need for vigilance regarding communications beyond the one year period that involved matters that were under (b) (6) supervision in her last year of service as Director. The email string is in the file. (b) (6) August 6, 2009

103. (b) (6) (OIG, (b) (6) called to discuss a 208 issue in an ongoing investigation. He sought advice on the "financial interest" and "direct and predictable effect" elements of section 208. Discussed with (b) (6) Called (b) (6) back and discussed the 208 issue. He was appreciate of the input and said that he may contact us in the future as more information is developed in the investigation. (b) (6) August 7, 2009

104. (b) (6) (b) (6), Office of General Counsel, Navy) sent an email with some follow up questions that relate to the planning of an ISIMC conference to be held this fall. The Navy and DOJ Chief Information Officers are Co-Chairs. Two outside organizations have indicated that they would like to participate in the planning of this conference by identifying and inviting speakers, helping to set the agenda, and participating in the ISIMC working group. They would remain in the "background" and would not be identified as conference sponsors. The two entities are Cisco Internet Business Solutions Group, the consulting arm of Cisco, and (ISC)2, a security accreditation organization. Representatives of these groups had previously served as Chief Information Officers with federal departments. Discussed with (b) (6) Called (b) (6) and said that there would be no problem receiving suggestions from these sources with regard to topics and speakers. However, we did not believe that they should be involved in conference development or inviting speakers. The government officials involved should be the ones to set the goals of the conference, do the planning and assess expectations of participants. (b) (6) had the same concerns and said she would advise accordingly. She did not believe they should participate in the working group. And she said any input they might provide should be in the context of input from a broader range of persons. (b) (6) indicated that the Navy takes a conservative view of such a matter but that currently they have a detailee from another agency that takes a more expansive view of government/private sector relationships. The email is in the file. (b) (6) August 7, 2009

105. (b) (6) (EOIR, (b) (6) had some conflicts and recusal questions regarding a recently hired immigration judge (b) (6) (b) (6). The judge had an immigration practice as a solo practitioner. She sold the practice to another attorney. She consulted the (b) (6) bar with regard to the professional responsibility issues. The judge sold office furniture, office supplies, a client list, files, and accounts receivable. The sale price was \$100,000 which will be paid to her over the course of a year. She is recused under 208 from working on any case in which the purchasing attorney is representing a client. The recusal ends when the last payment is made. She does not have a 203 conflict because she sold the accounts receivable and now she is getting a payment for the practice and will not be collecting any outstanding fees for representations before the government that occurred before she became a judge. She does not have a 209 conflict because the payments are not for her services to the government. Her spouse is also an immigration judge. He will also not work on any cases in which the purchasing attorney is the counsel. She will retain the legal entity under which she practiced in order to receive the payments and to take care of tax matters. But the legal entity has no clients and conducts no business. She will dissolve the legal entity once the payments are received and any remaining matters such as tax matters are taken care of. Under these circumstances, there is no problem about continuing to maintain this legal entity as she completes winding down the affairs of her legal practice. Subsequently, (b) (6) confirmed that the new judge had no contingent fee cases. Subsequently, I followed up and sent an email to confirm that neither the new judge nor her husband would handle any cases or matters that were included in the sale of the practice. This would include cases/matters in which the judge had formerly

represented a client even if she had not entered an appearance as the attorney of record in a case. Neither she nor her husband would be assigned any cases whatsoever that involved the purchasing attorney during the time that payments were being made. Once the payments were completed, the spouse could work on new cases involving the purchasing attorney. I suggested that the new judge should continue to be recused for some period of time after the last payment was made.

(b) (6) called on 8/7/09 and said that neither she nor her spouse would take any cases in which she had been substantially involved in private practice which is potentially an even broader category than matters that were included in the sale of the practice. She also agreed that a six month recusal after the last payment was made would be a good practice and they will do that. She said it would not impose any management burden because the (b) (6) office has a lot of judges and it will be easy to have any cases involving the purchasing attorney handled by another judge for a period of time after the payments are complete. The emails are in the file. (b) (6) July 23, 2009, August 7, 2009

106. (b) (6) (sp?)(JMD, OGC) called with a discount question. He wanted to know if he could accept a hotel discount rate offered to all government employees. He thought it could only be accepted if you were on official travel. I told him he would need to find out if the rate was only being offered when someone was on official travel. If that was the case, then he could not use that discounted rate for personal travel. However, if the hotel simply offers the discount to the class of all government employees without regard to whether they are on official travel, then he could indicate that he was eligible and use that rate for personal travel. (b) (6) August 7, 2009

107. (b) (6) OAG, awards. The Brennan Center at NYU would like to honor the AG at their annual dinner for his work on social justice matters, including his work for racial equality and bringing "meaningful change" to the Department. I spoke with (b) (6) at the Brennan Center who discussed the process for determining who receives the award each year (a committee of the Board of Directors nominates someone or a couple of people and the Head of the Board makes the final determination.) The award is given every year. Conferred with (b) (6) who agreed it was a bona fide award and that the AG may attend and accept the award. I sent an email to (b) (6) to let her know, she would follow up with the Brennan Center. (b) (6) August 7, 2009.

108. (b) (6) EEO, Hatch Act. (b) (6) sent an email requesting guidance on the Hatch Act. She had sent some articles regarding (b) (6) (b) (6) nomination and confirmation hearings to her staff and one member of the staff was concerned this was "skirting the Hatch Act." She sent one of the articles she had forwarded, which discussed the diversity that (b) (6) would bring to the Court. I advised that since (b) (6) was not a candidate for a partisan position, the emails would not fall under the Hatch Act. I also advised that (b) (6) should be aware and be careful about sending these sorts of emails as a supervisor. If the emails related to the mission at EEO or had a connection to their work it would be appropriate - the article regarding diversity had a nexus to the mission of EEO. If however the articles seemed to align with one political party or attempt to sway someone's political opinion, she should probably not send the article or email. (b) (6) August 7, 2009.

109. (b) (6) EOUSA, writing. (b) (6) sent an article for review that was written by 3 AUSAs and would be submitted for potential publication in a law journal. The article dealt with the exclusionary rule to information provided to officer's at "fusion centers." I advised (b) (6) on the disclaimers and any use of title or position issues that may arise. I suggested that someone with familiarity with the subject matter review it to ensure that nothing in appropriate was said - he said that review was already underway. (b) (6) August 7, 2009.

110. (b) (6) OSG, 502 determination. (b) (6) OSG, seeks authorization to resume participation in a matter he had ceased working on due to learning his former firm was involved. After advice from PRAO, I recommended (b) (6) approve his participation and she approved. Emails are in log file. (b) (6) August 10, 2009

111. (b) (6) OAG, invitation acceptance. (b) (6) was invited to attend a casual dinner this coming Friday. There are no tickets involved, thus no funds are exchanging hands. The host is an ambassador who had been to the Justice Department this year to meet with the AG. (b) (6) was concerned of conflict since she works in the AG's front office. Though she is not the only attendee, she thought she was the only person from the Justice Department invited. She does not know why she was invited to the dinner, but has decided to decline the offer. (b) (6) August 11, 2009

112. (b) (6) (EOUSA, OGC, (b) (6) called with a going away party question. An (b) (6) got an appointment as a federal magistrate judge in that district. For one year he would not hear cases involving his former office. They were planning to have a going away party for him but he left sooner than they expected and was sworn in on July 31. Now he is in the legislative branch. (b) (6) wanted to know what they could do in the nature of a going away party since he is no longer an executive branch employee and so the gifts between employees rules in the Standards are not applicable. Discussed with (b) (6) Called (b) (6) and left message that they could hold the going away event as long as it was in keeping with events that they have held for other similarly situated departing AUSA's in the past. The Standards would provide guidance even though not strictly applicable. An email is in the file. (b) (6) August 10, 2009

113. (b) (6) (JMD) sought approval to teach IT courses at UMUC this fall and to serve as a proctor for exams at the end of the summer session. (b) (6) approved. The memorandum is in the outside employment file. (b) (6) August 10, 2009

114. (b) (6) (OSG) requested a determination under 502 so that she could resume participation in (b) (6) a patent case in the Supreme Court. Her husband's firm had filed

an amicus brief. We recommended approval and (b) (6) approved. The emails are in the file. (b) (6) August 10, 2009

115. (b) (6) (CIV) called with a 1353 travel reimbursement question. The Chief of Staff in Civil has been invited to be a speaker at the annual meeting of the California State Bar Association from September 10-13, 2009. They are offering to pay his expenses. (b) (6) was asking whether they could pay his expenses to attend on days other than the day he gave the speech. Discussed with (b) (6). Called (b) (6) back and said that the test was whether or not his participation in the other days of the conference would relate to his official duties. They would need to review the agenda and make that determination. We also discussed an invitation to AAG (b) (6) to speak to the National Association of Medicaid Fraud Control Units training program held September 13-17, 2009. I said the same analysis would apply. (b) (6) thought that in that case some of the other sessions at the training would be relevant to the work of the Civil Division. The email and other documents are in the file. (b) (6) August 11, 2009

116. (b) (6) (DAAG, Office of Associate Attorney General) had a recusal question regarding two former clients. In the case of one client, she done work recently but only a small number of hours. In the case of the second client, she had signed an engagement letter but had not provided legal services. I sent her an email describing additional factual information that we would need to determine the applicability of the pledge and 502 and a basis for waiver if appropriate. (b) (6) replied by email with some information. She is on vacation and will follow up when she returns. Emails are in the file. (b) (6) August 11, 2009

117. (b) (6) ENRD, 1353 travel. (b) (6) emailed with a question regarding non-federal source travel reimbursement. An ENRD attorney is invited to train government representatives from New Zealand and 5 other Oceania countries about illegal wildlife trafficking in the region. He is one of the Department's experts in this subject. New Zealand government is paying partial travel expenses and ENRD is covering the rest. The total amount expected from New Zealand is approximately \$2500, which includes partial airfare and approximately \$150/day for hotel and meals. The allowable per diem for the area is \$260/day for hotel and meals. I advised that 1353 would be the proper way to accept the gift. (b) (6) August 11, 2009.

118. (b) (6) OLC, Gift question. (b) (6) accepted an opera ticket from a friend who works at a firm that is a registered lobbyist. His friend is not a registered lobbyist - the ticket was his friend's personal ticket, not one paid for by his friend's firm. He would like to know what he should do now. I advised that as long as this is a genuine friend and the friend personally paid for the ticket, he may accept it under the exception for gifts based on a personal relationship. This is true even if the friend works for a registered lobbying organization. If the friend's firm

has any matter pending before OLC, we should discuss, but I was assuming they do not. (b) (6)
August 12, 2009

119. (b) (6) OAG, gifts. (b) (6) emailed with a question regarding an unsolicited gift the AG received. (b) (6), former NFL football player, sent a congratulatory note to the AG and included an autographed photo of himself, having heard the AG was a (b) (6) fan. (b) (6) wanted to know if photos were considered gifts. I googled autographed photos of (b) (6) and they had a value of over \$100. After consulting with (b) (6) I advised (b) (6) that it would have to be processed as any other gift. Therefore since the value was over \$20 the gift could not be accepted by the AG. He could return it, offer to pay fair market value or it could be accepted by the Department and the AG could display it in his office while he was with the Department, but not take it with him when he leaves. (b) (6) said she would talk to (b) (6) to determine what the AG wanted to do. (b) (6) August 12, 2009.

120. (b) (6) OIG, use of official title. (b) (6) is in the process of writing a report of an investigation and had questions about the use of one's official title. I advised that she was correct that a DOJ official may not use their title, such as Assistant Attorney General, AUSA, DAG, etc., in personal correspondence or other personal activities. Commissioner and Chairman are titles, so use of either would not be permitted by the rule. The propriety of "Honorable" is out of my expertise - I think there is some protocol or at least custom that governs the use of this honorific, and my understanding is that it is appropriate for relatively senior officials - not her and I, for instance - and I didn't know if it is appropriate for a Commissioner to use it. (b) (6)
August 13, 2009

121. (b) (6) USAEO, USA teaching position. A USA received approval to teach a course in 2007, and would like to teach the same course at the same school this fall. (b) (6) would like to know if this has to go up the approval chain again. My suggestion was that he email ODAG for a "re-approval" and advise that nothing has changed in the circumstances (assuming that's the case) and that DEO and EOUSA both recommend approval. (b) (6) August 13, 2009

122. (b) (6) (FBI, (b) (6) called with a question about the exception to 207 for communications of scientific and technological information. A former SL employee who retired in July and had worked on the Sentinel Project has gone to work for (b) (6). He knows the architecture of the system, having worked on it for years. He is subject to the permanent ban and the one year ban. The FBI's information technology branch would like to have his assistance and support. (b) (6) wanted to know if this exception had ever been used by the Department and what would be required to get approval. Discussed with (b) (6). Told (b) (6) we were unaware of it ever having been used. Said that we would need to know more specifics regarding the former employee's scientific and technical expertise. The focus had to be on the science, not just his knowledge of the program. (b) (6) said he would ask the IT people to put something on paper and when he had that he would like to talk with us again and perhaps meet with himself, us, and the IT people. (b) (6) understands that it would take some time to make such a request and get a determination and that the outcome is not certain. An email is in the file. (b) (6) August 12, 2009

123. (b) (6) (Civil, (b) (6) called about a 502 determination for (b) (6), a career line attorney, to continue to participate (b) (6). (b) (6) sent a draft which we reviewed and made some suggestions for changes which (b) (6) made. (b) (6) had come from (b) (6) in September 2008 and had a little over 6 weeks remaining on his one year covered relationship with his former firm. Now, it is expected that (b) (6) will be representing a party in the case. Also the attorney who is expected to be involved is a partner that he had worked with on two cases when he was an associate at the firm. The determination allows him to continue to work on the case with the limitation that he not have direct contacts about the case with (b) (6). The emails and the 502 determination are in the file. (b) (6) August 13, 2009

124. (b) (6) (COPS) had a financial disclosure question regarding the reporting of school bonds and the conflict analysis of the asset. (b) (6) is the (b) (6). His regular job is as the (b) (6) where he does not file an OGE Form 450 because in that job he does not do any work relating to grants. Now, however, he may see grant matters. He owns \$36,000 of revenue bonds in the (b) (6) (b) (6) has a grant for \$125,000. Said test for conflicts is whether a particular matter would have a direct and predictable effect on the value of the bonds or the ability or willingness of Ennis to honor its obligation. I said bond rating would be relevant to the analysis. Discussed with (b) (6) (b) (6) is going to approach this with recusal as the preferred remedy. When he goes back to his other job possibly in September, recusal will not be a problem because he does not deal with grants. (b) (6) may indicate in the reviewer's notes that he is recused from the (b) (6) grant. Her email is in the file. (b) (6) August 13, 2009

125. (b) (6) CRT, possible conflict. (b) (6) emailed in a follow up to an issue we discussed in January. (b) (6) is representing his mother in an ADA case stemming from an accessibility issue for a condo she recently purchased. The original question concerned a case in Baltimore that involved similar issues and parties to those involved in (b) (6) mother's case. At that time they were awaiting word on a statute of limitations challenge. The government won on that point (the court ruling that the SOL did not preclude action) but had not decided whether to move forward or not. (b) (6) had emailed (b) (6) asking about the next step in his mother's case - she needs to make an election to continue in state court or in the administrative process. (b) (6) was concerned that because (b) (6) is head of the (b) (6) this would be a conflict. We concurred. Emails in the file with greater detail. (b) (6) August 13, 2009.

126. (b) (6) (OSG) sought a 502 determination in order to resume working on Bilski v. Doll after discovering that her former firm, (b) (6), had filed an amicus brief in the case. SG Kagen approved. See related entry #114 where (b) (6) had received 502 approval to participate in Bilski after learning that her spouse's firm had filed an amicus brief in the case. The email recommendation with the SG's approval is in the file. (b) (6) August 17, 2009

127. (b) (6) PSS, Contractor issue. (b) (6) called (b) (6) with a question regarding a DOJ task order with Grant Thornton that calls for a certification of no conflict with other involved contractors. A GT employee asked PSS if there is a threshold amount for the conflict and if he had to report anything below that. (b) (6) was not sure and called for guidance. We advised that we cannot advise contract employees but we can advise the CO. Contract employees should be told that all holdings should be disclosed to determine if there is a conflict. If the CO determines there is no conflict, they can sign the certificate. If the CO has a question regarding the determination of conflict, they may contact us. Because the contractors are not subject of the same federal ethics rules of a federal employee, there will be slightly more discretion in determining if there is a conflict or not. Email in file. (b) (6) August 17, 2009.

128. (b) (6) ODAG, Attendance at Nats game. (b) (6) and (b) (6) have been invited by former USA (b) (6) now at (b) (6), to attend the Nats game on Wednesday using the firm's tickets. I advised (b) (6) that (b) (6) and (b) (6) may accept (b) (6) invitation under the exception to the general prohibition on accepting gifts from prohibited sources that permits acceptance of gifts based on a personal relationship. Who actually pays for the gift is a factor in determining whether a gift falls within the exception. Although the firm provided the tickets, (b) (6) has the use of them to invite who he wishes (as opposed to inviting, e.g., clients) and in these circumstances we may conclude that it is a gift from (b) (6) personally. However, we always consider whether the firm has matters pending before the DOJ official invited. If (b) (6) also has no (b) (6) matters pending, I think it is fine for (b) (6) to approve his and (b) (6) attendance. I think it best to leave the decision for (b) (6) to EDVA/eousa so they can judge what is pending before the district (although I note that if an employee pays the face value for the ticket it is not a gift). (b) (6) also advised that he had no pending matters. (b) (6) approved their attendance. (b) (6) August 18, 2009

129. (b) (6) OAG, AG invitation to speak at HNBA Latina lawyers luncheon program on 9/3/09. Also private reception after keynote address. AG not going. (b) (6) August 18, 2009

130. (b) (6) (b) (6) called on 8/18 with a financial disclosure question. (b) (6) had suggested that he call (b) (6) (b) (6) is a former (b) (6) (b) (6) and he is now in private practice. He identified himself as an attorney for Chris Christie who is currently running for Governor in New Jersey. A story in today's New York Times covered the fact that Christie had not reported a \$46,000 loan to Michele Brown, a prosecutor in Christie's office. He did not report it on his annual report for 2007 filed in June 2008 or on his termination report when he left in December 2008. He said they wanted to correct the reports as soon as possible. (b) (5)

(b) (6) called later to ask whether there was any internal DOJ policy that addressed loans between employees. Director Cusick had asked the question because they had an inquiry from a

reporter from the New York Times. Specifically, she asked if there was any policy that prohibited it in certain circumstances. (b) (6) checked USAM and advice logs and did not find a reference to a written policy. Discussed with (b) (6). Called (b) (6), the duty attorney at EOUSA, and asked him if he was aware of any guidance that EOUSA might have issued. He was not but he said he would check and call back. UPDATE: (b) (6) called on 8/19 and confirmed that there was no written internal policy in EOUSA on loans between employees. I called (b) (6) on 8/19 and told her the Department did not have a written internal policy on such loans. (b) (6) August 19, 2009

131. (b) (6) former (b) (6) (b) (6) called for post-employment guidance. He was a Schedule C, GS-15, who left on January 20, 2009. He is now working with a placement firm in his job search. They have a case that involves document review and they asked him what restrictions he is subject to. He is not subject to the one year restriction. As a general matter, he did not have anyone who reported directly to him. However, we discussed the possibility of being given authority to supervise or administer a particular project. So, for the most part, he needs to be concerned about the permanent restriction for specific party matters in which he participated personally and substantially. (b) (6) pointed out that CRS does not get involved in litigation. But I said that a mediation matter such as a racial dispute would be a matter that involved specific parties. An example would be the Jena case. If a lawsuit arose out of a mediation and involved the same underlying facts, same parties, same issue, same laws, etc., it would likely be considered the same specific party matter. So he would need to find out enough about the case that the placement firm is looking to staff to determine whether it was something that he had worked on at (b) (6). I told him if he had any questions, to call our office. If he has professional responsibility questions, he needs to contact the appropriate bar counsel. (b) (6) August 19, 2009

132. (b) (6) CIV, Hatch Act question. A Civil employee contacted (b) (6) about a Hatch Act related question, specifically participation in non-partisan elections. I advised (b) (6) that I would like to raise this as a policy issue with ODAG and OASG. Regarding specific questions here on a DA race in northern California, (b) (6) spoke to (b) (6) again and (b) (6) advised that there aren't any DOJ-related issues in the race; she said she wants to give money, and would like to "talk up" the candidate at other events, e.g., if she attends a fundraiser she wants to tell other people there how strongly she believes that the individual would make a good DA. I advised (b) (6) that: (b) (6) may give money; she may, as long as the event truly remains non-partisan, verbally endorse the candidate as long as she does not identify herself with her position. Even if not a Hatch Act violation, she can misuse her position if she links it to endorsement of a candidate. Also, please advise (b) (6) of potential that election can morph into a partisan one. I sent (b) (6) links to OSC opinions on this subject. Emails are in log file. (b) (6) August 19, 2009

133. (b) (6) (ATR, (b) (6) called to ask about providing information to fellow employees regarding her husband's business providing financial planning services. She wanted to know if (1) she could mention to her friends in the office that her husband provides such services, (2) if not, could she give the names of friends in the office and let her husband contact them, or (3) if not, could she provide information such as her husband's phone number to

someone in the office who knew about his business and wanted to contact him. Discussed with (b) (6). Called her back and said (1) would be using her official position for personal gain, (2) would be doing the same thing indirectly, and (3) would be alright as long as it did not involve a subordinate. She has one person who works for her. She then explained further that she was only thinking of one specific situation in which she and her husband socialize by going to dinner occasionally with another couple, one of whom works in her office. That person is not her subordinate. I said that in those circumstance it would be permissible to pass along contact information on her husband's business. (b) (6) August 20, 2009

134. (b) (6) (Civil) sent an email asking about whether several attorneys in the division could contribute to an official portrait for Judge Tatel of the D.C. Circuit that would be sponsored by the Historical Society of the D.C. Circuit and permanently hung in the courthouse. The judge himself apparently made an appeal for support although it seems that the Historical Society is handling the fundraising and the gift would be to the Society, not the judge personally. One of the Civil lawyers has a case coming up before the judge in October. The other two attorneys have no cases before the judge or even in the D.C. Circuit at this time. Discussed with (b) (6). Sent (b) (6) an email saying the two who had no current case could participate as they wished. The one attorney who had a case might also be able to participate depending on the circumstances. The key factor would be whether the judge would be told who contributed and when he would be told. If the judge was unaware of individual contributors until some later time after the case was over, such as at the unveiling of the portrait, then the attorney with the current case could contribute if he wished. The email string is in the log file. (b) (6) August 20, 2009

135. (b) (6) CIV, recommendation letter question. (b) (6) emailed questions from a political appointee in civil, (b) (6) about writing a letter for someone up for local judgeship; and about support/effort on behalf of possible candidate for USA in San Francisco. Advised (b) (6) that if (b) (6) knows the person under consideration for the local judgeship well, she could write the letter; she should only mention her DOJ position in general terms and the letter should clearly reflect how she knows the individual and not that DOJ supports the person. For the second, I spoke to WH liaison (b) (6) and we decided that it would be best that (b) (6) not make the contacts unless: 1) she knows the person well and feels strongly about their qualifications as USA, and even then only if 2) she speaks with (b) (6). It's possible that another candidate has been advanced by the Senators or others and is well along in the process and if so the contacts could be counterproductive, embarrassing, or could antagonize people especially if they are seen as the Department's view. (b) (6) August 20, 2009

136. (b) (6) OASG, recusal question. (b) (6) question is whether (b) (6)(b) (6) is recused from participating in an antitrust investigation in which Simon & Shuster is an interested party, based on whether S&S is (b) (6) (b) (6) former client. I advised that I do not think there is a problem. From what we found online, it appears that in late 2005, Viacom (which included Simon & Shuster up to that point) split into 2 companies: one called CBS Corporation (which inherited S&S) and the other retaining the Viacom name. National Amusements retained majority control of both firms. So, the Viacom that was a client of (b) (6) in early 2008 would be Viacom that no longer includes Simon & Shuster. (b) (5)

(b) (5)

(b) (6) August 20, 2009

137. (b) (6) (TAX, (b) (6) called with a question about some \$25 Target gift cards that the Justice Federal Credit Union had given to some employees who had helped the credit union set up brown bag lunch retirement seminar. She thought that maybe 4 people had got them. Told her they could only be accepted if an applicable gift exception was available and this exceeded the de minimis exception so they would have to be returned. Discussed with (b) (6). Called and left message to call. Next day followed up with an email indicating that it was a gift because of official position and depending on the duties of the employees may be a gift from a prohibited source. The credit union does not have a special relationship with the Department. The Department does not endorse its products or services. There needs to be an arms-length relationship with the credit union. (b) (6) will tell her employees to return the cards and they may explain that it exceeds the limit of the gift exception but they may not suggest that the credit union reoffer the gift at a lower amount within the gift exception. The email is in the log file.

(b) (6) August 21, 2009

138. (b) (6) Contact with former client. (b) (6) (b) (6) asked (b) (6) to contact us about whether he can attend a dinner that (b) (6) (b) (6) and the (b) (6) and a few other folks from DOJ are having on Tuesday evening (in Seattle) with a half dozen Indian tribal leaders and NCAI's general counsel, (b) (6) (NCAI - the National Congress of American Indians - was a client of (b) (6) before he came to DOJ, so he is generally quite limited in his NCAI contacts.) The dinner is not open to the public. If it turns out that (b) (6) and (b) (6) cannot attend the same dinner, he will make separate arrangements, so that (b) (6) (b) (6) and the (b) (6) can spend time with (b) (6). I advised (b) (6) that he may attend the if the dinner meets the criteria of the Pledge restrictions and guidance that allow him to communicate with a former client on matters of general applicability as long as 5 distinct parties are present. (b) (6) August 21, 2009

139. (b) (6) (ATF) had a question from (b) (6), a Questioned Document Examiner for ATF. He serves on a subcommittee of the American Society for Testing and Materials (ASTM), a standards setting organization. ASTM accredits laboratories, including ATF labs. The subcommittee is now considering a procedure to expel one of the members who is from a private sector organization. (b) (6) wanted to know if (1) he could provide copies of emails relating to the subcommittee's business, (2) whether ATF would represent him if some action were brought against him as a result of his participation in the expulsion matter, and (3) whether he could appear in a hearing in the matter. There seemed to be some uncertainty as to whether he was participating in his personal capacity or his official capacity and whether or not he had obtained approval. In the past, ATF had apparently paid for his travel to attend some conferences of the group. On the first question, I gave him (b) (6) (b) (6)'s contact information to discuss the email release. On the other two questions, ATF decided to have the employee request approval to participate in a personal capacity in which case he would be personally responsible for his participation in the expulsion matter. Beyond this individual case, (b) (6) was seeking some guidance regarding the application of the DAG's memo of May 19, 2000. A number of ATF employees are involved in outside organizations. If they are involved in an official

capacity, (b) (6) was asking what level of involvement in an official capacity would require DAG approval. Would membership by ATF itself require approval? Discussed with (b) (6) Sent (b) (6) an email follow up on the question of approval of (b) (6) to participate in his private capacity noting that (b) (6) would need to be careful to observe the requirements of section 205 on representing an outside organization and 208 on acting in an official capacity on any particular matter that could affect the organization. Also asked (b) (6) to provide some more specific information relating to his general questions. The emails are in the file (b) (6) August 21, 2009

140. (b) (6) PSS, gifts/contractors. (b) (6) emailed with a question regarding a retirement party and contractors. A longtime employee is retiring and the section is holding a retirement party at a local restaurant. An email was sent out requesting \$25 from all employees who wished to participate, including contractors. The contractor - Booz Allen Hamilton - emailed back and thanked them for the invite and explained that contractors could not donate to such collections but that they would attend and pay for their own food/drink. This was forwarded to (b) (6) and questioned as being correct. I advised (b) (6) that it was correct, contractors could not be solicited for donations for gifts, refreshments, etc. I also advised that if the contractors planned to attend they could pay their own way but that they could not be on government time - that is they could not bill the government for the time they spent at the social event. One government employee complained that some of the food would be prepurchased and there was no way to determine the per person cost for items such as cake. I advised that if they wished to purchase the cake then everyone who was invited would be able to have some - donations were voluntary or in the case of contractors not allowed. I advised (b) (6) on some basic solicitation rules too - that the solicitation should not be made by a supervisory employee, that it was voluntary but that everyone could attend the event regardless of donation and that while one email may be ok, there should not be any more email reminders about the solicitation or event. A single flier may be placed in a public location to serve as a reminder. (b) (6) August 24, 2009.

Addendum:

(b) (6) of UFMS came into DEO prior to her COTR class. She works in UFMS, has been part of the planning for this party, and wanted an overview on what was permissible and where did they go wrong. I went over the relevant rules including gifts to superiors for special infrequent occasions, collections for permissible gifts to superiors by nonsupervisory employees only, and being careful not to include contractors, as it amounts to improper soliciting of gifts from prohibited sources. If contractors want to attend independently, they must pay their own way, and not contribute toward a group gift or collective food. Since the happy hour is planned for a late afternoon outside of usual lunch break times, but inclusive of normal working hours, contractors could not bill the Department for their time if they attended, and fed employees would need to account for their work time as well (like through annual leave). (b) (6) did have concerns about the way they were planning the party - for the future she will be sure any plans get the okay of our office beforehand, and the flyer is "blessed" by our office before it goes out. I verified the ethics training status of the UFMS employees involved, and will check about UFMS having COTRs, who should be filing a 450 or Certification, and getting annual ethics training. (b) (6) August 25, 2009

141. (b) (6) (ATR (b) (6)) called with several speaking related questions. Discussed with (b) (6) and called (b) (6) Back. The first question involved an invitation by the

(b) (6) to the Division to send someone to an antitrust conference in Beijing that would be held from October 26-28. Adding on travel time would mean a full week (October 24-31). (b) (6) would pay for the expenses. (b) (6) did not request any specific person. The Division decided it was not an important enough event to send someone officially for an entire week but indicated they had no objection to an economist going on his own personal time. The economist is interested in doing so. He would discuss how economics and data analysis is used in antitrust investigations. Although his talk would deal generally with economics, the subject does relate to his official duties. Told (b) (6) that we did not think he should go in his personal capacity as it is likely that he would be viewed as representing the Department, especially since this was an international forum. In our view, he should either go officially, in which case the Department could use 1353 to accept reimbursement of travel expenses (estimated at \$5,000), or he should not go at all. The second question involved an invitation by the (b) (6) to the (b) (6) to attend a reception at Mandarin Oriental Hotel in Washington to honor a Chinese official. This (b) (6) is not political and so the Pledge restrictions do not come in to play. The (b) (6) is here temporarily from academia. (b) (6) had asked if the spouse could attend. I told (b) (6) that he should confirm that all the requirements of the WAG exception have been met and that if most others in attendance are bringing a spouse or guest, that he could do so as well. The third question involved an invitation to (b) (6) to speak at a symposium at (b) (6) and a follow on symposium at (b) (6) September. On the day before she would speak at each symposium they are holding speaker's dinners. Told (b) (6) the exception for speaking on the day of the event would not apply if the dinners were a day earlier and that the dinner events would have to qualify as WAG's. Moreover, the Pledge restrictions would apply. (b) (6) said that the (b) (6) firm was sponsoring the (b) (6) speaker's dinner and that it was an exclusive group that included other members of the firm and interested guests of the firm. This did not sound like it would meet the WAG requirements and even if it did, it would be barred by the Pledge. Moreover, because it raised special access issues, it would be better if (b) (6) did not attend at all even if she wished to pay for the dinner. (b) (6) thought the (b) (6) speaker's dinner was sponsored by (b) (6). In that case, more facts would be necessary to see if it qualified as a WAG. Or it might be to include the dinner in the travel expenses that (b) (6) offered to pay using 1353. There is an email in the file. (b) (6) August 24, 2009

142. (b) (6) (OPDAT) called our office believing it was the Office of Government Ethics. He was trying to reach (b) (6) to schedule an ethics briefing for a visiting delegation of 8 judges from Senegal in September. This is under an international visitors program and Meridian is the contractor handling the logistics for the State Department. I gave him (b) (6) phone number. (b) (6) August 24, 2009

143. (b) (6) (ATR) called with a 207(c) question that involved the definition of "senior employee". A person who had been a career employee became a non-career Schedule C employee when he moved to the front office first as the Special Assistant and then as the Chief of Staff. He left on January 20, 2009. He remained a GS-15-10 when he switched from career to non-career. (b) (6) wanted to know if he was covered by the definition. I said it was geared to rate of base pay excluding locality pay and a GS-15-10 would not meet the definition of senior

employee in 5 C.F.R. § 2641.104. (b) (6) also had a question about our DEO handout from June 2009 which said that for some political employees the 207(c) restriction was two years. (b) (6) wanted to know where the two years came from. I said it was from section 1, paragraph 4 of the pledge which extends the one year requirement for those subject to the pledge and covered by 207(c). This departing employee who left on January 20, 2009 would not be subject to the pledge. (b) (6) August 25, 2009

144. (b) (6) JMD, OCIO on detail from ATF) requested approval to serve without compensation as a co-chair of a committee of Women in Technology. The memo from the Director of DEO to (b) (6) was dated August 17, 2009 and it was approved on August 25, 2009. The memorandum is in the outside activity file. (b) (6) August 25, 2009

145. (b) (6), ethics official, Interpol: 4 Interpol employees will be in Lyon to visit the Interpol Secretariat General (IPSG) who wants to host a dinner for the US Staff Delegation. (b) (6) wants to know if they can accept this gift from Interpol, which is an international organization to which the US delegation pays dues in its representation of the US. (b) (5) in checking with (b) (6) she referred me to the FGDA: gifts from international organizations such as Interpol are considered to be from foreign governments. These meals have a value of about \$50 each which falls under the de minimis threshold of \$335 and can be accepted by the Interpol employees. They must not claim the meal on their per diem and must report the meals to JMD when JMD calls for info for their annual report of gifts from foreign governments. Emailed (b) (6) - (b) (6) Executive Officer and DDAEO of Interpol responded that (b) (6) was out for a few days but he would relay the response to the affected employees. (b) (6) August 27, 2009

146. (b) (6) OSG, 502 determinations. I emailed (b) (6) two recommendations for 502 authorization. These cases were the Loving and Piedmont cases. (b) (6) approved my recommendation for (b) (6) to participate in both cases. Both emails are in log file. (b) (6) August 26, 2006

147. (b) (6) DDAEO, CIV: Pledge question. (b) (6) is the named Trustee for a former client, uncompensated. He cannot resign from the position. His former firm remains legal counsel for the Trust. (b) (6) asked about SF278 reporting of this position and the Trust assets, and whether this position raises issues under the Ethics Pledge. Helped her with the SF278 reporting: seemingly Mr. (b) (6) has no beneficial interest in the Trust assets so they do not need to be reported unless he has the unqualified power to dispose of them. The position of Trustee is reportable on his Sched C. Discussed the Pledge issue with (b) (6) - the traditional ethics rules .208 and .502 will restrict Mr. (b) (6) from communicating on official matters with his former firm/now legal counsel. He will remain so restricted for one year after he ceases to be the Trustee. This will definitely outlast the one year restriction as former employer. The Pledge restricts communications with his former firm in his official capacity - not his personal capacity so it places no additional restrictions on his communications with his former firm as Trustee, but he's restricted from official communications with them under .208 and .502.. (b) (6) emailed this analysis. Email in log file. (b) (6) August 28, 2009

148. (b) (6) (ODAG) called with a recusal question. She worked for more than the past two years for the (b) (6) which has four company members. These are her former employer and clients. In the past, (b) (6) joined in with others such as the Association of American Publishers in filing an amicus brief. (b) (6) asked if there was any need for her to recuse herself from working on an antitrust settlement that involves the Association of American Publishers, the Author's Guild, and Google. She never represented any of these parties in any matter. She had no prior involvement in this antitrust settlement matter. Neither (b) (6) nor its member companies is involved in this antitrust matter. The only link to this case is that her former employer joined in on an amicus brief with one of the parties to the settlement but on completed unrelated matters. I said that she could participate in the settlement and that the linkage was so remote that it did not even implicate the catch-all provision of 502. An email is in the file. (b) (6) August 26, 2009

149. ArcSight, a Department contractor, holding an IT conference in September offered two complementary tickets to attend the conference to anyone who was a speaker. (b) (6) will be a speaker in her official capacity. Consequently, the gift of the tickets would be to the Department for its use. (b) (6) approved acceptance of the gift by the Department. The memorandum with signed approval is in the file for gift acceptance on behalf of the Department. (b) (6) August 26, 2009

150. (b) (6) (Office of the Associate AG) asked if she would be barred by the Pledge from participating in a matter involving an antitrust settlement in which Google was a party. More than two years before she was appointed she had signed an engagement letter to Google which meant that Google would put her former firm on a list of firms that Google could use as outside counsel. Google never did use the firm or pay any fees such as a retainer fee. Advised that because her former firm was not involved in the matter and because she had not provided any services to Google during the two years prior to her appointment, that she was not barred by the Pledge from participation. Also she was not barred by either 208 or 502. (b) (6) decided not to pursue another question relating to Intuit, a former client that she had provided services for. The email is in the file. (b) (6) August 27, 2009

151. (b) (6) (b) (6) (OJP) called regarding a proposal to use RSA for some IT security software under a sole source contract. JMD would contribute about \$500K and OJP would put in another \$500K. JMD would just contribute money and OJP would do the procurement work. (b) (6) son, (b) (6) works for RSA and in May 2008, the Department IT officials were notified of this conflict and of the need to keep (b) (6) out of any matters involving RSA. (b) (6) and (b) (6) were seeking confirmation that (b) (6) had no involvement in this RSA matter. I discussed with (b) (6) and confirmed that with respect to this matter, (b) (6) had no involvement. (b) (6) also confirmed that the screening mechanisms within JMD were still up-to-date. Conveyed that information to (b) (6) and (b) (6) (b) (6) (5)

(b) (5) The emails and some background information provided by OJP are in the log file.
(b) (6) August 27, 2009

152. (b) (6) (CRT) had a question about royalty income which he resolved. I sent him a follow up email indicating that royalty income for past completed work is more akin to income from an investment. The emails are in the log file. (b) (6) August 28, 2009

153. (b) (6) OAG, AG speech and award acceptance. The AG was invited to speak at NNEDV's annual dinner and receive an award. The event is a fundraiser and the AG was not being asked to give an official speech, in which case his participation would not be consistent with the standards of conduct. Also, the organization has grant applications pending with DOJ, so timing of the award is a consideration in approving the award. (b) (5) decided the AG would not attend. I will follow up with OVW because the acting OVW director was also scheduled to attend/participate. (b) (6) August 28, 2009

154. (b) (6) OPR, 1353 travel. (b) (6) Deputy Director is traveling to Tokyo to give a speech about OPR. The United Nations Asia and Far East Institute has offered to pay her travel expenses in-kind: airfare, lodging, meals. They also plan to pay her incidentals, and also an honorarium. Checked w/ (b) (6) we then confirmed for (b) (6) by email that the CH must pre-approve the acceptance of gifts of travel upon (b) (6) recommendation and conflicts analysis, that (b) (6) is not permitted to accept cash or travel payment directly for any incidentals, that her per diem submission cannot include the meals that were provided by UNAFE, The honorarium must be declined (under 209). The gift of travel will be accounted for on the biannual SF326. (b) (6) September 2, 2009

155. (b) (6) (OCIO, JMD) requested approval to work as a paid laboratory assistant in connection with a computer science course at George Washington University that will be taught by (b) (6), an employee of RSA, a Department contractor. Some emails that provided the background information are in the log file. The memorandum dated August 31, 2009 is in the outside employment JMD approvals file. (b) (6) approved on September 1, 2009. (b) (6) August 31, 2009

156. (b) (6) (ODAG) requested 502 approval to participate in the Jeppesen case. Her husband is a salaried staff attorney with (b) (6) which is presenting the plaintiff in the case. He has no involvement in the case and she will not need to make any contact with (b) (6) in the course of working on the case. (b) (6) approved. The approval email and related background emails are in the log file. (b) (6) September 1, 2009

157. (b) (6) (JMD facilities management) called about a going away lunch for (b) (6), an employee of the Department, who is leaving on September 10 to go work at the State Department. They are planning a lunch and a gift. They are thinking of a pen from Fahrney's. She asked what the guidelines were for an event like this. I told her that a group gift was

permitted; that there was no dollar limit but that the gift had to be reasonable and appropriate for the occasion; that participation had to be voluntary and no specific amount could be required; that a supervisor should not make the request; that they could pay for his lunch. I also said they could not collect from contractor employees for the gift or his lunch but contractor employees could pay for their own lunches and attend. She was not sure they had any contract employees. She was aware of most of these limits and was fine with this guidance. (b) (6) September 1, 2009

158. (b) (6) (Navy Department, (b) (6) sent an email expressing her concerns about an upcoming teleconference event in October hosted by Cisco for a visiting delegation of CIO's from the European Institutions. In addition to the Navy CIO, the CIO's of DOJ and DOD were also invited. They would attend by way of the teleconference facility at the Reagan Building. Linda's concern was that this event, as proposed, would give Cisco exclusive access to requirements development information. (b) (5)

(b) (6) discussed with (b) (6) Told (b) (6) we shared her concerns and thanked her for bringing this to our attention. Sent a follow up email to (b) (6) telling him that we shared the concerns of the Navy ethics official and asking him who in his office was handling this matter for him. Linda's incoming email and the email to (b) (6) are in the log file. (b) (6) September 2, 2009

159. (b) (6) OARM, JMD) called to ask whether he could attend a luncheon on September 3 that is being hosted by the National Gay and Lesbian Task Force at the Taberna Del'Alabardero restaurant. (b) (6) assumed that the market value of the lunch would be more than \$20. The executive director of the Task Force would speak. (b) (6) would be attending in a personal capacity. He was contacted by an employee in the Civil Rights Division to see if he would be interested in attending. (b) (6) thinks someone may have dropped out at the last minute and they were looking for a replacement. (b) (6) said he was interested and the Civil Rights employee submitted his name to the Task Force which sent him an invitation. (b) (6) thinks that the Civil Rights person contacted him because he participates in the Pride organization at DOJ. Discussed this with (b) (6) and advised (b) (6) that he could attend as the gift prohibitions do not apply under these facts. (b) (6) has no official interaction with the Task Force. He is not aware of any matters in OARM or JMD that involve the Task Force. Under the supplemental regulation, the gift prohibitions apply by component. JMD is a separate component. Nothing in these facts indicates that the Task Force is a prohibited source for a JMD employee. Moreover, under these facts, the invitation was not offered because of his official position. Rather it was because of his participation in Pride, a DOJ recognized employee organization. I also advised (b) (6) to be alert to the possibility that he could be contacted by the Task Force at some time in the future regarding attorney employment or other matters. (b) (6) work in OARM involves disciplinary matters. I also called attention to the fact that the analysis under the gift rules might lead to a different conclusion for an employee of the Civil Rights Division. The Task Force has an interest in the issue of hate crimes, something Civil Rights handles. I said we would recommend that the Civil Rights employee contact a CRT ethics official for guidance on what was permitted. I gave him the names of the CRT ethics officials. (b) (6) said he would pass that information on to

the Civil Rights employee. (b) (6) September 2, 2009

160. (b) (6) (b) (6) (b) (6)) called about a complaint against two AUSA's in (b) (6). She alleged that the attorneys had used fraudulent evidence in connection with a discrimination suit against the Army brought by (b) (6), (b) (6). She indicated that she had contacted OPR. I told her that the was the correct office to contact on this kind of matter and that I would check on the status of the matter. Discussed with (b) (6). Contacted (b) (6) in OPR who said the matter was awaiting assignment in OPR. Called (b) (6) back and told her the matter was in OPR awaiting assignment and that is the correct office to handle this matter. If she had questions about its status, she should call OPR at (b) (6) and ask for the duty attorney. The email exchange with OPR is in the log file. (b) (6) September 3, 2009

161. (b) (6) CRM, 1353 travel. German government is trying (b) (6). The Court wants OSI to bring over an original document for examination and has offered to pay all travel expenses. (b) (6). CRM's employee, a historian, is going to deliver the document. (b) (6) at first believed the historian was needed to testify in Court to authenticate the document for evidence, but upon speaking with the historian more she learned today that the Court has plenty of legal analysis at hand to authenticate the document, but has requested the original for examination. The only way to get it there in time for Monday when the Court wants it is for OSI to physically bring it and meet with the Court. It is not a hearing or testimony, but a meeting. Therefore, (b) (6) believes 1353 is appropriate for acceptance of the travel expenses but wanted to confirm with (b) (6) whether it should instead be agency gift acceptance. (b) (6) okay'd (b) (6) to use 1353 for acceptance of this travel. (b) (6) September 3, 2009

162. (b) (6) ATR, speaking invitation. (b) (6) and (b) (6) would like to attend a small (10-20) people meeting with members of the Democracy Alliance on the morning of October 9. The Democracy Alliance is hosting its annual meeting here in DC and they are sponsoring a number of these dialogues for their members with administration officials (OMB, Energy, etc.). [The Alliance is an investment partnership of business and philanthropic leaders committed to investing in and fostering collaboration among progressive leaders and institutions that are building a more robust, coherent progressive movement at the local, state, and national level. Alliance Partners represent a range of progressive perspectives, and have diverse backgrounds in business, philanthropy, and academia.] The Alliance is a non-profit; they are not registered lobbyists. The Democracy Alliance is a former client of (b) (6) (b) (6) and she is subject to the Pledge restrictions on contact with them. I advised (b) (6) that I believe this would not be permitted under the Pledge. They are not an educational institution or think tank with an expertise in a given subject, and the proposed meeting is not with 5 distinct parties, so the two exceptions for discussions of matters of general applicability, even assuming those were the only topics to be covered, would not apply. In addition, this would not be a speech that might constitute an exception to the general prohibition on communicating in the course of official duties with a former client. (b) (6) September 3, 2009

163. (b) (6) OLC, Travel reimbursement acceptance. (b) (6) forwarded me a recommendation to approve that the Department accept reimbursement for (b) (6)'s travel to Harvard to participate in a public service orientation program. I concurred in recommending approval. (b) (6) September 4, 2009

164. (b) (6) ASG, WAG approval. I emailed (b) (6) the following for approval: (b) (5)

(b) (5)

approved. I also advised ASG (b) (6) that he may approve (b) (6) attendance. Emails in log file. (b) (6) September 4, 2009

165. (b) (6) DDAEO, CRS. A former longtime CRS employee, who had fallen on hard times has now died. (b) (6) received questions on how CRS employees can help pay for funeral costs, etc. He knows that fundraising efforts would not be permissible within CRS. Can current CFC employees who specifically ask be given the phone number of the funeral home to make donations for funeral costs? There is an alumni group of former CRS employees - none of them are current federal employees - they've asked if they can be the contact group for donations. One email has gone within CRS advising of the death. Can one additional email go out which says something like: "There have been inquiries on how to help. All such inquiries should be addressed to the funeral home or [the alumni group] - with the contact phone number given." (b) (6) ok as long as there were not collection efforts within the office and as long as the alumni group did not tie themselves in some way to the current CRS employees - as if CRS was sanctioning or supporting the collection efforts. (b) (6) thought he was on the right track but just wanted to double check his thinking. (b) (6) September 9, 2009

166. (b) (6) CIV, travel plans - tribal organization. (b) (6) plans to attend the event

described in (b) (6) email. There is no travel reimbursement involved and this is not a former client. (b) (6) would like to verify that there is no ethics pledge issue. I advised that there was no Pledge issue as long as (b) (6), (b) (6) and any other political appointee attending do not have a "Pledge relationship" (e.g., former employer or client, organization on whose board they served) with the organization. (b) (6) September 8, 2009

167. (b) (6), EOUSA, outside activity for PAS nominee. They have a USA nominee for the WDWA (not yet confirmed) that has asked whether there is any prohibition against her participating in a fundraiser with a charity called the College Success Foundation on September 14th. She is not a current federal employee. The Foundation provides college scholarships and support to disadvantaged kids in foster care. Every year they have a golf tournament that features current and past Governors (both parties) as a fundraiser. The nominee has been asked to join a foursome in the tournament. (b) (6) would like to know if I am aware of anything that would prohibit her participation from an appearance standpoint and if the White House has provided any guidance w/re to this type of situation. I advised that there is no specific guidance for unconfirmed nominees, but there are some sensitivities here, and misuse of position is a real concern, so this is what we've advised in analogous circumstances. She should have a prior connection to the group or a personal as opposed to professional connection to the group/organizers. And, she should not play with any soon-to-be prohibited sources. (b) (6) September 8, 2009

168. (b) (6) (b) (6) post-employment question. While (b) (6) was (b) (6), he recused himself from certain cases because of his wife's (and her firm's, (b) (6)) involvement in them. Now his wife is preparing to argue one of the cases, in which the US is still participating as an amicus. (b) (6) would like to know if he may participate in a moot court on the case (i.e., does his recusal from the matter in OSG eliminate the bar that would otherwise presumably apply)? Also, to the extent that it matters in the conflicts analysis, he will be joining (b) (6) next week. I advised that the post-employment restrictions prohibit him from appearing or communicating to the US or in court. However, since he was recused from participating in this matter, and assuming he has no client confidences concerning the case, he may participate in the moot court as long as there is no federal attorney participating. Joining (b) (6) doesn't make any difference to the analysis. (b) (6) September 9, 2009

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DEO Counsel Log, Fourth Quarter, 2009 (October 1 - December 31, 2009)

1. (b) (6) formerly of ODAG now with CIV. Was in process of referring him to (b) (6) but he had general gift question: he is planning to get married and he and fiancé are looking for hotels. Wanted to know if he was completely precluded from contacting nice hotels he's stayed with on official travel to ask about their wedding packages. As long as it is an arm's length transaction, and he does not invoke his title or position, he is not precluded from holding his wedding or staying at a hotel merely because he has stayed there before on official travel. In making his plans, he cannot invoke his position in any way for benefits. If they have a bona fide federal employee discount, available across the board to any federal employee, he could avail himself of that for his own room, as long as he makes it clear he is not on official travel but on personal travel, and no use of government credit card. (b) (6) October 2, 2009
2. (b) (6) a DHS employee in U.S. Citizen and Immigration Services called and had a question about communicating with Congress with regard to an immigration bill that she said has flaws in it and could affect her personally. She called DOJ because she had formerly been a part of DOJ and she was looking at a DOJ ethics booklet. I recommended that she contact a DHS ethics official not only for ethics advice but also for any other considerations that might be relevant to communicating with Congress about subject matter within the scope of her agency. She said she would. (b) (6) October 1, 2009
3. (b) (6), (b) (6), (b) (6) called with a question about the use of religious quotations on Department email. He had spoken to (b) (6) and she had told him that this was not permissible. I called (b) (6) first and told her we had gotten this inquiry. She confirmed the advice which she based on Constitutional grounds. I told her I would call him to see if there was anything else he needed. I called and told him that we agreed that religious quotes could not be included as tag lines at the bottom of messages. He said that people wanted to put quotations from the Bible. He was looking for a citation in the reg or some written opinion. I said it was barred by the Establishment Clause and that also it would also be a misuse of position and government resources. But I told him I was not aware of any written advice on the question. He was satisfied. An email is in the file. (b) (6) October 5, 2009
4. (b) (6) (CIV) sent an email asking if an attorney could represent his wife in settlement discussions with USDA (her former employing agency) over her discrimination complaint. USDA attorneys are representing the agency. I told (b) (6) this would require approval under 18 U.S.C. § 205(e) and under 5 C.F.R. § 3801. Approval was appropriate provided that USDA was not a client agency of the attorney. He should be advised not to use his DOJ affiliation. The email chain is in the file. (b) (6) October 6, 2009
5. (b) (6) OPR, 1353 travel. (b) (6), (b) (6), is traveling to Tokyo to be a lecturer at UNAFEI (United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders). She has been approved for official travel for this trip for about 8

days of attendance at the conference and travel days. 31 USC 1353 allows the Government to accept reimbursement for travel expenses from a non-federal source for official travel to a conference. UNAFEI has offered to reimburse her in cash for her expenses on the trip, as is often seen in international or multi-national organizations. While 1353 allows for reimbursement to the Government for travel expenses, it does not allow for the individual employee to accept reimbursement personally (except in-kind), and the employee may never accept cash or payment directly from the organization. Also, under 31 USC 1353, foreign travel per diem reimbursements may not exceed the State Department per diem amounts for the area. The allowed daily per diem amounts for Tokyo are \$226 USD for lodging and \$205 for meals and incidental expenses. The Japanese subsistence allowance also includes ground transportation, which is normally a separate reimbursable expense for US Government travel. UNAFEI will not send a check to DOJ after the trip the way we usually want the 1353 reimbursement process to work - traveler comes back and vouchers trip, DOJ pays traveler, DOJ seeks reimbursement from non-Federal organization. After some further discussion, UNAFEI has indicated they are willing to send a wire transfer to DOJ for the standard amount they pay to a traveler, after the trip and after she has paid for her expenses while there. However, they are only willing to do this for the 6 days Judith will be at the conference, not the travel days. (They will only make payment for those days directly to the traveler and only in cash). However, the standard amount (it's a fixed 25,000Y per day,) for the conference days exceeds the expenses (b) (6) would be able to claim reimbursement for and the Department would end up with an excess amount being offered for those days, and no payment offered for her expenses incurred on the travel days (because she may not accept payment from them directly and that is all they are offering). This means OPR would pay for the expenses of the travel days. We consulted with OGC and they said DOJ could accept the 25,000JPY per day payment for her time at the conference and they may reimburse (b) (6) for all appropriate expenses, including ground travel, mandatory health insurance, lodging, per diem and incidentals. Any overage remaining after (b) (6) expenses have been paid (for the conference days) should be sent to Miscellaneous Receipts at the Department of Treasury. UNAFEI was advised of this and agreed. OPR will pay for the travel days. (UNAFEI purchased the airline tickets for (b) (6) and she may accept them in kind.) Emails in the file. (b) (6) October 6, 2009.

6. (b) (6) (CIV) asked for our review of 3 WAG approval memos. One was a group WAG approval for 10 attorneys (selected by Civil, not the sponsor) to attend a conference and awards dinner hosted by Taxpayers Against Fraud (TAF). The second was a memo for (b) (6) the Counselor to the AAG, to attend the TAF event. In this case, (b) (6) fielded an invitation from TAF to (b) (6) to attend. (b) (6) will not attend but in the process TAF invited (b) (6). The third was a group WAG approval for three attorneys to attend a Life Sciences Institute sponsored by several health related organizations. For all three memos, none of the attorneys attending the events (with the exception of one attorney attending the TAF event) had any pending cases involving the sponsors as a party or an amicus. One attorney who wished to attend the TAF event was the lead counsel on a case in which TAF had filed an amicus brief that supported the Department's position that the False Claims Act was Constitutional. In the case of that attorney, (b) (6) added language describing the involvement of TAF and language that said that this was not, however, a reason to disallow his attendance. In the case of all of the

others, (b) (6) added language saying that they did not have pending cases the involved TAF as a party or amicus. I told (b) (6) that with the addition of that language we had no objection to using the WAG to accept free attendance. The email exchange and the draft memos are in the file.

(b) (6) October 7, 2009 FOLLOW UP: As a follow-up to the WAG approvals for Civil, I asked (b) (6) if (b) (6) is a political appointee subject to the Pledge and if he is, is TAF a registered lobbyist. (b) (6) determined that he is subject to the Pledge and that TAF is a registered lobbyist. He will not be a speaker, so he cannot use the WAG exception. They had not yet forwarded the memo to (b) (6) so they retrieved the memo requesting WAG approval for (b) (6) The email exchange is in the file. (b) (6) October 8, 2009

7. (b) (6) CIV, lobbyist meeting and the ethics pledge. This afternoon, (b) (6) is going to meet with (b) (6), whom (b) (6) has known for 20 years. (b) (6) is the former (b) (6), and is now Of Counsel at (b) (6) in the firm's Public Policy and International practice groups. They expect this visit to be more of a personal nature than a professional nature. (b) (5)

Without knowing whether (b) (6) is involved in matters before the Division, (b) (6) does not have enough information to know whether this meeting could create an appearance of impropriety that should be considered. I agreed on all points. (b) (6) October 7, 2009

8. (b) (6) JMD/FASS, Recommendation and endorsement. (b) (6) has been contacted to provide a recommendation for a company they have worked with directly to the Bureau of Engraving and Printing. The company worked on the MAIN modernization project. I advised (b) (6) they could respond but it should reflect consensus DOJ view of the contractor's performance, and if there is disagreement they should go up to have more senior official make the call. (b) (6) October 7, 2009

9. (b) (6) PAO, fundraiser event. A friend of his from Miami is the finance director for Congressman Kendrick Meek's campaign for U.S. Senate. He has asked (b) (6) if he is able to help him at a young professional event they are hosting tomorrow afternoon here in DC. (b) (6) would like to know if he is able to attend the event or volunteer given that he is a personal friend of his and his girlfriend's for several years. I advised that the only allowable activity is passive attendance, for which he needs ODAG approval, so he would not be able to help in planning or at the event, and he may not solicit or encourage others to attend. He then advised that he would not be seeking approval or attending. (b) (6) October 7, 2009

10. (b) (6) Civil, 502. (b) (6) emailed requesting a 502 concurrence from us. (b) (6) is an attorney in the Commercial Litigation Branch who is working on a case in which her brother's law firm represents a party. Her brother is not involved in the litigation and works in a separate section. We concurred we saw no conflict. Email in the file. (b) (6) October 7, 2009.

11. (b) (6) (OPR), speaking engagements. (b) (6) (b) (6) (b) (6) is

speaking at a DC Bar Luncheon in her official capacity. It is okay. He wanted to double check with us on when (b) (6) needed ODAG (b) (6) approval to accept speaking engagements. Discussed with (b) (6) ODAG approval is required for all 1353 travel, and for WAGs, and it is really a policy/management question between (b) (6) and ODAG how much she should get approval for other official speaking engagements. It is always a good idea for the ethics official to review a speaking engagement for conflicts and/or appearances. (b) (6) indicated that (b) (6) always forwards her speaking engagements to him for analysis. She told him that ODAG has asked her to become active in speaking engagements, so he thinks that she has ODAG's support in her speaking engagements, but he will discuss with (b) (6) how involved in approving her speaking engagements ODAG expressed they should be. He will continue to review all of her speaking engagements, he was just trying to clarify when ODAG approval was needed. (b) (6) October 8, 2009

12. (b) (6) Civil. (b) (6) who prior to coming to the Department worked on international adoption issues, was approached by 60 Minutes to provide background on a story they are producing on Ethiopian adoptions. They approached (b) (6) not based on her DOJ position but because of her previous work. They would like to interview her off air, off the record, nothing will be attributed to her in the story. (b) (6) asked if she could do this so long as the disclaimer that this is based on her personal knowledge and has nothing to do with the Department or her position at the Department was made clear to the producer. (b) (6) said it would be made clear and she would advise her against using any non public information she received through her work at the Department. (b) (6) October 8, 2009.

13. (b) (6) DEA, WAG. (b) (6) sent a WAG request for (b) (6) to attend the annual DARE America gala in New York. We sent a recommendation for approval to (b) (6) but noted that our office was concerned about (b) (6). (b) (6) potential involvement with DARE in her official duties, the original DEA memo stated that she had no such involvement. This office did not see her potential involvement with DARE through her official position as a conflict that outweighed the benefit to the Department in her attending and recommended approval. (b) (6) approved. (b) (6) October 8, 2009.

14. (b) (6) ENRD, official position. (b) (6) a procurement official in ENRD, was approached by Lexis/Nexis to sit on their advisory board. He would provide a "large government agency" view point to assist Lexis in developing new tools and better managing their product. Consulted with OGC and determined that he could sit on the board in his official position, but that he could only speak based on his viewpoint of using Lexis at the Department - he was not the "official Department voice" and he could not commit the Department to anything. Lexis could not use his official position at the Department and his involvement in the advisory board to advertise their product or promote themselves in any way. Lexis is a specialized product - because there is little competition in this area and the Department contracts with both Lexis and Westlaw. The Department would not necessarily agree to serving on such an advisory board for a different type of government contractor. (b) (6) October 8, 2009.

15. (b) (6) OCIO, gifts. OSS wants to have a pizza party and requested supervisors (both government and contract employees) pay \$40 for refreshments for their employees. We advised

that contractors must pay for their own food and may not be solicited for money for the event and that they must attend in their own time. Email in the file. (b) (6) October 8, 2009.

16. (b) (6) (b) (6) called asking whether a DOJ attorney has an obligation under the standards of conduct to disclose to appropriate DOJ persons the existence of a bar inquiry into the attorney's professional conduct. An attorney who was involved in the (b) (6) prosecution discovered that the D.C. Bar Council is looking into his conduct in the (b) (6) prosecution and a matter in Alaska that is not related to the (b) (6) prosecution. Told (b) (6) I did not believe the standards established such a disclosure obligation. Discussed with (b) (6) Talked further with (b) (6) and said DOJ policy, but not the standards of conduct, does require reporting of non-frivolous allegations. (b) (6) (b) (5) (b) (6) October 8, 2009

17. (b) (6) (CRT) called with a WAG question. (b) (6) (b) (6) (Counsel to (b) (6) and (b) (6), have been invited to attend a reception welcoming (b) (6) as the new President and General Counsel of MALDEF. The invitation came from MALDEF and the event is sponsored by Anheuser-Busch. I sent the links to the approved websites for determining whether a source was a registered lobbyist. (b) (6) found that both MALDEF and Anheuser-Busch are registered lobbyists. She advised them that (b) (6) and (b) (6) who are subject to the Pledge could not use the WAG exception. (b) (6) who is not subject to the Pledge could use the WAG exception provided that all the elements of the exception are met. The emails are in the file. (b) (6) October 8, 2009

18. (b) (6) (CIV) had a question from (b) (6) an attorney in OIL. (b) (6) wanted to know if he could represent his wife in settlement negotiations of an EEO complaint that she filed against her former employing agency, USDA. She now works at SSA. USDA is defending the case itself and DOJ has no involvement. I advised (b) (6) that he should obtain approval from the AAG under 18 U.S.C. 205(e) and that he also needs approval for this outside practice of law under the supplemental regulation which could also be granted by the AAG. Also he should not use his DOJ affiliation in connection with the representation. (b) (6) so advised (b) (6) who then asked about the provision in 205(d)(1)(A) for representing someone who is the "subject of disciplinary, loyalty, or other personnel administrative proceedings." I discussed this further with (b) (6) and said that I believed that applied only to defensive litigation and not to representing someone who had filed a complaint. And in any event (b) (6) would need approval under the supplemental reg. (b) (6) did not want to have to get approval from the AAG. (b) (6) said he would go back to (b) (6) and confirm the earlier advice. The emails are in the file. (b) (6) October 9, 2009

19. (b) (6) OAG, WAG. I emailed the following to (b) (6) for approval: "The Attorney General (AG) and Dr. Sharon Malone have been invited by the Kennedy Center Board of Trustees to attend the Thelonious Monk Institute of Jazz Bass Competition and Blue Note

Records 70th Anniversary Gala, at the Kennedy Center Eisenhower Theatre on October 11, 2009. The Competition is followed by a reception. Between 450-500 attendees are expected, including Members of Congress, members of the Cabinet and other Administration officials, supporters of the competition, and students in the public schools music programs. Tickets are \$105. Spouses are invited. A Federal official may not accept a gift from a prohibited source or that is given based on official position. One exception to the general prohibition is for a widely attended gathering (WAG). An event is widely attended if it is expected that a large number of persons will attend, and that persons with a diversity of views will be present. For example, an event is widely attended if it is open to members from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter. An official may be approved to attend where it is in the interest of Department because it will further the agency's programs and operations. The event meets the criteria for a widely attended gathering, and I believe that you may determine it is in the Department's interest for the AG and Dr. Malone to attend, as it is an opportunity for the AG to interact with persons who have interests in common with the Department and with the Administration's goals. I note that several of the event organizers are a personal friends of the AG and Dr. Malone, and that may be part of the basis for the invitation. However, the standard under the gift regulations requires a determination that the personal relationship was the motivation for the gifts, in order to qualify under the exception for gifts based on a personal relationship. I do not believe it is necessary to make that determination, as attendance is appropriate under the WAG exception and I recommend that you approve."

(b) (6) approved. (b) (6) October 9, 2009

20. (b) (6) NSD, Outside practice of law. (b) (6) called regarding an attorney who wanted to represent her father who received a ticket for a traffic violation. The violation is a misdemeanor in Virginia so I explained to (b) (6) that approval from the DAG would be necessary and sent him an example so he could produce the memo. (b) (6) October 9, 2009

UPDATE: The attorney decided not to represent her father and instead hire outside counsel. October 22, 2009.

21. (b) (6) (DAAG, OLA, 5-7851) called with a question about reference to official position in a bio. He will be a speaker in his personal capacity at a meeting of the Commission on the World Justice Project in Vienna in November. All of the speakers have bios in the program for the event and (b) (6) said that he had to submit his bio today. Discussed with (b) (6). He sent a draft bio and I sent several recommended changes: indicate simply that he is serving with the Department rather than referencing his official position; move the reference to his Department affiliation from the position of prominence in the second sentence to the end of the first paragraph; delete the disclaimer footnote. (b) (6) agreed to the changes. He will be attending in his capacity as the Chair of the Rule of Law Index Project. The email exchange is in the file. (b) (6) October 9, 2009

22. (b) (6) DDAEO for COPS, outside Boards question. Their new Director, Bernard Melekian is to come on board in November. Does (b) (6) brief him, or should he come to (b) (6) new appointee briefing? He is in an outside position as President of the California Police Chief

Association - his term runs through March 2010. Must he resign? Checked with (b) (6) - yes. He cannot sit on the board of a law enforcement organization. (b) (6) will advise him. He will need to come to (b) (6) appointee briefing to review the Pledge restrictions. (b) (6) agreed - she will stay in contact so that when he arrives, he comes to a briefing and signs the Pledge. (b) (6) October 13, 2009

23. (b) (6) SEPS, outside activities. (b) (6) has been asked to serve on the Advisory Board EPCI College of Technology. The advisory board is an advice giving body assisting the program in meeting the needs of employers in a manner consistent with the college mission. The Board aims to provide an information exchange and relationship building opportunity between faculty, students, alumni and employers. (b) (6) has been asked to sit on the advisory board because of his military background, where he served prior to joining the Department. He would not be asked about his position at the Department or asked to share any information regarding his current position. I advised (b) (6) on the conflict of interest concerns, as well as advising that he was serving solely in his personal capacity. (b) (6) understood and was going to accept the position. Emails in file. (b) (6) October 13, 2009.

24. (b) (6) JMD Budget, gifts. (b) (6) is planning the Budget office holiday party and is considering holding it at McCormick and Schmick's. M&S is offering a promotion for any holiday party booked at their restaurant before November 1. Whoever is planning the event will receive a \$50 holiday gift card and all those who attend will receive a \$20 gift card. (b) (6) wanted to know if he could book the event and accept the gift card. I told him because the promotion was offered to anyone who booked the event there, it was ok. (b) (6) October 13, 2009.

25. (b) (6) PRAO, travel. (b) (6) traveled to Chicago to accept the ABA Pro Bono award on behalf of the government. Both (b) (6) and her husband attended the awards luncheon free of cost, the admission cost was \$60. Pat wanted to know how to put that on the travel reimbursements. This had not been approved as a WAG so I told her to do a retroactive WAG approval for (b) (6) and her husband. (b) (6) October 14, 2009.

26. (b) (6) OIP, post government employment restrictions. Former OIP employee called (b) (6) regarding a consulting job she had been offered. The job was with a vendor which is currently seeking a bid with OIP. The bidding process was ongoing when this employee left the office in January 2009 but she did not participate. She was an immediate supervisor of the employees who did participate in the bidding process, but her role did not involve contract related activities. The subordinates reported to a higher level supervisor on all contract related matters. (b) (6) wanted to know if the two year ban applied. I told her based on the information provided, no. If the employee truly had no role in supervising the contract activities and it was not in her duty description, then the two year ban would not apply. Emails in file. (b) (6) October 14, 2009.

27. (b) (6) (OAG) called to ask if there was any written guidance available on investing from a conflicts perspective. The AG's wife was going to meet with a financial advisor that

evening to discuss investments. I told (b) (6) that diversified mutual funds would be the best type of investment from a conflicts concern. He asked if there was anything in writing. I said he could look at the exemption. I sent him an email with the cite to the exemption for diversified mutual funds. I also sent him an email indicating the advantages of diversified mutual funds from a conflicts perspective. The emails are in the file. (b) (6) October 14, 2009

28. (b) (6) (CIV) called with a Hatch Act question. (b) (6) who is non-career and subject to the Pledge wanted to attend a dinner at Old Ebbitt Grill which was billed as a reunion of people who worked on President Obama's campaign. There is no fundraising at the event. He will pay his own way so the gift issue is resolved. He understands that he cannot communicate with anyone at the meeting about his work at DOJ if he has a relationship with that person that is covered by the Pledge. We discussed the Hatch Act aspects and I discussed with (b) (6). Discussed again with (b) (6) and emphasized that he is further restricted and needs to avoid any participation in partisan political activity. (b) (6) can attend the dinner with approval but he cannot encourage or discourage partisan political activity. He should avoid participating in political strategizing relating to upcoming elections this fall or the mid-term elections next year. The emails are in the file. (b) (6) October 14, 2009

29. (b) (6) ENRD, 205. (b) (6) wanted to know if Freddie Mac is a federal agency for the purpose of the ban of representing anyone to a federal agency. I couldn't find any guidance so I called Lorna Syme at OGE. She said there is no written guidance but that OGE does not treat Freddie Mac as a federal agency for this purpose. (b) (6) October 15, 2009.

30. (b) (6) USMS, CFC question. Robert just attended the CFC coordinator meeting and the instructor said that they can no longer take a letter to solicit on behalf of the CFC. Robert wanted to be sure this was correct. I advised that it was correct. (b) (6) October 16, 2009

31. (b) (6) Civil, conflicts. (b) (6) called about an attorney working on an investigation involving a bank. The attorney's mortgage is with the bank and he wanted to know if this was a financial conflict. I told him it was not, so long as she was not in arrears on her mortgage and it was not an adjustable rate. (b) (6) October 16, 2009.

32. (b) (6) PRAO, Fundraising question. (b) (6) got an email from Katia Garrett asking about whether DOJ can participate in a fundraiser which is part of the national pro bono celebration this month. (b) (6) told her that she doubts that she can because all fed fundraising must go through CFC, but wanted check with me. I advised that she was correct, this would be official fundraising and is not permitted. (b) (6) October 17, 2009

33. (b) (6) (Boies, Schiller & Flexner, (b) (6) called with a post-employment question concerning possible representation of a client in an insider trading case against some hedge fund managers. After we discussed the matter, (b) (6) decided to withdraw his request for assistance in determining whether the matter was under his official responsibility. The potential

client needed immediate assistance and even a day or two to determine what was pending in the Division was not practical. The emails and the press release on the case are in the file. (b) (6) October 16, 2009

34. (b) (6) EOUSA, Gift analysis. USA Neil MacBride has been invited to attend a cocktail reception sponsored by O'Melveny & Myers LLP, a firm likely to have matters before the USAO. This reception is honoring Kenneth Wainstein and (b) (6) was asking for my analysis due to it being previously incorrectly analyzed by the USAO. I advised that I also agreed that the USAO analysis was incorrect. O'Melveny's firm is a registered lobbying firm. In (b) (6) reviewing the firm's website, the individual sponsors of the event are all affiliated with the firm, but none appear to be registered lobbyists as individuals. (b) (6) disagrees with the USAO that a cocktail reception would be excluded from the general definition of "gift" in 5 C.F.R. § 2635.203, as a modest item of food or refreshment. And with the de minimis and WAG exceptions otherwise precluded by the pledge's lobbyist gift ban, the only exception that may require further investigation is if the gift was motivated by USA MacBride's personal relationships with the individual sponsors, and the individuals are actually paying for the reception. They also expressed their concerns to the USAO that, even if an exception to the gift rules permitted USA MacBride's attendance at the reception, since the firm often represents white-collar defendants in cases prosecuted by the USAO, there were serious appearance issues to consider. I advised that I agreed with this analysis. (b) (6) October 17, 2009

35. (b) (6) (b) (6) ENRD, Preparing for AAG arrival. (b) (6) and (b) (6) are trying to prepare for (b) (6) arrival (she's out of committee, but not yet confirmed) and are planning a Division directive that would re-delegate her authority to her PDAAG for case matters assigned to her by regulation. If the PDAAG were also recused, the directive would delegate to the DAAG supervising the matter. This would cover a wide variety of actions from approving complaints to approving settlements and would also require ASG sign-off. I advised (b) (6) and (b) (6) that this sounded fine. ENRD has 2 political deputies and 2 career deputies when fully staffed; their PDAAG supervises a number of Sections as do all the DAAG's. Suggested that for matters which fall within the PDAAG's basic responsibility, the document should identify who will make the decision as to who will be acting AAG (since neither AAG or PDAAG may make that decision with respect to any matter from which both are recused). (b) (6) thought the other political DAAG would be a logical choice for his and I agree. Also, this decision could be subject to OAS approval, along with about 7-8 other specific actions that they plan to include in the matters that must receive ASG approval (e.g., settlement authority above a certain amount). (b) (6) October 19, 2009

36. (b) (6) OASG, Recusal question. ASG Perelli asked (b) (6) to find out if everyone here at DOJ who used to work at Jenner & Block (including ASG Perelli and (b) (6)) would be recused from any issue involving Leonard Peltier and his applications for a pardon or for parole. For many years, dating back to the 1980s, (b) (6) believes, Peltier's counsel has been (b) (6), who

was a partner at Jenner in the 1990s, when ASG Perelli and he were both there. (b) (6) left Jenner about a decade ago, more or less. I advised (b) (6) that there is no recusal requirement merely from the fact that current officials were formerly with Jenner. However, if any current official actually participated in the firm's representation of Peltier, or had access to privileged information about the earlier matters, they would have a recusal obligation under the bar rules. But, if Peltier's current or former counsel is not presently at Jenner, no need to recuse. (b) (6) October 20, 2009

37. (b) (6) (b) (6)) former DOJ official, post-employment advice. (b) (6) left in 2003, was Acting AAG/A at the time. He served on the board of the National Crime Prevention Council (NCPC - MacGruff the crime dog) for 25 years, in his personal capacity, before he came to DOJ and through his time here. He was recused from participating in anything that could affect NCPC (they are a grantee through OJP through a specific appropriation designation) while he was here. He asks if he can contact DOJ concerning funding for the organization. Yes, there are no bans that would apply. He never participated personally and substantially in decisions affecting NCPC; and if matters were pending in JMD during his last year, the 2-year ban has elapsed, so he has no post-employment restrictions. (b) (6) October 20, 2009

38. (b) (6) DAAG, ODAG, conflict question. (b) (6) serves in his official capacity on the Advisory Board of the National Methamphetamine Pharmaceutical Initiative (NMPI), which is a group organized and funded through the Office of National Drug Control Policy (ONDCP). This is one of these unusual groups that is composed of federal, state and local government officials, funded through federal monies but not through a direct appropriation to the "group." This Advisory board, which consists of only 8 individuals and several staff members, has drafted a position paper essentially proposing that access to pseudoephedrine and ephedrine (cold medications) be prescription only, which so far has been enacted in a few states. (b) (6) is concerned because while DOJ and law enforcement do think this should be the goal, there is no administration position on this, including whether federal legislation should be proposed to make this change. Other agencies, e.g., HHS, do not support such a change. We discussed what the status and the decision making process is of the advisory board and it is somewhat vague, for instance, they have no by-laws. They generally seem to follow a consensus decision making model, but they haven't taken many actual actions- this is the first position paper that (b) (6) has seen in his 10 months on the board. For the time being, we agreed that DEA should be removed from a list of "Major organizations favoring Rx" which is included in the position paper, so no federal agency is listed. Then, I suggested that the group agree on some by-laws or operating guidelines that provide for members' participation to be understood as providing expertise, but not providing an official position of his or her agency on all matters the Advisory Board might address. (b) (6) asked the staff director to put this on the agenda for the next meeting. Docs in log file. (b) (6) October 20, 2009

39. (b) (6) (CRT) called with an official speech question. (b) (6) has been invited to speak to the Washington Lawyers Committee for Civil Rights and Urban Affairs at a breakfast at the Grand Hyatt on October 21, 2009. The other two speakers will be from the EEOC and HUD. The cost to attend is \$35. In the past this group has been involved in matters in the Civil Rights

Division. A number of law firms will be in attendance. (b) (6) asked whether it was necessary to vet the law firms in attendance. I said they would need to determine whether he was an officer or board member of this group within the last two years. (b) (6) asked about approval to give an official speech and whether he needs approval from the Associate Attorney General. I said that is a matter to be worked out with the office of the Associate AG has to how much control he wants to exercise over speaking events. The email and announcement are in the file. (b) (6) October 19, 2009

40. (b) (6) (CRT) called because he has been getting emails asking for advice with regard to various meetings that (b) (6) is being asked to participate in. (b) (6) said they have never been asked about meetings before and he wondered what his role as an ethics official was. I said this is probably prompted by the Pledge and that the AAG does need to be careful about a meeting that might involve an employer in the last two years. That would include any organization that he served in as an officer or director. Also he needs to be careful about former clients from the past two years, including clients who did not meet the reporting thresholds on the SF-278. (b) (6) October 20, 2009

41. (b) (6) the former Deputy Director, Security and Emergency Planning Staff, called with a post-employment question. He is discussing employment with a company that may wish to bid on the guard services contract currently held by Wackenhut. The company is not Wackenhut. I contacted Reid Hilliard, (b) (6) and (b) (6) to discuss various aspects of this question. I sent (b) (6) an email dealing with the post employment statutes, the Procurement Integrity Act, the Trade Secrets Act and the bar rules. I also sent (b) (6) an email telling him what our conclusions were. The emails and other background information are in the log file. (b) (6) October 20, 2009

42. Career Folks, OSG, WAG approval. I sent the following email to (b) (6) for approval: "King & Spalding has invited staff in OSG to a reception in honor of former SG Paul (b) (6) 50th argument before the Supreme Court. The reception is from 6:00 - 8:00 p.m. on October 22, at the Willard Hotel. Several hundred attendees are expected, including members of the Supreme Court bar, and possibly members of the Court. The standards of conduct generally prohibit a federal employee from accepting a gift from a prohibited source. King & Spalding is a prohibited source for the staff of OSG. One of the exceptions to the gift prohibition is for a widely attended gathering (WAG). An event is a WAG if it is attended by a large number of persons, from throughout a given industry or profession, or who represent a range of persons interested in a given subject, and based on a determination that the employee's attendance is in the interest of the Department. Additionally, where the donor is a prohibited source, the agency may approve only upon a determination that the agency's interest outweighs the concern that acceptance may or may appear to improperly influence the employee in the performance of his or her official duties. The reception meets the criteria for a WAG. I believe that you may determine

that attendance by career staff who served under former SG (b) (6) serves a Department interest, by acknowledging a significant accomplishment among Supreme court practitioners by their former colleague/supervisor, and that it would not create the appearance of partiality in performing their official duties. Your response to this email will serve as your determination under the standards of conduct.” (b) (6) approved. (b) (6) October 21, 2009

43. (b) (6) Civil, outside activities. (b) (6) emailed regarding an employee who wanted to serve on a DC bar committee to make recommendations on judicial nominees. We have no issue with this, so long as the below is understood. The recommendation process should be one of consensus. We do not want a DOJ employee to be on the record anywhere speaking for or against a certain candidate for a judicial appointment. The recommendation should come from the committee and all internal debate should be kept private. If the process will be different, please let us know so we can re-evaluate. - She cannot use any information she has because of her official position. No non-public info, client confidences, etc should be revealed in her dealings with the committee. - Her views shared on the committee will be her own, based on her experiences as an attorney. She will not be speaking on behalf of the Department or suggesting that the Department favors one judge over another. (b) (6) October 21, 2009.

44. (b) (6) OSG, attendance at WAG. (b) (6) and (b) (6) would also like to attend the WAG in honor of former SG (b) (6) (the prior log entry) that was approved for career folks in OSG to attend. The law firm sponsoring the event is a prohibited source in OSG and under the ethics pledge they are prohibited from attending. I advised that in this situation, they may pay their way. It would be the per head cost or other FMV the firm could provide, but not based on what they eat or drink. This may seem rigid but it's the way we've always addressed this issue which has arisen before (and it becomes difficult to administer any other way). Other concern is the appearance issue- namely, that the Ethics Pledge demonstrates the President's clear desire that appointees not accept invitations from registered lobbyists, which includes an appearance concern. To attend and not eat doesn't address this appearance issue, because no one will know they aren't eating. One could argue that paying their way also will not be obvious to anyone else there, but at least if asked we can advise that they did not accept a gift because they paid for their attendance. We do not want to be in this position very often (of eliminating the gift but still attending a function) but I am comfortable with them doing it in this case - I think this is an unusual enough occasion, and obviously one not likely to repeat itself - to justify attending as long as they do not accept the "gift." If their staff can inquire of the firm and get a value of attendance, and they reimburse the firm, I think it's alright for them to go. (b) (6) October 22, 2009

45. (b) (6) NSD, Hatch Act. (b) (6) had a follow up question to the annual ethics training slides we sent to the DDAEOs. He wanted to be sure further restricted employees can follow the same “Facebook” guidelines as non further restricted. Further restricted employees, such as NSD employees, may join political groups. They may not hold leadership positions. Based on our conversations with OSC, they see joining groups on Facebook or other social media sites as "joining a political group." The only caveat is that it may not appear on the same

page/tab as your work information. (The best advice being, don't have your work info on your social media pages.) All employees need to be aware of the restriction against soliciting for donations, so any link on their social media pages cannot bring someone to a site that requests donations. (b) (6) October 22, 2009.

46. (b) (6) JMD/HR; duty to report contagious illness. An employee called her because she is the COTR for the Health Units. He has contracted MRSA: is there a duty to report it to anyone? The ethics rules do not address. (b) (6) and I researched DOJNet briefly together unsuccessfully for info or for a contact person. Referred her to OGC to speak with the HR attorneys. (b) (6) October 23, 2009

47. (b) (6) OAG, AG Holder met with Judge (b) (6) - she used to be a USA back in the Clinton days and now she's a federal judge. She had her picture taken with the AG recently, and asked him if she could use the picture as she is running for President of her sorority - (b) (6) is guessing Alumni president). It's a picture of the two of them in front of the fireplace in the AG's conference room and it was autopenned. I advised against saying yes. The standard of conduct provides that we may not allow someone to misuse our position, and this includes endorsing a person or organization. The picture, especially since it is taken in his office, would not reasonably be viewed as personal, and everyone knows who he is, so it would be an implied endorsement of her. While the office of sorority president may seem fairly benign, the rules do not make that kind of distinction. Also, I think this would open the proverbial floodgates and many others would want to do something similar. (b) (6) October 23, 2009

48. (b) (6) ITTS, gifts question. (b) (6) recently joined the Department and has been good friends with a Department contractor for year, as well as a Department supervisor. His daughter is making her bat mitzvah next month and he would like to invite both and wanted to be sure he could do so. I asked him if he had attended such events with them before or invited them to such events in the past. He said yes, both were good friends and they had been involved with each others families for years. I told him that because the invite is based on a prior personal relationship, there was no issue. He asked if they had to be told not to bring gifts. I told him they should be treated however he treated them in the past - if it is customary for them to bring gifts to each others families, it would not be a problem now. (b) (6) October 23, 2009.

49. (b) (6) Civil, potential conflict. PRAO sent Mr. (b) (6) to us. He is working on a habeas for an alien who is appealing the findings. The petitioner works for a company that Mr. (b) (6) used to represent when he was in private practice. He left private practice over a year ago and has not worked with this client in over two years. The matter he worked with this client on is completely unrelated to the habeas and he has no prior contact with the petitioner. He wanted to know if there was a conflict. He has no reason to contact the employer on this petition. I consulted with (b) (6) and we decided there was such a small connection that it would not be a conflict. We advised Mr. (b) (6) of such and told him to contact (b) (6) if the situation changed. Email in file. (b) (6) October 23, 2009.

50. (b) (6) OASG, fundraising and conflicts questions. She was asked by a professional fundraiser from Atlanta to recommend DOJ officials to come and speak at an event that is just a fundraiser for a black bar association. She told them DOJ officials cannot speak at fundraisers. Went through the rule and the exception for an official speech at a fundraising event where it is an appropriate audience and message, etc., so it's not a complete ban. Her instincts on this were absolutely correct -we would not have authorized anyone to speak at this event - they wanted a DOJ official as the draw and that is not permitted. Also, AIG is a client of her former firm for tax matters, but not her personal former client. Is she recused? No, as long as firm is not representing AIG on these matters - she said they are not. Then, she may participate. (b) (6) October 23, 2009

51. (b) (6) (b) (6) CRM, conflicts issue. CRM Fraud section would like to offer a job to an attorney in Hank Schulke's firm and who is currently working with Schulke on the investigation of the PI attorneys in the Ted Stevens case. Spoke to OPR and others and Schulke is appointed by the Court, paid out of court administrative funds, but he is not a judicial branch employee in this matter. So, it's pretty much the same as any case in which a prospective hire is currently representing another party to the Department. Even though it's the Court, in this matter the Court and DOJ are not on the same side except in the most general sense of wanting achieve a fair and just result. But we may disagree. He would be in Fraud which is not handling the investigations for CRM or working with the Court /Schulke, so once he is here there would be no unusual conflicts. While he awaits a final offer, security clearance, it would be awkward if he continued to work on the case and deal with CRM. We have been told that he advised Schulke that he had interviewed with DOJ this week; I referred (b) (6) to PRAO for additional advice but my sense is that CRM should advise him that during this pendency of approval he should not be working on the case at Schulke's firm. (b) (6) October 20-22, 2009

52. (b) (6) (b) (6) called on October 20 with a follow up to his earlier question. See item #33 above. He said he did want to ask us to see if he had been personally involved in the wiretaps connected to the Rajaratnam case. (b) (6) provided names of persons who might be able to assist. I talked with (b) (6) who did inquire. (b) (6) talked to (b) (6) (b) (6) and when he did not get a response from (b) (6) (c) he also talked with (b) (6) in OEO. (b) (6) had not recollection of (b) (6) ever being personally involved. (b) (6) did some research. There were some wiretap applications addressed to (b) (6) as the AAG but that is standard procedure. He did not sign them and there is no indication that he ever saw them. They handle hundreds of wiretap requests and few are seen by the AAG. I called (b) (6) on October 26, 2009 and told him we had no record indicating he participated personally in these wiretaps. He had no recollection himself of having done so. He asked me to memorialize this in an email which I did. The emails are in the file. (b) (6) October 26, 2009

53. (b) (6) OASG, WAG. (b) (6) requested approval to attend the Congressional Asian Pacific American Caucus (CAPAC) reception for the new CAPAC congressmembers as well as political appointees. Recommendation sent to (b) (6) “(b) (6) has been invited to and is seeking approval to attend the Congressional Asian Pacific American Caucus (CAPAC) reception honoring Asian American and Pacific Islander appointees in the Obama administration and the new members of CAPAC. The reception will be held Tuesday, October 27 in the Foyer of the Rayburn House Office Building. CAPAC is a bipartisan, bicameral caucus of the Members of Congress who are committee to advocating on behalf of Asian American and Pacific Islander communities. CAPAC is not a registered lobbying organization. Federal officials are generally prohibited from accepting gifts that are offered by prohibited sources or that are based on official position. One exception to the general ban is for widely attended gatherings (WAG), which are large events attended by a range of persons interested in a given subject or from throughout, for example, a given industry. An official may be approved by the Department to attend where his or her participation is determined to be in the Department's best interest. The CAPAC reception meets the criteria for a WAG, and I believe you may determine that it is in the Department's interest for appointees of the new administration to have an opportunity to meet informally with appointees in other agencies and Members of Congress.” (b) (6) approved. (b) (6) October 26, 2009.

54. (b) (6) event. (b) (6) was invited to an awards reception held by the UN Refugee Council, her former employer. The award for work in the area of refugee aid is being given posthumously to Ted Kennedy. She does not work with the UN Refugee Council in her current position and they are not registered lobbyists. She was invited as a former employee and not because of her current position. No further approval needed for her to attend. (b) (6) October 27, 2009.

55. (b) (6) OVW, outside activities. (b) (6) emailed with a question regarding on of the OVW program specialists who previously was chair of the DC Bar Domestic Violence Committee. The committee is revising their handbook and would like the employee's help. I told Jen so long as it was in her personal capacity and there was no use of her DOJ affiliation, it was not a problem. (b) (6) October 27, 2009.

56. (b) (6) CRT, WAG. (b) (6) called with a question regarding an event sponsored by the Human Rights Campaign to celebrate the signing of the Hate Crimes Bill on Oct 28, 2009. CRT will be the responsible for the enforcement of the Hate Crimes Bill and the front office has been invited to the event. Some of the invitees are political. CRT felt this was an important event to be at because of their involvement in the enforcement of this bill. HRC is a lobbying organization. (They have a Foundation which is a 501(c)(3) but the Foundation is not sponsoring the event.) The event will feature light hors d'oeuvres. (b) (6) knew the non-politicals could be approved to attend because it is a WAG but was trying to determine if the political appointees in the Front Office would be able to. I conferred with (b) (6) and we determined that they may attend if they contacted HRC and determined the per person cost of the event and paid HRC for it. This is a very small exception because of the subject matter of the event and its direct relation to the

mission of CRT. Politicals will not be allowed to pay to attend events they would otherwise be prohibited from attending by the Pledge. (b) (6) October 27, 2009.

57. (b) (6) Associate Deputy Attorney General, asked for advice regarding his participation in legislative matters relating to the Patriot Act. DEO sent a memo to the DAG dated October 20, 2009, indicating that he could participate subject to the limitations described in the memo. A background email providing information on (b) (6) stock holdings in telecom companies is in the log file. As of October 27, 2009, a copy of the memo signed off by the DAG had not been received. (b) (6) October 27, 2009

58. (b) (6) (NSD) asked if an employee could take 3 contractors to lunch to show appreciation for their work on a completed project. I sent him an email saying the employee would not be prohibited from buying lunch for the contractor employees. (b) (6) October 28, 2009

59. (b) (6) (b) (6) (b) (6) (b) (6) of Office of Public Affairs. (b) (6) is a non-career employee subject to the Pledge who came to the Department from POGO. (b) (6) received a request from (b) (6) of POGO regarding a survey they wished to conduct. (b) (6) did not think she should handle it so she forwarded it on to (b) (6). (b) (6) asked me to contact (b) (6) and (b) (6). I called (b) (6) and told her that our office had been contacted in connection with the POGO survey request which had been forwarded on to JMD. We discussed the Pledge restrictions which would apply to any contacts with a former employer, in this case POGO. I said that POGO should not be contacting her about official DOJ business. She said that she had many friends at POGO. I said that she could have strictly social interactions with her former colleagues from POGO but that she should not discuss an official matter with them. I called (b) (6) and we discussed the application of the Pledge to employees in that office. She thought that at least 6 persons were subject to the Pledge. Some came from the Hill. We discussed the idea of a Pledge reminder. (b) (6) said they would include a Pledge reminder on the agenda of their next regular staff meeting. The next day (b) (6) had a follow up question. (b) (6) asked her about the status of the POGO survey request. (b) (6) asked if she should refer him to our office. I discussed with (b) (6). Told (b) (6) not to refer him to us and that (b) (6) would discuss with her next week. The emails are in the log file. (b) (6) October 29, 2009

60. (b) (6) (EOUST) called with a question about acceptance of a ticket to attend Supreme Court oral argument on November 3 in the case of Schwab v. Reilly. Schwab is the Chapter 7 private trustee appointed and overseen by EOUST. EOUST filed an amicus brief in the case and their position was aligned with the Chapter 7 trustee. The tickets are given out by the Supreme Court and have no monetary value. Chapter 7 trustees are assigned from a large panel on a blind rotation basis. I discussed with (b) (6) and advised (b) (6) that under these facts the ticket could be accepted. The emails are in the log file. (b) (6) October 29, 2009

61. (b) (6) (CRT) called with an appropriated funds question. (b) (6) will have his formal investiture in a few weeks and at least 300 outside people are expected to attend. (b) (6) was asked about how the refreshments could be paid for. She told people they could not solicit contributions from outside sources. The question was whether the Department could pay for light refreshments at the event. I told her it was a question of use of appropriated funds for that purpose. She was going to contact their administrative person. I also said (b) (6) Frisch's office might be able to answer the question of whether that event could be funded using appropriated funds. (b) (6) October 29, 2009

62. (b) (6) (DAAG, Legislative Affairs) sent an email with a follow up question relating to his participation in his personal capacity in an rule of law conference in Vienna in November. See log entry #21 this quarter. He wanted to know how he could be identified on a report that would be distributed in connection with his panel. He sent a link to last year's report which will now be updated. I reviewed the report and reviewed the legislative history and OGE opinions on the reg dealing with use of title in connection with publication of an article in a professional journal. Sent (b) (6) an email explaining that a report does not qualify under the professional journal exception from the prohibition on use of official title in connection with personal writing. He should not in any way indicate affiliation with the Department and should use his affiliation with the private organization. The concern over an appearance of government endorsement is heightened by the international setting of the event. The emails and other background information on the rule of law index project are in the log file. (b) (6) October 29, 2009

63. (b) (6) Chairman of the Foreign Claims Settlement Commission, asked for advice regarding his planned transition from his government position to private practice. He is planning to start up a new law firm with a friend possibly early in 2010. In an email dated October 22, 2009, we provided guidance on the post-employment restrictions and on laws and regulations that would apply to incorporating with a partner, setting up bank accounts, contacting potential clients, etc. By a follow up email on October 30, 2009, we provided additional guidance on avoiding attribution concerns during the one year cooling off period. The various emails are in the log file. (b) (6) October 30, 2009

64. (b) (6) CIV, Ethics clearance for AAG, speaking engagement. (b) (6) was contacted about (b) (6) AAG for Civil, being the guest and speaker at the next General Counsels' Dinner on Thursday, November 19, 2009 at the Officers' Club at Ft. Myer, Virginia. The attendees of the General Counsels' Dinners are very senior federal agency counsels and the general counsels or designated senior attorneys of major federal government contractors. In addition, past Chairs of the ABA Public Contract Law Section are invited. There is a customary format for the General Counsels Dinners, beginning with a cash bar at 6:30 p.m. to allow the attendees to arrive and to have the opportunity to meet and catch-up with each other. Dinner is seated and served at 7:15 p.m. The generals counsel are seated in a "roundtable discussion" style, and typically the guest speaker makes his or her remarks during the course of the dinner, and engages in a conversation with the attendees based on questions or comments that are raised. The speaker is free to pose questions to the attendees as well as invite questions from them. The

press is not invited. To facilitate strict compliance with the federal gift and gratuities regulations, the custom is that each attendee pays for his/her own bar tab and dinner. The cost of the dinner is \$30-\$35 (which does include non-alcoholic beverages, a salad, main course and dessert), and attendees are invoiced after the dinner so that the actual cost is properly calculated over the actual attendees. (b) (6) was concerned about the ethics pledge bar on communications with former clients if it applied to this situation. I advised that I would ask for a list of the members of the Committee (or attendees if they know who is coming) to review for former clients. The Pledge would not bar him from speaking about matters of general applicability - legislation, policy and overall goals, and generally how the Civil division works - as long as there are 5 interested parties there, which seems likely. He would not be able to discuss or answer questions about particular cases unless their review of the attendee list found no former clients. As long as no former clients of his are present, he would not be prohibited from speaking about cases, if permitted by other DOJ restrictions on discussion of individual cases. If there are former clients there, he may want to explain that he may not be able to answer certain questions they may ask because of the Pledge restrictions. (b) (6) October 27, 2009

65. (b) (6) OLA, Invitation to Commemoration. An OLA employee received an invitation to Commemorate the historic signing of the Matthew Shepard and (b) (6) Jr. Hate Crimes Prevention Act. (b) (6) didn't see a problem if there was no charge for food or drink and was not of value. I advised that this appears to be based on their prior personal participation. I agree about no photos - they represent the administration now and should not be identified as DOJ officials for something they are attending because of their prior work. If no food except light refreshments, it's not a gift, but if it is a reception then it must comply with the Pledge restrictions on gifts- basically if HRC is a registered lobbying organization and not a 501c3 they may not be able to attend. (There may have been a later exchange on this). (b) (6) October 27, 2009

66. (b) (6) CRS, & (b) (6) OASG, WAG. I emailed the following to ASG (b) (6) for approval: "CRS Director (b) (6) and DASG (b) (6) along with approximately 10 other DOJ employees, have been invited to attend the "Anti-Defamation League (ADL) in Concert Against Hate," on November 16, 2009, at the Kennedy Center Concert Hall. Tickets to the event are \$75. The Concert Hall seats 2400; of these, 1,900 tickets are being provided by the sponsors without cost to a range of invitees. The invitation is from (b) (6), Washington Counsel, Director, Civil Rights Policy Planning Center, Anti-Defamation League. Mr. Lieberman and the Anti-Defamation League have worked with the Community Relations Service (CRS) on many issues including alleged hate crime activities, Ku Klux Klan activities affecting minority communities, noose incidents, church burning incidents, and similar anti-social behavior. The event will include a concert by the National Symphony Orchestra, and recognition of 4 individuals for their roles in opposing hate crimes and hate incidents. The invitees include students; constituents, partners, friends of ADL; elected Federal officials; officials from DOJ, the Department of Education and other federal agencies; state and local officials; and community organizations. The invitation includes a spouse or guest. A Federal official may not accept a gift from a prohibited source or that is given based on official position. One exception to the general prohibition is for a widely attended gathering (WAG). An

event is widely attended if it is expected that a large number of persons will attend, and that persons with a diversity of views will be present. For example, an event is widely attended if it is open to members from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter. An official may be approved to attend where it is in the interest of the Department because it will further the agency's programs and operations. 5 CFR 2635.204(g)(2). Generally, entertainment events that do not include an accompanying reception or similar opportunity for interaction with other attendees are not appropriate for approval under the WAG exception because they do not provide a means of furthering the Department's programs and operations. However, I believe this an appropriate event for approval. Although there is a concert, it is only part of the evening's activities, which also include the formal program recognizing the 4 honorees. While there is no reception before or after the program, there is at least an hour beforehand and the same amount of time following the concert when attendees and honorees will have the opportunity to interact. Taken together I believe this is an appropriate event under the WAG exception. Political appointees are also subject to restrictions on accepting gifts from registered lobbying organizations unless the organization is a 501(c)(3) charitable organization. ADL is a registered lobbying organization; however it is also a 501(c)(3). Therefore, the prohibition does not bar accepting the invitation. The event meets the criteria for a widely attended gathering, and I believe that you may determine it is in the Department's interest for CRS Director (b) (6) and DASG (b) (6) to attend. The event is an opportunity for them to interact with persons who have interests in common with the Department and with the Administration's goals, and it is timely as it will take place shortly after the President signs into law the Matthew Shepard Hate Crimes bill. I recommend that you approve." He approved. (b) (6) October 28, 2009

67. Various employees, CRS, WAG. I emailed CRS Director, (b) (6) for approval for the CRS employees to also attend the same WAG, "Anti-Defamation League (ADL) in Concert Against Hate," on November 16, 2009, at the Kennedy Center Concert Hall as addressed above that (b) (6) was also invited to. (b) (6) approved. (b) (6) October 28, 2009

68. (b) (6) NSD, WAG. (b) (6) called regarding the above ADL event that two NSD employees were invited to attended. I sent her a copy of (b) (6) email so that she could use it in preparing her own WAG approval. (b) (6) October 28, 2009.

69. (b) (6) (OCIO), outside activities. (b) (6) attended the annual ethics training and had some follow up questions. 1) He owns his own construction business and wanted to be sure this was not a conflict. I reviewed with him the restrictions on outside paid employment - no use of government resources, no soliciting for customers in the workplace, not applying for government contracts - and told him that if these restrictions were followed, he would be ok. I advised him if he had any business that involved prohibited sources or someone with connections to his work at the Department, he should talk to us to be sure there is no conflict. 2) He has been asked to be an officer in the Knights of Columbus and wanted to be sure there was no conflict. It has no relation to his official duties, so I reviewed the outside activity restrictions with him and told him to again contact us if something came up involving his official duties with this activity. (b) (6)

October 28, 2009.

70. (b) (6) OASG, WAG. I emailed ASG (b) (6) the following for approval: "Several Department officials, including yourself and (b) (6) have been invited to attend a reception sponsored by the Smithsonian National Museum of American Indians (NMAI) and the National Congress of American Indians (NCAI), on November 4, 2009. (I am making the request to ODAG approve your attendance, and to OPA to approve (b) (6) attendance). At least one hundred attendees are expected, including tribal leaders, and museum and other government officials. The reception is being held the evening before a conference of tribal leaders the following day at the White House. There is no charge for the reception. The Department is engaged in significant efforts to improve the Department's handling of matters in Indian Country, and the opportunity to meet informally with tribal leaders and other experts on Indian Country affairs will improve communication issues that are a significant concern in that process. A Federal official may not accept a gift from a prohibited source or that is given based on official position. One exception to the general prohibition is for a widely attended gathering (WAG). An event is widely attended if it is expected that a large number of persons will attend, and that persons with a diversity of views will be present. For example, an event is widely attended if it is open to members from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter. An official may be approved to attend where it is in the interest of the Department because it will further DOJ's programs and operations. Political appointees are also subject to restrictions on accepting gifts from registered lobbying organizations. NCAI is not a registered lobbying organization, so the additional restrictions do not apply. The event meets the criteria for a widely attended gathering, and I believe that you may determine it is in the Department's interest for (b) (6) to attend, as one of your staff with responsibility for issues affecting Indian Country. Because NCAI is a former client of (b) (6) he continues to be limited in his communications with NCAI under the provisions of the Ethics Pledge. Specifically, he may not communicate with them in the course of his official duties (which is anything on behalf of the Department) unless the communication is about a matter of general applicability (e.g., legislation, policy) and the meeting or call is attended by at least 5 interested parties. He may not communicate with them about any particular matter. He will need to be vigilant while attending the reception not to engage in any discussion that is restricted by the Pledge provisions. As we have previously discussed, since his former client is NCAI, he is not restricted in communications with individual tribal leaders as long as they are not representing NCAI during those communications (and assuming no other restrictions would limit the contact). I recommend that you approve." ASG (b) (6) approved. (b) (6)
October 29, 2009

71. (b) (6) OPA, WAG. I emailed the following to (b) (6) for approval:
(b) (5)

(b) (5)

(b) (5)

(b) (6) approved. (b) (6) October 29, 2009

72. ASG (b) (6) WAG. I emailed the following to (b) (6) for approval: "Several Department officials, including ASG (b) (6) have been invited to attend a reception sponsored by the Smithsonian National Museum of American Indians (NMAI) and the National Congress of American Indians (NCAI), on November 4, 2009. At least one hundred attendees are expected, including tribal leaders, and museum and other government officials. The reception is being held the evening before a conference of tribal leaders the following day at the White House. There is no charge for the reception. A Federal official may not accept a gift from a prohibited source or that is given based on official position. One exception to the general prohibition is for a widely attended gathering (WAG). An event is widely attended if it is expected that a large number of persons will attend, and that persons with a diversity of views will be present. For example, an event is widely attended if it is open to members from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter. An official may be approved to attend where it is in the interest of the Department because it will further the agency's programs and operations. Political appointees are also subject to restrictions on accepting gifts from registered lobbying organizations. NCAI is not a registered lobbying organization, so the additional restrictions do not apply. The event meets the criteria for a widely attended gathering, and I believe that you may determine it is in the Department's interest for ASG (b) (6) to attend. The Department is engaged in significant efforts to improve the Department's handling of matters in Indian Country, and the opportunity to meet informally with tribal leaders and other experts on Indian Country affairs will improve communication issues that are a significant concern in that process. I recommend that you approve." (b) (6) approved. (b) (6) October 29, 2009

73. (b) (6) ATR, DAAG invitation. Each year, or every other year depending on the

circumstances, the DAAG's former law firm holds a dinner in honor of retiring partners to which all retired partners and their spouses are invited. It is a black tie affair. As a retired partner she is invited to attend, with her husband. The DAAG is not currently working on any matter which the firm is involved in and they do not show as a lobbying organization. I advised that as long as the firm is not a registered lobbying organization and she is not working on anything affecting them, I think she may use the outside business or personal exception to go. (b) (6) November 2, 2009

74. (b) (6) outside employment and compensation. Oxford University Press (OUP) sent (b) (6) a letter stating they were paying her a prorated honorarium for her service on their Board of Trustees during their last fiscal year. She was appointed SG March 20, 2009. She served as Trustee 11/1/2008 through her resignation, which was effective 3/20/2009. As a DOJ political appointee, she is prohibited from accepting outside compensation while serving as the SG -. (b) (6) conferred with OGE who agreed that as long as OUP prorated the amount to exclude any time she was the SG, she may accept the rest. Oxford again recalculated the honorarium to be inclusive only up to February, 2009, the last full month she served as Trustee, and, therefore, she could accept it. She will report the payment on the annual SF278 she submits in May 2010. Correspondence in the log file. (b) (6) for (b) (6) November 3, 2009

75. (b) (6), a COTR in OSS, (b) (6), called with a question concerning a contract employee. (b) (6), a contract employee with WFR Technologies, wants to know if he can consent to be "interviewed" by (b) (6) regarding products provided to DOJ by Breach. (b) (6) wanted to know if there was an ethics rule or policy that would prohibit this. I discussed with her and said we needed more information. Specifically, we needed to know what information (b) (6) is seeking to obtain, how (b) (6) would use it, and whether the Department has any interest in having (b) (6) do this. The email is in the file. (b) (6) November 2, 2009

76. (b) (6) (CIV) had a question that concerned an offer by Partnership for Public Service, a non-profit organization that promotes government service, to do a leadership/ management training for the Civil Division at no cost. Typical seminar programs that they put on cost \$995 per person. (b) (6) the training person in Civil, wanted to know if she could negotiate a reduced price if it could not be accepted for free. I told (b) (6) that he could look into the use of Department gift acceptance authority but he did not seem interested in that approach. (b) (6) raised procurement questions but I said he would have to consult the procurement people in the division as to what procedures had to be followed for obtaining training services. He said he would check with the Office of Litigation Support. I discussed further with (b) (6) and he said that (b) (6) had decided not to pursue this possibility at this time. But (b) (6) said the matter might return at a future date. The email is in the file. (b) (6) November 2, 2009

77. (b) (6) (CIV) had a question regarding the position of DOJ liaison to the ABA Standing Committee on Legal Aid. (b) (6) had been approved to serve in this position. She is now leaving the Department. (b) (6) wanted to know if he should use the same procedure

to have (b) (6) serve as the DOJ liaison. I said yes. (b) (6) sent a copy of the memo that was sent to the DAG for (b) (6). That memo and the email exchange is in the log file. (b) (6) November 2, 2009

78. (b) (6) NDIC), (b) (6) emailed with a question regarding a NDIC employee, GS-11 intelligence analyst, who had been asked to serve on the Flight 93 Advisory Committee. Flight 93 crashed near Shanksville, PA in Somerset county, approximately 25 miles from Johnstown. Johnstown happens to be just inside the Cambria county line. A fair number of NDIC employees live in Somerset county. The advisory committee has a few positions that are required to be filled by Somerset county residents. This employee has prior experience with the Park Service, and has an interest in working as a member of the committee. The NDIC leadership has no objection to her serving in this capacity. NDIC limited interaction with the Department of the Interior, mostly related to marijuana cultivation on public lands and traffickers crossing public lands, particularly in the SW states. Looking at the enacting legislation, the committee would be required to submit a report to the Dept of the Interior, which raised 205 questions. (b) (6) researched and determined that the report had already been submitted and that the work of the committee is focused on building/dedicating the memorial. We had no objections to the employee serving in her personal capacity as the Somerset county representative (b) (6) November 2, 2009.

79. (b) (6) (EOIR), teaching. (b) (6) called with a question regarding Mr. (b) (6) an EOIR employee who would like to accept compensation for teaching a two day course on immigration law at the USDA Graduate School. He has made the same request for a few years now and the opinions from this office have varied regarding whether the course fits within the multiple presentation exception. He had been approved in prior years but last year (b) (6) did not approve his receiving compensation. She found that the course did not require "multiple presentations" as it was only a two day course. Mr. (b) (6) submitted his request this year and (b) (6) researched, finding OGE guidance stating that the class would qualify as multiple presentations. She was seeking our guidance. I agreed with her research and told her we felt the office had the discretion to allow Mr. (b) (6) to receive compensation for the course. (b) (6) November 2, 2009.

80. (b) (6) (EOUSA) speaking release. ABA wanted a signed release from a Department attorney, (b) (6) who had participated in an ABA panel presentation. The ABA release allowed them to use the individual's name, title, presentation, etc for advertising and any other purpose. Uncomfortable with the broad use of their title, our office drafted a letter of release modeled after a White House letter for the same event. This letter was submitted to the ABA and accepted. Notes and letter in file. (b) (6) November 3, 2009.

81. (b) (6) (CIV) called to ask whether an attorney in Civil could serve as an executrix of her parents estate and be paid \$30,000 which is a fixed amount based on the value of the estate. I discussed with (b) (6) Told (b) (6) that if none of the activities she would undertake as executrix

would require an attorney or, if it did, she hired an attorney to perform those activities, then she could serve as executrix and be paid the fee without obtaining approval. On the other hand, if some of the activities required an attorney and she wanted to perform those duties, she would need to get a waiver of the restriction on outside practice of law from the DAG (i.e., (b) (6)). The memo could go through us (or cc to us) to (b) (6). It should be specific about the particular activities she would be doing as a lawyer. It should also provide enough information to do a conflicts analysis. For example, would any of the people she would be interacting with in performing the duties of executrix be people she deals with in her official duties. (b) (6) November 3, 2009.

82. (b) (6) OSG, WAG attendance. I emailed the following to (b) (6) for approval:
(b) (5)

(b) (5) persons from throughout a given industry or profession, or who represent a range of

(b) (6) approved.
(b) (6) November 3, 2009

83. (b) (6) OAG, WAG. (b) (6) would like to attend the "Anti-Defamation League (ADL) in Concert Against Hate," on November 16, 2009, at the Kennedy Center Concert Hall as addressed above that (b) (6) (b) (6) CRS, and (b) (6) in OASG have already been approved to attend. After being asked to describe the Departments interest in her attendance, (b) (6) advised that she would not be able to attend now due to a work related conflict. (b) (6) November 3, 2009

84. (b) (6) (JMD library staff, (b) (6) is leaving the Department and called for her ethics briefing. She is going to work as a law librarian for the White House in the Executive Office of the President and will thus continue to be an executive branch employee. Her last work day here is November 5 and she starts at EOP on November 9. Told her the post-employment restrictions only apply to former federal employees. Asked her if she had any other questions which she didn't. (b) (6) November 4, 2009

85. (b) (6) (CRT) Fund-raising. A NGO that works with the criminal section on human trafficking issues sent an email to the director of that section letting them know they were now a CFC charity and asking if they could come in to speak to their office about their charity or send out an email letting people know. I told (b) (6) that they shouldn't send such an email and the NGO should be advised not to contact them on such things and referred to whoever the CFC captain for their section was. The NGO may be able to come if they have a kick off event, but it would have to be done in accordance with the CFC rules. The (b) (6) should not be sending out emails about one charity, even if it is in the CFC. (b) (6) November 4, 2009.

86. (b) (6) (Crim) travel expenses. A criminal attorney does attorney recruitment at universities, including UVA. UVA offered to pay for her travel expenses, including lodging. (b) (6) didn't think she could accept but called to see if we had any thoughts. She suggested 1353 but I pointed out that this was part of her assigned duties, so 1353 wouldn't work. We determined that accepting the lodging or other travel expenses would not be prudent even if there was a workable exception. (b) (6) November 4, 2009.

87. (b) (6) (JMD) had a question about a speech she will give next week at the 10th Annual Security Conference sponsored by 1105 Government Information Group, which provides information for the "government IT market". They publish Federal Computer Week and host FOSE, GovSec, and U.S. Law expos. She will give an official speech on November 12 on (b) (6) Told her that because she is giving an official speech she could accept free attendance on the day she gives the speech and any food or refreshments provided to all attendees. She said she simply plans to duck in to give her speech and then leave. I told her she would need approval to accept free attendance on the second conference day November 13 when she is not giving a speech. She said she is not attending on the second day. I also advised her not to participate in the promotional activities suggested by the conference sponsor, i.e., touting the conference on LinkedIn or govloop or some blogs. She can give an official speech but she can't allow the sponsor to use her to promote the

event. (b) (6) approved her giving an official speech. The email chain is in the file. (b) (6) was copied on it. (b) (6) November 4, 2009

88. (b) (6) OASG, Gift acceptance. (b) (6) received a book from a former colleague, (b) (6) from Jenner & Block. Since he is with Jenner, which is a registered lobbying organization, no one may personally accept the book. However, (b) (6) may accept it under DOJ's gift acceptance authority. Our office will do the memo for the approval to accept the gift. (b) (6) November 5, 2009

89. (b) (6) (OSG) possible 502. (b) (6) called regarding a case she was going to be assigned in the OSG. (b) (6) started at OSG in Aug, coming from Latham & Watkins. The case had been granted cert and the (b) (6). (b) (6) would be researching and working on any amicus brief the office did produce. Latham represents the plaintiff in this case and (b) (6) had worked with this client while at Latham - though not on this matter. Looking over the facts, I did not think a 502 waiver would be appropriate - (b) (6) concurred. I called (b) (6) to discuss and he said they would reassign the case to another Assistant to the SG. (b) (6) November 5, 2009.

90. (b) (6) & (b) (6) ODAG, WAG. I emailed the following to (b) (6) for approval: (b) (5)

(b) (5) in the agency's interest for the employee to attend. An event is widely attended if there is a (b) (5)

(b) (5)

[REDACTED]

(b) (6) approved their attendance. (b) (6) November 5, 2009

91. (b) (6) OSG, Recusal question. (b) (6) has been recused from matters that involve WilmerHale, with which he was discussing possible employment. Those discussions were firmly terminated in October and (b) (6) would like to know if his recusals need to continue. I advised that although there are no firm rules, when looking at the circumstances I think it is fine for him to work on this case as long as (b) (6) is. (b) (6) November 5, 2009

92. (b) (6) (CIV) had a 502 question relating to (b) (6) one of the DAAG's in Civil. (b) (6) is interested in working on issues related to changes in the rules governing immigration procedures for children. His wife is the Executive Director of KIND (Kids in Need of Defense) an organization that is dedicated to protecting the welfare of unaccompanied alien children. (b) (6)

[REDACTED] Sent (b) (6) an email saying that Civil (perhaps coming from (b) (6)) should draft the memo through DEO to the DAG. He should let us take a look at the draft. The emails and background information, including the DAG's memo establishing the Working Group, is in the log file. (b) (6) November 3, 2009

93. Sent (b) (6) (OLA) our advice to (b) (6) and discussed his upcoming trip to the Rule of Law conference. Email is in the file. (b) (6) November 5, 2009

94. (b) (6), (b) (6), (b) (6) called with a post-employment question. (b) (6) had originally posed the question to (b) (6) who passed it on to (b) (6) who referred it to us. His firm may take on a new case that would be a Chapter 11 bankruptcy case in Vermont. The bankruptcy lawyers would handle the bankruptcy aspects but he might want to appear on some filings in the case. The case might not be filed until early next year. (b) (6) last day was early February 2009. He also called (b) (6) with this same question. We conferred with (b) (6). Called (b) (6) and told him the one year ban applied with respect to the entire Department, including the U.S. Trustees and EOUST. So he could not have his name on a filing or make an appearance or communication in the bankruptcy case until his one year restriction expired. He could work behind the scenes but had to be careful to avoid having his behind the scenes work provided to a Department official with attribution to him. (b) (6) said he understood this. I

followed up with an email to him which is in the file. (b) (6) November 6, 2009

95. (b) (6) (CIV) called about an outside activity. (b) (6) who is a career trial attorney in the Federal Programs Branch, has been invited to participate in a career day on November 17, 2009 at Harvard Law School. He would talk generally about government careers and working at the Department. He would not talk about any pending cases. He currently has no cases that involve Harvard. He would do this in his personal capacity and Harvard would over his travel expenses in kind. He would not be compensated. He would use his official title only as part of his general professional bio. I told (b) (6) it was okay under these circumstances. (b) (6) November 6, 2009

96. (b) (6) (ENRD) letters of recommendation. (b) (6) had a question in her annual training and wasn't sure of the answer. Someone asked if they could write a letter of recommendation on letterhead for opposing counsel at a private firm who was looking to go to another firm. She said it didn't seem right but appeared to fulfill both criteria listed in the regulation: (1) the attorney has personal knowledge of the abilities and/or character of the person because he worked against the person for quite a while on one of our cases; and (2) the person is someone with whom the attorney dealt in the course of his federal employment. We advised that if the attorney is or soon expects to be dealing with the opposing counsel again it might be best not to write. It also depends on how well s/he knows them - if they've been friends or colleagues/opposing counsel for a long time and the attorney has genuinely relevant information that they can convey, that seems a stronger case to go ahead and write a letter. I think the middle ground, assuming they're not in the middle of a major case, of using personal stationery is a good one but being allowed to discuss that they work at the Department. (b) (6) November 6, 2009.

97. (b) (6) (EOUSA) sent an email asking for our concurrence in an email request that he wished to send to (b) (6) to authorize (b) (6) to give an official speech at a fundraising dinner for the Minnesota Association of Black Lawyers. I reviewed his draft email and discussed with (b) (6). I said he should change the first sentence in the next to last paragraph. When someone gives an official speech, he is not considered by virtue of giving the speech alone to be a participant in a fundraising event. (b) (6) will make this change. His email is in the file. (b) (6) November 9, 2009

98. (b) (6) (b) (6) (FASS) gifts. ASAG (b) (6) had received a number of gifts at the Tribal Council meeting and (b) (6) were seeking advice on how to handle the gifts. I sent the following email: "Gifts from Indian tribes are not gifts from foreign nations and therefore they are subject to the standard gift rules. Mr. (b) (6) may accept up to a total of \$20 in gifts from one source, per occurrence. Assuming all of these gifts were from the same source, he may accept the flag and the pin, but not the blanket. It has been determined that the Department does not wish to send money to Indian tribes to purchase such gifts because it may be considered to be a rejection of the gift. Therefore, the gift of the blanket may be accepted by the Department. If Mr. (b) (6) would like to display it in his office he may, but it must remain

with the Department even after Mr. (b) (6) leaves office. It would not be his personal property. If Mr. (b) (6) wishes to purchase the blanket for his personal use, he will have to send a check to GSA for the purchase price. A more accurate value of the blanket will need to be determined so that Mr. (b) (6) will know for what amount to write the check." Email in file. (b) (6) November 9, 2009.

99. (b) (6) (OSG) one year ban. (b) (6) emailed with a question regarding 207(c) restrictions. "If an employee holds a position that is subject to the bar but then transfers to a different position that is not subject to the bar (but in the same agency), does the bar expire one year from the transfer date (i.e., the date on which the employee no longer held a position subject to the bar)." (b) (6) emailed "The restriction applies to any agency(ies) in which you serve as a senior appointee during your last year of gov't service and runs from date of resignation. So, if you transfer to a non-senior position in DoJ, and remain in a nonsenior position for at least one year prior to leaving gov't, the ban would no longer be in effect when you leave. However, if you leave gov't (from DOJ or another agency), within one year of leaving a senior position the ban would run for one year of leaving gov't and cover DOJ (or parts of DoJ)." (b) (6) then called, questioning the email from (b) (6) stating he felt it was less restrictive than based on his reading of 207(c). I again told him that the restriction looks at any position you were in during the last year of your government employment and the clock begins when you leave the Department. Therefore if you leave the Department on Jan 1, 2010, the one year ban applies to any component you worked in (and if it is not designated as separate, then the components restricted for that as well) during 2009. He said he understood. (b) (6) November 9, 2009.

100. (b) (6) (ODAG), gifts. (b) (6) had received a number of gifts during his travel to Taiwan and the office was unsure how to process them or assure that he could keep them. I took the form we use for the AG's gifts and met with (b) (6) to review the process, how to value the gifts and told her to call with any questions. We reviewed what he had received and determined that they were all foreign gifts and within the limit so that (b) (6) could keep the gifts and did not need to report them because all were under \$120. (b) (6) November 9, 2009.

101. (b) (6) (NSD) gifts. (b) (6) called regarding a NSD employee who regularly sends money to Sierra Leone and Indonesia to friends. (b) (6) wanted to be sure this wasn't a conflict. I told her I did not see one unless there was some relation to the employee's official duties, she said there was not. She said she was going to contact the security officer to be sure this wasn't a security issue or an issue with her clearance. (b) (6) November 9, 2009.

102. (b) (6) OASG, Hatch Act. (b) (6) wife is active in Montgomery County local politics and on the local town committee. When attaching her name to a letter endorsing a candidate for a local partisan election, she included (b) (6) name. He was unaware of this until the letter went out as a mailing from the local committee. He called concerned this was a Hatch Act violation. I conferred with (b) (6) and we advised that he should do what he can to prevent any further exposure of the "endorsement" - if its online, have it taken down, if there are letters than have not been

sent out or passed out we would advise that you request that they not be, etc. I think having them send out a retraction would bring more attention to the matter and the candidate (and possibly appear as if you were opposing the candidate). Advises that if he could not prevent the material from being sent out or used by the partisan political group, he should send a letter to this group stating for the record that his name was used without his knowledge and inadvertently and that he was letting the group know what it would be improper under the Hatch Act for him to endorse a candidate. (b) (6) November 9, 2009.

103. (b) (6) (CRM) requested a waiver to represent his son. We had sent a recommendation to (b) (6) last week. I sent (b) (6) an email asking him what the status of this request was. He sent back an email approving the request. I called (b) (6) and told her the request was approved and forwarded (b) (6) email to her. (b) (6) indicated he would follow up his email approval with hard copy. (b) (6) email approval is in the log file. (b) (6) November 10, 2009

104. (b) (6) (CRM), gifts. (b) (6) was invited to a dinner/party at his former firm to celebrate on of the attorneys making partner. (b) (6) called to see if we had a feeling on him attending this. Because it is his former employer who is a registered lobbying organization, he cannot accept the gift. Based on previous advice (b) (6) had given in the log, we did not think this met the requirements to allow him to pay and attend. (b) (6) was unhappy with this answer and asked if he could go, buy drinks, toast and then leave. We advised that it may look bad, but that if it would simply be a stop by without staying longer than to toast, it may be acceptable. (b) (6) November 10, 2009.

105. (b) (6) (Public Affairs Office, (b) (6)) is leaving the Department and called for his ethics briefing. He is a career Public Affairs Specialist. He had no supervisory responsibilities. He is going to work with a small communications consulting firm in Alexandria and expects to work on defense industry issues. He does not expect to have work back at the Department. His work here has involved matters in the Criminal Division. He has never worked with NSD. I said he would have a permanent ban on representing a client before the Department on particular matters that he personally worked on. I said if a client matter came up that involved something he had worked on here at the Department, that he should call us before making any communications to the Department in that matter. Ian did not think such a situation would arise but said he would call if he did have questions. (b) (6) November 10, 2009

106. (b) (6) (CRT) called with a Pledge question. (b) (6), Counsel to the Assistant Attorney General, has been invited to participate in a workshop with other leaders in the Muslim community that is being sponsored by the Center on American Progress. He would be speaking in the workshop which will discuss problems confronting Muslim Americans in the new generation. A breakfast and lunch will be provided. He would be doing this in his official capacity. Because he is giving an official speech he is not barred from attending and accepting the meals. See OGE Memorandum DO-09-007, dated February 11, 2009, p. 4, footnote 3.

Linda's email is in the file. (b) (6) November 10, 2009

107. (b) (6) (Civil) called with a Pledge question. (b) (6) is a Counsel to the Assistant Attorney General and a non-career employee subject to the Pledge. (b) (6) wants to attend a meeting on Friday that will involve some South African Apartheid litigation in SDNY. One of the defendants is represented by Morrison & Foerster. (b) (6) left MoFo in February 2007. (b) (6) thought that was conclusive that the Pledge did not apply. I said the two years runs from the date of (b) (6) appointment. (b) (6) said she would check to confirm that (b) (6) did not begin an appointment here at DOJ prior to March 2009. If (b) (6) started after February 2009, then MoFo would not be a former employer as defined in the Pledge. (b) (6) did not do any work for the MoFo client which is Fujitsu. Sara's email is in the file. (b) (6) November 10, 2009

108. (b) (6) (DAAG, Office of Assoc. AG) called with a widely attended gathering question. The event is a fundraiser for the Joe Torre Safe at Home Foundation. (b) (6) indicated that (b) (6) of OVW had already been cleared to attend the event and give a short speech. (b) (6) is working on a request to have (b) (6) of OVW approved to attend. (b) (6) was calling on behalf of the Office of the Assoc. AG to determine whether (b) (6) a non-career Counsel to the Associate AG, could also attend. The Foundation has invited (b) (6) to give a short speech and has offered to have two other persons to be selected by DOJ to attend. They are (b) (6) and (b) (6) is subject to the Pledge which required additional considerations. (b) (6) researched the status of the Foundation and determined that it was a 501(c)(3) organization and therefore was not a registered lobbying organization. So the WAG exception could be used by (b) (6) to accept free attendance at the event. In this case the event will be widely attended and will include persons who represent a diversity of views. The event will provide the opportunity to meet with and discuss issues and developments that are relevant to the work and mission of OVW. I told (b) (6) that the event qualified as a WAG. (b) (6) will provide this information to (b) (6) for his decision on whether to approve (b) (6) attendance which is on Friday, November 13. (b) (6) email is in the file. (b) (6) November 10, 2009

109. (b) (6) (JMD, (b) (6)) sent an email with a Hatch Act question. She is a career GS-13 accounting supervisor. She asked whether she could serve as a Treasurer for a candidate running for office as a DC Council Member. The primary is early next year. The Treasurer manages receipts and disbursements of campaign funds, handles deposits and withdrawals from the campaign bank account, ensures compliance with campaign finance rules, registers as Treasurer with the DC Office of Campaign Finance, and makes reports to the Office of Campaign Finances. Researched OSC opinions and found a November 18, 1997 opinion that said a federal employee could be a campaign Treasurer and could prepare and file campaign finance reports, and pay campaign bills. However, the employee could not solicit, accept or receive political contributions. I discussed with (b) (6). I called (b) (6) at OSC (b) (6) or direct line (b) (6) and discussed. (b) (6) consulted with (b) (6). (b) (6) confirmed that she could serve as Treasurer but could not engage in political fundraising.

She cannot solicit or receive contributions in her name. Also she cannot solicit or receive contributions as "Treasurer" even if her name is not included. In order to avoid accepting or receiving political contributions, she should ensure that the campaign does not direct that contributions be made out to or sent to the Treasurer. They should be made out and sent to someone else or to the campaign and sent to the campaign, not the Treasurer. She can process and deposit the checks in a campaign bank account. Also in order to avoid soliciting political contributions, requests for contributions should not be made "by authority of the Treasurer." So anything sent out by the campaign that included a request for money should not have the Treasurer position attached to it. Called (b) (6) and discussed with her and encouraged her to ask if she has any doubts about an activity. Followed up with an email. Emails are in the file. (b) (6) November 11, 2009

110. (b) (6) (OSG) sent an email asking whether he could be a guest speaker/lecturer at a class at American University Washington College of Law. The course is Appellate Advocacy and he would discuss Supreme Court practice and the work of OSG. (b) (6) has no objection to (b) (6) doing this. It would be uncompensated and on (b) (6) own time as a personal outside activity. The class meets on Monday evenings. I discussed with (b) (6) and told him he could do this in his personal capacity. He should not discuss pending cases and may not disclose non-public information. (b) (6) said he understood that he could not do that and said he would discuss generally the work of OSG and its role in Supreme Court practice. He would not use government resources. He said he did not anticipate that it would require much if any preparation time. He would refer to his official position in accordance with the rules. I sent him a follow up email. The emails are in the log file. (b) (6) November 11, 2009

111. (b) (6) (CRM) had asked a question as to whether a GW law student who was seeking a job as an unpaid intern could continue representing defendants in misdemeanor cases in a GW clinic or whether she needed DAG approval. I emailed and said she needed DAG approval. (b) (6) emailed back that the issue had become moot. (b) (6) had discussed with (b) (6) (b) (6) had also contacted PRAO. However, the student was told by the clinic that she could not do both simultaneously. Because she had a one year commitment to the clinic, she declined the internship. (b) (6) email is in the log file. (b) (6) November 12, 2009

112. (b) (6) (CIV) said an email with a draft memo seeking our concurrence in a 502 determination. (b) (6) was assigned to work on a bid protest case on October 21, 2009 and has completed the first draft of the brief which is due November 17, 2009. Two days ago Fried, Frank entered an appearance in the case representing the plaintiff. The DC office of Fried, Frank is handling the case. (b) (6) 30 year old son is a 4th year associate in the New York office of Fried, Frank. Although he is in the litigation practice of the firm he has had no involvement with this case. (b) (6) supervisor wants her to be able to do the final draft of the brief and the reply brief because of the short briefing schedule. Although (b) (6) has a covered relationship with her son, she does not have a covered relationship with his employer because he is not a dependant. Nevertheless, they are seeking authorization under the catch-all provision. I said we concur in their recommendation. (b) (6) email and the draft memo are in the log file.

(b) (6) November 12, 2009

113. (b) (6) had had a question about a receivable reported on the SF-278 of (b) (6) who is up for (b) (6). (b) (6) had asked through (b) (6) if the name of a person should be reported. I spoke with (b) (6) and confirmed that it is the LLC that is listed that is legally responsible for repaying the loan. The loan is on a piece of property that his parents had purchased and which was inherited by him and his siblings upon their death. He has a one-third interest. It is the LLC that is legally responsible for paying the loan. I conveyed that to (b) (6) who said he would discuss with (b) (6). Called (b) (6) and confirmed that (b) (6) question was resolved and there was no change required on the SF-278. (b) (6) November 12, 2009

114. (b) (6) (NSD) sent an email with a Foreign Gifts Act question. He is doing training on Monday and wanted to confirm that a meal provided by a foreign government overseas is not subject to the \$20 limit. I sent him a short email saying that transportation, meals and lodging provided overseas can be accepted and that other gifts such as entertainment are subject to the minimal value limitation, currently \$335. Also there are reporting obligations. The email is in the file. (b) (6) November 13, 2009

115. (b) (6) (CRM) called with a recommendation question. (b) (6), (b) (6), wanted to know if there were any ethics concerns if she were to write a character reference to be used by (b) (6) at his sentencing next week. (b) (6) had nothing to do with the investigation of (b) (6) was going to cooperate in the Ring case. I said this was not representation of (b) (6) but rather her statement of her own views, so the post-employment restrictions would not apply. (b) (6) was going to write a straight character reference and would not be using any confidential information so the bar rules would not seem to apply. Said I thought she could do this. We discussed the OGE DAEOgram dealing with writing immigration reference letters, and also OGE 98x18 which discussed character letters at sentencing hearings, although both involved current employees and dealt with the 205 issue. In both cases, OGE concluded there was no violation of 205. My email to (b) (6) is in the log file. (b) (6) November 13, 2009

116. (b) (6) (ATR) had a question about the Antitrust Division asking for volunteers to serve meals at SOME. (b) (6) sent a draft email that they asking if they could send out. I sent (b) (6) an email saying that they should not use government email to solicit support for this charitable activity. I also suggested some edits to the email so it would not suggest an endorsement by the Division. I said they could post a request for volunteers in a common area like the kitchen. The emails are in the file. (b) (6) November 13, 2009

117. (b) (6) (Navy Department, (b) (6) called with a question relating to the nomination of the new General Counsel of the Navy. He is coming from a position on the Hill that he has had for more than 2 years. His wife is a partner at (b) (6) which is representing some detainees. (b) (6) was asking for some general guidance about dealing with such an issue.

Working on detainee issues would not be a big part of his job, but he wanted some guidance about whether he could be involved in discussions, etc. I said that our situation was somewhat different because we do not have custody of individual detainees and our officials are working on more global questions. However, we did consider the law firm to have a financial interest that could be affected even though the cases were being handled pro bono. Consequently, we did provide a 208 waiver and a 502 determination. I suggested that they could craft the waiver so that it would not apply to specific cases. (b) (6) November 13, 2009

118. (b) (6) (ATR) had a follow up Hatch Act question. An antitrust lawyer in (b) (6) husband is running for local District Attorney. She wanted to know if she could be identified in her husband's campaign as "federal prosecutor" "prosecutor with the federal government" or "prosecutor". Discussed with (b) (6) and sent (b) (6) an email explaining why the attorney should just stick to identifying herself as a "federal attorney." Email is in file. (b) (6) November 16, 2009

119. (b) (6) OSG, Use of OSG appropriated funds for Holiday Party. (b) (6) asked (b) (6) to check into whether OSG could use appropriated funds to offset the cost of the holiday party. (b) (6) has already advised (b) (6) that in previous years OSG has never been allowed to do this. This is long settled and the answer is no. I forwarded the question to OGC who advised them that they may want to ask the AG if they can use part of the AG's rep fund for it since there will be high level officials from outside DOJ in attendance. (b) (6) November 16, 2009

120. (b) (6) Antitrust, Fund-raising. (b) (6) Antitrust wanted the office to volunteer at So Others May Eat (SOME) and (b) (6) was looking for guidance as to how/if this may be accomplished. I told (b) (6) there have been questions from a few other offices about volunteering with SOME and we just need to be sensitive to creating an appearance of endorsement of one charity over another and that if others in the office wish to publicize their volunteer event (non-political event) in the same manner (posting in a public location such as the kitchen/break room) they must be allowed to do so. We would also request that any volunteer group be listed as Volunteers of the DOJ Antitrust Division. We reviewed the passive recruitment of volunteers (one sign in a public place, etc) and told her (b) (6) should not be the one spearheading the effort to get volunteers. (b) (6) November 16, 2009.

121. (b) (6) EOUSA, Reception in honor of USA. The South Asian Bar Association would like to throw a welcome reception for (b) (6) (b) (6). The reception being contemplated is underwritten by several law firms. I advised (b) (6) that I saw differences in this event, which is being held to honor the new USA alone and is underwritten by firms which practice before the USAO, and the earlier events which honored multiple appointees, and which had fewer underwriters and which we vetted for our attendees. EOUSA seems inclined to disapprove and I concur. (b) (6) November 16, 2009

122. (b) (6) (ATF) had a question from an employee who is looking for a job and the company wants a recusal letter. Told (b) (6) we don't have any standard form letter that we

could provide. Said we had been seeing more of these requests and advised she should keep the letter brief. She said the memo would go to the employee and explain the recusal and it would be up to the employee to provide it to the prospective outside employer. Email is in file. (b) (6)
November 17, 2009

123. (b) (6) former AAG/OLA , and currently on the board of the American Constitutional Society. Asked about the restrictions on the AG, a former board member, in meeting or giving a speech to ACS. I confirmed that under the Pledge the AG would generally be barred from giving a speech or meeting with ACS; explained that the restrictions are individual to each appointee, however, so if the DAG or ASG do not have the same recusal obligations with respect to ACS, they would not be barred from making such an appearance. (b) (6)
November 17, 2009

124. (b) (6) CRM, Wizards tickets. (b) (6) was invited was invited to the Wizards game by an old friend. He is a partner at Sullivan & Cromwell. He has floor seats that he pays for himself and would like (b) (6) to join him on Wednesday. He went to college with (b) (6) wife and (b) (6) has known him for 12 or so years. They have socialized together over the years and the invitation has nothing to do with Sullivan. I advised (b) (6) that since his friend pays for the tickets himself (v. firm paying), and he is a "bona fide" personal friend, he may accept under the both the general gift rules and the Pledge. The only other issue is whether he is currently working on any matter in which he is representing someone. If not, he is okay to attend. (b) (6)
November 17, 2009

125. (b) (6) CRT, WAG. (b) (6) counsel to the AAG was invited to a Hispanic leadership dinner by Congressman Cuellar. It was a networking event and the cost was \$12 per person and below the gift ban. (b) (6) confirmed it was not a political event. We recommended she may attend. (b) (6)
November 17, 2009.

126. (b) (6) CIV, endorsement. (b) (6) sent this email "(b) (6)" from the Office of Litigation Support is wondering if DOJ can enter into an agreement with a vendor where DOJ gets a reduced price in exchange for the following activities (which could all be construed as endorsements of the product). Does the restriction on endorsements in 5 CFR 2635.802 (c) extend to this type of endorsement – ie one that is undertaken officially by DOJ as opposed to on the side by an employee?" I told her this sort of endorsement would not be allowable under the ethics rules. (b) (6)
November 17, 2009.

127. (b) (6) ENRD, conflicts. (b) (6) sent us this message from an ENRD attorney. "In . . . a trust set up by my mother-in-law for my son, there is a Massachusetts Turnpike Authority Bond with a current value of about (b) (6) Up until recently, I viewed this as not posing a conflict with respect to cases involving the Commonwealth of Mass, as the Turnpike Authority was an autonomous agency. However, recent legislation resulted in the Turnpike Authority merging into the Commonwealth's Department of Transportation. At this point, I assume that I have to be concerned about any matter involving the Commonwealth. I have an old case that still involves some work where Mass is a party (they are a co-plaintiff). I also have

ACLU, about anything relating to the official business of the Department. (b) (6) has friends in the Georgia ACLU and she wants to know if she can contact them to discuss a study that the Georgia affiliate did on racial profiling. Racial profiling is an issue that she will be working on in the Division. So the question is whether a State affiliate of the ACLU, or in this particular case, the Georgia ACLU, should be treated as her former employer within the meaning of the Pledge. I discussed with (b) (6) and (b) (6) confirmed with (b) (6) that the Georgia ACLU acts independently in many ways including having its own litigating authority. I researched the websites of the national ACLU and the Georgia ACLU, as well as some other State affiliates, namely, Maryland and Pennsylvania. The ACLU and the Georgia ACLU share a common mission and in terms of brand name are certainly closely identified for the general public. However, the ACLU and the Georgia ACLU are distinct corporate entities. Each has their own officers and board. Funding comes mostly through membership fees. Each entity sets its own agenda, brings its own cases, etc. In terms of employment law, it is clear that (b) (6) was an employee of the national ACLU and would not be considered an "employee" of the Georgia ACLU. The national ACLU hired her, paid her etc. They don't share staff. They don't share facilities. I advised (b) (6) that we are approaching this kind of question on a case by case basis and looking at the totality of the facts. For example, it might be possible that a different State affiliate might be so dependent on or interrelated with the national organization that we would reach a different conclusion. This is not a precedent for any national/affiliate question. I told (b) (6) that in this case the Georgia ACLU was sufficiently distinct and independent from the national ACLU that the Pledge would not preclude (b) (6) from contacting Georgia about the profiling report. I said (b) (6) would have to be careful that the communication was only with Georgia and did not involve anyone from the national organization. Beyond the Pledge, I said they should do a written 502 determination. I said we would provide assistance with the draft. In addition, I confirmed that (b) (6) had correctly advised (b) (6) on a number of other Pledge questions. (b) (6) is recused for 2 years from being involved in any cases in which the ACLU is a party or an amicus. She does not have to recuse herself from matters of general applicability simply because the ACLU would have an interest in the matter. The ACLU could be present to discuss a matter of general applicability if 4 other interested persons were present. She could be involved in immigration reform legislation that would deal in part with the employment verification system as long as she had not involvement in a lawsuit in which the Civil Division is defending the current requirement of contractors and in which ACLU has filed an amicus as long as she got 502 approval. The emails are in the file. (b) (6) November 16, 2009

131. (b) (6) (CRT) had some follow up questions from (b) (6), a new (b) (6) following an ethics briefing that she received in July 2009. They concerned her obligations under the Pledge and 502 with respect to the Leadership Conference on Civil Rights (LCCR), the Leadership Conference on Civil Rights Education Fund (LCCREF) and the Raben Group. She was employed by LCCREF through December 2007. LCCREF is the 501(c)(3) arm of LCCR, a 501(c)(4) organization. Starting in January 2008 and until recently, she was employed by the Raben Group and one of her clients was LCCREF. I discussed the questions with (b) (6) in July. I agreed that (b) (6) could discuss matters of general applicability with these three entities provided at least 5 parties were present. (b) (6) believes that LCCREF would qualify under the think tank exception and thus (b) (6) could discuss matters of general applicability with them. I agreed provided that LCCREF does qualify for the think tank

exception to the 5 parties requirement. I agreed that she could not participate in specific party matters involving these groups for two years. (b) (6) had a follow up question. (b) (6) was employed by LCCREF. For Pledge purposes, should LCCR also be considered her former employer. In this case, we determined that the two entities were so closely related, that LCCR also should be considered her former employer. The two organizations shared staff and facilities and (b) (6) had done some work for LCCR. I called (b) (6) and said the Pledge recusal should apply to both LCCREF and LCCR. The emails are in the file. (b) (6) November 16, 2009

132. (b) (6) (JMD, OSS) called for her exit ethics briefing. She trains law enforcement personnel. She is on a term appointment which expires this month. She competed for another appointment here but was not selected. She is looking for a similar job elsewhere in the Government. She has not yet looked at any private sector opportunities. She does not have any procurement responsibilities. She trains law enforcement personnel on the use of the NCIC system so that they can obtain their certification as a user. I explained to her that if she got a job in another federal agency, that the post-employment rules would not apply. However, if she got a job with a private sector company, then she would be subject to the post-employment restrictions which I explained to her. I said she should contact us if she does get a job in the private sector and has any question about whether the post-employment rules apply. I sent her an email confirming that she got her briefing with a copy to her supervisor, (b) (6) (b) (6) November 16, 2009

133. (b) (6) (CIV) called to discuss a training related issue that we had discussed some time ago in connection with an offer from a company to provide a \$1,000 training free for senior officials. (b) (6), is asking for some general guidelines she should follow in searching for and negotiating for training for the Division. We had discussed general issues such as use of Department gift authority and the possible application of procurement rules which (b) (6) would have to check with either a procurement person in Civil or with JMD OGC. (b) (6) did not want to have to do an ethics clearance for every individual training request. I said most training requests probably don't raise any ethics issues but the ones that do are best approached on a case by case basis. (b) (6) was going to be in a meeting on this subject the next day and he said he would get back to us if he had further questions. (b) (6) November 19, 2009

134. (b) (6) (ODAG, (b) (6)), (b) (6) sent an email asking whether he was eligible for a partial exemption from payment of the Client Security Fund Fee for the Connecticut bar. The full fee is \$110. A partial exemption reduces the fee by 50% to \$55. The exemption is not available if "being an attorney is a factor in an individual's employment." I sent him an email suggesting that he contact OARM for guidance on this question. I said if he is in a 905 series it is likely that the partial exemption would not be available to him. He indicated that he was going to contact HR staff in ODAG to determine the classification of his position. Email exchange is in the file. (b) (6) November 19, 2009

135. (b) (6) the (b) (6), sent an email because an item in Main Justice Blog has misreported his annual salary and a lump sum payment from his

mother's estate. When I talked to him, he had already resolved the matter by contacting OLA which is handling his nomination. They said they would contact Main Justice and that he should not contact the media while his nomination was pending. The emails are in the file. (b) (6) November 19, 2009

136. (b) (6) (Community Relations Service) who is a non-career employee subject to the Pledge sent an email asking for our advice regarding a WAG. (b) (6) had asked her to contact our office regarding this event. The event was a fundraising dinner for the National Women's Law Center and she was being invited as the guest of her former employer, the Constitution Project. A ticket cost \$250. (b) (6) had correctly determined that the event qualified as a WAG and that acceptance from someone other than the sponsor was permitted. We looked at 2 Pledge issues. We determined that both organizations were 501(c)(3) and therefore the Pledge ban on gifts from lobbyists did not apply. The second Pledge issue was the restriction on discussing Department business with a former employer. That presented an unfeasible situation as it would preclude her from discussing Department related matters at the table with her former employer when she was attending under the WAG exception. She asked if she could pay her own way and sit at another table and we advised that was okay. I sent a follow up email to (b) (6) and he said he would keep it in his file for use in advising on this kind of question in the future. The emails are in the log file. (b) (6) November 20, 2009

137. (b) (6) CIV, speaking. (b) (6) was invited to be the key note speaker at the Lawyer's Committee for Civil Rights in the Bay Area annual MLK Luncheon. LCCR is a former client of Mr. (b) (6). (b) (6) wanted to know if he could attend. I sent the following to (b) (6) "The Pledge will prevent AAG (b) (6) from speaking at this event because the Lawyer's Committee for Civil Rights is a former client and the luncheon is a fundraiser. The Ethics Pledge, paragraph 2, prohibits political appointees from participating in a particular matter involving specific parties that is directly and substantially related to their former employer or client. The OGE memo on May 26, 2009 states that this is not meant to prohibit an appointee from participating in an official speech unless "the speech would have a demonstrable financial effect on the former employer or client." In this case, the LCCR luncheon is a fundraiser which raised over \$270,000 for the group last year. Because AAG (b) (6) speech at this event would have a financial effect on his former client, he may not speak in his official capacity. It is Department policy that employees at the AAG level may not speak in their personal capacity to a group such as this, because he would be expected to discuss matters involving the Department, current Department programs and policies." (b) (6) November 20, 2009.

UPDATE: (b) (6) called with a question regarding the MLK luncheon. When he spoke to (b) (6) about not being able to speak at the luncheon, he did not recall having LCCR as a client. (b) (6) called MoFo who said (b) (6) (b) (6) billed .75 hours in Oct 2006 for LCCR. Because this was more than 2 years prior to his date of appointment at the Department, it is not a former client under the Pledge. After confirming with (b) (6) I advised that (b) (6) (b) (6) would be able to speak at the event but that he would be restricted from any active participation in Fund-raising. He could not speak of Fund-raising in his speech, could not allow his name to be used to entice people to attend the event, etc. I reviewed all of this in detail with (b) (6) and reviewed the Save the Date with her, making some edits. Emails in file. (b) (6) December 7, 2009.

138. (b) (6) (NSD) sent a discount question by email. (b) (6) has been offered a discount by her health club that is available to “any member of law enforcement.” I reviewed the OGE DAEOgram on commercial discounts dated January 5, 1999 and sent (b) (6) an email with an excerpt from the memo and indicated that the discount had to meet a three prong test and in this case it did not meet the third prong of the test and so could not be accepted. The email exchange is in the log file. (b) (6) November 19, 2009

139. (b) (6) (CIV) had a discount question. Can an attorney who is attending a conference in his official capacity accept the discounted rate offered to CMS employees and CMS is one of the sponsors. I sent (b) (6) an email saying yes this can be done without getting WAG approval as he is attending in his official capacity. Email is in the file. (b) (6) November 20, 2009

140. (b) (6) (OAG) sent an email asking if (b) (6) write a letter of recommendation for graduate school for “two junior political appointees”. I sent (b) (6) an email response asking if the two employees were on the staff of the OAG and whether (b) (6) had personal knowledge of their abilities based on having worked with them. The email exchange is in the file. (b) (6) November 12, 2009

141. (b) (6) (OSG, (b) (6)) sent an email with a question about the nepotism statute, 5 U.S.C. 3110. His wife who is an attorney is planning to return to work and is interested in a position at the Department. Ben wanted to know how he could assist her and comply with the nepotism law. He understands that he cannot recommend her or lobby, campaign, or press for her appointment. He particularly asked for guidance so that he could avoid any action that could be considered “advocating” for her appointment. He has been very conservative thus far and has not mentioned his wife’s interest in employment. I reviewed our subject matter file and MSPB and Comptroller General opinions on the statute. I told (b) (6) that he should be conservative about assisting her as he would want to avoid any action that could be considered “advocating” and thereby taint the hiring process. In terms of who he could contact, I said it would be permissible to contact his friends in the Department and let them know that she is interested. However, he should not contact anyone who is involved in recruitment or hiring. He also should not contact anyone from other offices who works with the OSG. In terms of what he can say or do, I said he can ask about possible openings and also ask about the nature of the work in a particular office. However, he should not provide his wife’s resume to anyone. It is up to her to advance her candidacy. He asked about mentioning this to his supervisor and I said that would be permissible. The email is in the file. (b) (6) November 23, 2009

142. (b) (6) (JMD, management and planning staff, (b) (6)) called with an outside employment question. He previously worked for Braintree Consulting up until July 2009 when he joined the Department. Now Braintree wants to hire him to help them work on a project they are doing for the D.C. Government and the D.C. Homeland Security Department under a grant from FEMA. He would be paid on an hourly basis for a few hours of work a week. I explained some of the ethics restrictions that would apply and told him he would need approval for this outside employment. He indicated that the opportunity was not significant enough that he would want to pursue it by submitting a request for approval. (b) (6) November 23, 2009

143. (b) (6) (OSG) had a question about a dinner at the home of a foreign national that was presented to our office by (b) (6) in OSG. (b) (6) is a member of the royal family of Saudi Arabia and a former Ambassador. He invited (b) (6) to dinner at his home in McLean. No one else is expected to attend. (b) (6) knows (b) (6) professionally from having attended various conferences. We treated this as a gift from a foreign government and obtained (b) (6) approval to accept this gift of hospitality. (b) (6) was on sick leave and I forwarded the request to (b) (6) for his approval in (b) (6) absence but (b) (6) sent an email approving it before (b) (6) acted on it. As a separate matter, (b) (6) worked with the security staff on the question of reporting a contact with a foreign national. (b) (6) will report the contact tomorrow. I also told (b) (6) that he could take an appropriate gift for the host, like ice cream. (b) (6) also had a separate question as to whether (b) (6) could administer the oath for a former student when the student is sworn in as a member of the bar. (b) (6) had no additional information such as which bar. Subsequently, he talked with (b) (6) in OARM and (b) (6) said he should also check with OLC. I consulted with (b) (6) who said depending on the facts, he should consult OLC and/or (b) (6) in OGC. I passed this information on to (b) (6). He said he was definitely going to consult with OLC. The emails are in the file. (b) (6) November 23, 2009

144. (b) (6) (b) (6) had two post-employment questions. She left on January 20, 2009 and she is not subject to the one year restriction because her salary was less than the threshold. I contacted (b) (6) in CRT and confirmed that she was not barred from representing clients on two matters. The San Antonio Police Department received notice of a Title VII hiring investigation on September 1, 2009. This matter was only opened in the Division in July 2009. So (b) (6) is not barred from representing SAPD. (b) (6) worked on a disability rulemaking that was withdrawn in January 2009. It was a general rulemaking and did not involve specific parties. So there is no restriction that applies to her as a result of her work on the general rulemaking. She may represent a telecommunications company on a disability regulatory issue that involves texting to 911 numbers. That matter is completely new. The emails are in the file. (b) (6) November 24, 2009

145. (b) (6) (CIV) had a question as to whether (b) (6) who just started in Civil could accept repayment of student loans through the Fiske Fellowship program at the University of Michigan Law School. A recent change in federal law provides for an exception to 18 U.S.C. 209 which will allow this provided certain criteria are met. (b) (6) provided the information that the criteria were met and so she can participate in the Fiske program. (b) (6) had already received a \$5,000 payment before she joined the Department. Section 209 does not apply to such payments prior to employment. The emails are in the file. (b) (6) November 24, 2009

146. (b) (6) finance, CFC. (b) (6) wanted to send out a "rah rah" email for CFC and promote upcoming CFC events. We modified the message and provided guidance on the email. Emails in file. (b) (6) November 24, 2009.

147. (b) (6) (ENRD) had a question regarding the scope of the recusal from GE for (b) (6) GE is her former employer. (b) (6) wanted to know if the recusal included GE subsidiaries. I talked to (b) (6) at OGE and she checked with (b) (6) who said they use the definition of "person" as a test. If the company owns 50% of another company then

the recusal applies to that other company. I sent an email to (b) (6) who was out and then sent it to (b) (6) and (b) (6) (b) (6) November 24, 2009

148. (b) (6) called on November 18 about her complaint to OPR. See log entry for September 3, 2009 an earlier call she made. She said she had not heard from them. I checked with (b) (6). He confirmed that they sent her a letter on September 22, 2009 saying they were not going to take any action on her complaint. I called her back and said they sent her a letter. She said she had not received it. I said if she wanted them to resend it she should call and specifically identify the letter by date. (b) (6) November 24, 2009

149. (b) (6) (b) (6) pledge question. ATR has an investigation into conduct by a unit of a subsidiary of a large corporation, and the (b) (6) had done work (46 hours) for the parent corporation over a year ago that was unrelated to this unit or this subsidiary. (b) (6) asked if participation by (b) (6) in their current investigation would be covered by the pledge. I advised that if (b) (6) did no work for subsidiary and the work for parent company was completely unrelated to this issue, I would not consider the subsidiary her former client, so participation not barred by the Pledge. (b) (6) November 24, 2009

150. (b) (6) EOUSA, Request to join 2009 Academy Nomination Board. EOUSA has received a request from a USA to join the nomination board for admission to military academies in his personal capacity and with no compensation. I advised that I agree that it is appropriate for (b) (6) to be approved to serve in this role. However, because the new Administration has adopted a stricter policy with respect to Senate-confirmed appointees serving in outside positions, the prior approvals cited will not be sufficient as a basis on which to approve this position. I believe that a more accurate way to view this is that he is assisting, in his personal capacity, another Federal official in carrying out one of her duties/responsibilities, viz., making recommendations from among her constituents for acceptance at one of the U.S. Service academies. With the caveats and advice described, I agree with the recommendation for approval. (b) (6) November 24, 2009

151. Anonymous call from an employee of a private sector firm asking how to give a gift of electronic equipment to the Department. She did not wish to divulge the identity of the donor nor the specific details of the gift. I steered her to our website page "Gifts to the Department." I answered her general procedural questions about DOJ's gift acceptance authority - that it requires analysis on a case by case basis by ethics officials and approval at varying levels of authority, depending on the circumstances and the value of the offered gift. She shared that it is a gift potentially to be offered to the FBI, so I gave her (b) (6) and (b) (6) contact information for analysis. (b) (6) November 25, 2009

152. (b) (6) JMD - a CRM division employee in National Place called wanting permission for a Toys for Tots drop box in the building. Sensitivities: cannot turn into a collection of cash donations, it is currently CFC season. Told (b) (6) to refer the employee to (b) (6) DDAEO for CRM who will seek Component Head approval for the drop box. November 25, 2009

153. (b) (6) (CRT, (b) (6) called with a question about an employee's obligation to report a violation of law. A CRT employee has an aunt in Florida who is being taken care of in a nursing home. The employee has suspicions that there may be Medicare Fraud going on. The facility wants to give the aunt insulin. A doctor says she doesn't need insulin. If a patient needs insulin, the facility gets a higher rate. The employee thinks a blood test may have been falsified. Medicare fraud is rampant in Miami. (b) (6) thought there might be some changes in the duty to report as a result of Patriot Act or immigration law changes. Told (b) (6) that more was probably needed here before any obligation to report was triggered. If the employee wanted to get some information on this they could talk to someone in the health care fraud section of CRM. But they would have to be careful not to try to persuade someone in CRM to take some action. (b) (6) agreed that there probably was not enough information at this point to trigger an obligation to report. (b) (6) November 24, 2009

154. (b) (6) (ATF) sent an email asking an outside employment question. A current Senior Special Agent wants to start a business now providing assistance to attorneys taking proffers from persons who have signed guilty pleas. He would work on in the State court system. The agent will retire next summer but wants to get this business started now. (b) (6) though this would not be permissible without a waiver under the supplemental regulation because it involved a criminal matter. I discussed with (b) (6) and said I agreed that he would need a waiver and also that he would need approval for outside employment. I also discussed with (b) (6) Called (b) (6) back again and said that this outside business would not be approved. Also discussed the risk of his trading on his current position if he were to start this business now. He has to wait till he retires. Then he will have to consider his post-employment obligations. The email is in the file. (b) (6) November 25, 2009

155. (b) (6) OASG, gift. (b) (6) called asking if he could attend his former firm's holiday party. I conferred with (b) (6) and (b) (6) and sent the following response. "Sidley Austin is a registered lobbying organization and the Ethics Pledge prohibits you from accepting a gift from a registered lobbying organization. Attendance at the holiday party would be a gift and therefore you may not attend the Sidley Austin holiday party because of the Ethics Pledge restrictions. While in some circumstances paying fair market value for the gift, in this case the per person cost of the party, may be a solution, our office does not see that as a suitable alternative in this situation. The Ethics Pledge demonstrates the President's clear desire that appointees not accept invitations from registered lobbyists, which includes an appearance concern. Paying for your attendance at the event would eliminate the issue of accepting a gift from a lobbying organization but not the appearance issues, and we believe would be against the spirit of the Ethics Pledge." (b) (6) November 25, 2009.

156. (b) (6) (Assoc. AG office, (b) (6) called at the request of (b) (6) for our views on (b) (6) (b) (6) request to him to approve her attendance on December 1 at a cocktail reception at the Japanese Embassy in honor of the Emperor of Japan's birthday and anniversary of accession to the throne. Discussed with (b) (6) Advised (b) (6) that (b) (6) could approve acceptance of free attendance at this event either under the \$335 de minimis exception

under the Foreign Gifts Act or under the WAG exception if the event qualified as a WAG. The email is in the file. (b) (6) November 25, 2009

157. (b) (6) BOP, letter of recommendation. (b) (6) called regarding a former BOP employee who had "gone bad" and was now an inmate. Several former coworkers wanted to write character reference letters for her and had done so, including one employee who was her former supervisor and wrote the letter on BOP letterhead. (b) (6) was concerned, as were the higher ups. I referred (b) (6) to the OGE opinion 98x18 which handled the issue of letterhead for letters of character reference and okayed it if the normal requirements for letterhead were met, as they were here. (b) (6) November 25, 2009

158. (b) (6) (CIV) had a question as to whether (b) (6) could continue to employ his nanny after learning she has a removal hearing coming up in July 2010. Discussed with (b) (6) Discussed with (b) (6) Called (b) (6) back and said it turns on the question of whether he as an employer is in compliance with immigration law. He needs to have a clear understanding of what his obligations are as an employer of the nanny. If he exercises due diligence and if the employment is clearly legal, then he can continue to employ the nanny. But he should not continue to employ the nanny if he is uncertain. I suggested to (b) (6) that the employee should also check with the security officer in Civil to see what his obligations are. The email is in the file. (b) (6) November 25, 2009

159. (b) (6) OCIO, IT Security Staff. She is the office's CFC organizer/worker. (b) (6) asked her to contact us about their planned activities. Can they solicit local businesses for coffee and food donations for CFC events (to sell, to eat, etc.) - no, DOJ employees are prohibited from soliciting nonfederal entities for CFC participation. (b) (6) pointed out that OPM's website says they can - I explained to (b) (6) that DOJ employees cannot. OPM has deferred to the individual agencies - it is up to each agency whether to allow or prohibit this practice. DOJ must be more conservative due to our unique law enforcement mission, and, therefore DOJ employees cannot solicit private sector businesses for CFC participation. The concerns are not new, but this year DOJ has newly emphasized them via a flat prohibition. (b) (6) asked if contractors, who will not be solicited for participation, can voluntarily come to the events and purchase food offerings or make cash donations: yes they can, but there are new controls and procedures this year for the handling of cash contributions which are explained in her key worker documentation and she should read them carefully. Should a nonfederal business who contributed to CFC in their office's past events contact them unsolicited to make a donation of some kind, (b) (6) will call us for an analysis before accepting. (b) (6) November 30, 2009

160. (b) (6) (CIV) asked us to review a 502 determination to allow (b) (6), the (b) (6), to work on a habeas case involving a prisoner at Bagram. His former firm, Jenner, filed an amicus. (b) (6) agreed to add language indicating he would not appear on the briefs and would not argue the case and would not have communications with his former firm. Subject to those changes being made, we concurred. A copy of the draft memo and the emails are in the log file. (b) (6) November 30, 2009

161. (b) (6) (CIV) asked whether a civil frauds attorney could attend a conference that evening that was being sponsored by the Aspen Institute and Intel. There are several cases against Intel in the Division. (b) (6) asked for confirmation that he would need approval to use the WAG gift exception. The offer may also have been extended because of his position in the Department. I agreed that he would need such approval. (b) (6) did not believe they had time to obtain approval. The email is in the log file. (b) (6) November 30, 2009

162. (b) (6) NSD, WAG. (b) (6) is speaking at the Atlantic Council's workshop on international law. The event is a two day workshop. There is a dinner, sponsored by Lexis/Nexis, in conjunction with the workshop. DOD's General Counsel will be speaking at the dinner, which will be attending by international law experts, attendees from Europe and the US, Executive Department officials and others attending the workshops. There will be approximately 32 attendees. I conferred with (b) (6) because of the low number of attendees. She agreed it was at the low end for attendees but because it was in conjunction with the workshop (b) (6) would be speaking at (though not on the same day), that it could be approved as a WAG. (b) (6) sent the approval memo to the AAG. Notes in file. (b) (6) December 1, 2009.

163. (b) (6) ODAG, WAG. I sent the following email to (b) (6) for approval: (b) (6) (5)

(b) (6), (b) (5) prohibition does not apply as long as the person inviting the official is not him

(b) (5)

(b) (6) approved. (b) (6)

December 2, 2009

164. (b) (6) NSD, CFC/Fund-raising. (b) (6) wanted to know if a Toys for Tots drive can be held at the same time as CFC. I told him yes, Toys for Tots is allowed because it is not the solicitation for monetary donations. Passive collection of non-monetary items is allowed during CFC season, with the proper approval. (b) (6) December 2, 2009.

165. (b) (6) (NSD) had an outside practice of law question. An NSD attorney asked if she could assist her brother-in-law in preparing a FOIA request to CRM, FBI and USAO relating to a criminal investigation of the brother-in-law. (b) (6) wanted to know if this would be the outside practice of law. Discussed with (b) (6). Told (b) (6) this would depend on whether she would have to disclose any client confidences. For example, if she had at one time worked in CRM, she could not disclose or make use of inside information about how CRM would handle a FOIA request. She could assist in drafting a basic FOIA request. She would not sign anything. If later on, the Department denied the request in whole or in part, she could not provide any further assistance once the matter was in dispute. The email is in the file. (b) (6) December 2, 2009

166. (b) (6) (Public Affairs, (b) (6) had a holiday party Pledge question. She has been invited by Senator Leahy of the Judiciary Committee to attend their annual holiday party on December 15, 2009. She has attended this party for years. She worked for the committee up until September 2007. She started at DOJ in March 2009. I told her she could attend and would not need to get approval. The Pledge ban on gifts from lobbying organizations does not apply. The gift prohibitions in the Standards of Conduct do not apply. Also the legislative branch is excluded from the Pledge definition of former employer. So she is not restricted from discussing her work with people from the committee with the caveat that she cannot disclose nonpublic information. She understood that. If someone else was in attendance who did meet the definition of a former employer, then she would have to avoid talking with that former employer about her work. The email is in the file. (b) (6) December 2, 2009

167. (b) (6) (CRT) originally asked if the non-career people in CRT were barred from attending the LCCR and LCCREF reception on December 2, 2009. Then she got some push back after the guidance in the December 1, 2009 memo on holiday parties came out. Non-career employees wanted to know if they could pay their own way. The memo discouraged that. (b) (6) sought the views of OGE and OGE also recommended that employees should not pay their own way to attend an event that would otherwise be barred by the Pledge. In this case, both organizations were hosts and the lobbying arm's involvement meant the Pledge ban would apply. (b) (6) recommended that the non-career employees not pay their own way to attend. She approved (b) (6) under a WAG exception because he is career. She had advised (b) (6) a non-career employee, that she could not go because the host was a former employer. (b) (6)

But in light of the others possibly paying their way she asked if it would be correct that (b) (6) could pay her way and avoid any discussion of her work with her former employer at the event. I said that would be in technical compliance although again we would advise against it. (b) (6) agreed but was going to convey that to (b) (6). The emails are in the file. (b) (6) (b) (6) December 2, 2009

168. (b) (6) CIV, 502 / Pledge question. One of their politicals represented American Airlines in the past 2 years and wants to know if he is recused from litigation that may ensue with the American Transport Ass'n of which the Airlines is a member. In other words the former client was not ATA but is (and I suppose was) a member of ATA. As (b) (6) read the pledge this may not fall within it but supposes this could be a 502 issue and waivable? I advised that I think that's correct- if his former client is AA, not ATA, and as long as this case is unrelated to any specific work he did for AA, I would do a 502 determination. (b) (6) December 3, 2009

169. (b) (6) PAO, Gift of attendance approval. I emailed the following to (b) (6) for approval: (b) (6) (b) (5)

(b) (6) approved. (b) (6) December 2, 2009

170. (b) (6) OASG, WAG. In emailed the following to (b) (6)(b) (6) for approval: (b) (5)

(b) (5)

(b) (5)

[REDACTED]

(b) (6) approved. (b) (6) December 3, 2009

171. (b) (6) PAO, WAG. I emailed the following to (b) (6) for approval: (b) (5)

[REDACTED]

(b) (5)

(b) (5)

(b) (5)

approved. (b) (6) December 3, 2009

172. (b) (6) (NSD) had a CFC question. They wanted to use Wii games as a fundraising method. They asked if what they proposed would violate rules on gifts between employees or would be coercive. Advised that what they proposed would not. Discussed with (b) (6) who suggested discussing with (b) (6) to see if there might be any other issues. (b) (6) was out of the office. Discussed with (b) (6). She discussed with (b) (6) a loaned executive from the Federal Air Marshals to OPM. She raised the question of whether making the amount contributed contingent on the outcome of a game would constitute gambling. Researched the definition of gambling in the federal property regulations. 41 CFR 102-74.395. The reg states: "Gambling per se means a game of chance where the participant risks something of value for the chance to gain or win a prize." In this case, the participant does not gain or win a prize. There are no winnings. Advised (b) (6) that the fundraising method they proposed using Wii games was permissible. The emails are in the file. (b) (6) December 3, 2009

173. (b) (6) (CRM) called to discuss issues relating to (b) (6) who is coming from a partnership at Davis, Polk where he has a white collar crime practice to be the head of the Fraud Section in Criminal. (b) (6) thought he would be coming on board as a career SES. In that case, there would be no Pledge issues. If he is non-career and signs the Pledge, then all of those issues need to be dealt with. We did not discuss Pledge issues. He expects to come on board in January 2010. I agreed that he should not take on new representations of clients in cases that involve the Department. I said for the SF278 he will need to report \$5,000 clients going back to 2009 and 2008. While he is still at the firm he should prepare that list of clients. For 502 purposes he should have a list of all the clients he provided services for in 2009 without regard to the amount of work he did. However, it would be helpful for him to have the date when he last provided services to a client and also how many hours he worked for a client as that relates to the expiration of the one year recusal and also how significant the client was. He should sever his financial ties to the firm and get information on bonuses, pension, and any other firm related financial interests. I mentioned to (b) (6) the matter of fees earned from providing personal services in claims against the United States (torts, contracts) and the 203 issue if he would be paid for that after he came on board. It does not seem that this would be likely given his practice.

An email is in the file. (b) (6) December 4, 2009

174. (b) (6) pro bono. (b) (6) called with a question regarding an affidavit she was given by a DOJ employee who participates in the pro bono program. The employee is applying to be admitted to the NY Bar. When he volunteered with the pro bono program he was not an attorney, but a paralegal. The affidavit discusses law related employment prior to becoming an attorney and asks for his "supervisor" to describe his work and sign the affidavit. (b) (6) was not comfortable signing the affidavit because she did not supervise his work, only managed the pro bono program. I agreed that we wouldn't want her to sign as a supervisor. She contacted the NY Bar and determined that she could also list the DOJ employee as a solo practitioner. She decided since pro bono participants are acting in their personal capacity when volunteering, this was more appropriate. She signed the affidavit and described the work he did through the pro bono program as a solo practitioner. (b) (6) December 4, 2009.

175. (b) (6) PRAO, gifts. (b) (6) wanted to know if her office could give gifts to contractor personnel. I told her while it was not prohibited by the rules, we do not advise close relationships with contractor personnel and want to be sure to avoid a conflict of interest. She said that they have some administrative assistants who are contract personnel and traditionally the staff has given a cash to the admins. I told her we would still advise against, but that it is not prohibited and if they are treating all admins alike (contractor and fed) it may create less of a conflict of interest. (b) (6) December 4, 2009.

176. (b) (6) OIG, LinkedIn. (b) (6) received the following question in response to annual training and forwarded to us for guidance. "A friend and former colleague of mine left government service a few months ago to start his own company. Not knowing the rules regarding social networking sites, I issued an endorsement of this person on his LinkedIn page. My endorsement did not address the nature of his business, nor of his skills in it. As his field of endeavor is not related to mine, I have no knowledge of that specific. My endorsement was along the lines of his strong personal character and work ethic, and my knowledge of those characteristics. Given that information, am I on safe ground or did I step over the line? If the latter, is the remedy to request that this individual delete my endorsement – or is other action required on my part?" I advised "I think the answer depends on how the employee has his LinkedIn account set up. Presumably it notes that his current employment is with the DOJ. If so, he should probably delete the recommendation because even though it is based on personal experiences, it will appear on LinkedIn as an endorsement by "John Smith, Department of Justice". It creates the appearance that the DOJ is endorsing someone. Even if the employee knows this person through their DOJ employment (thereby making a recommendation on letterhead permissible) LinkedIn is not the recommended way of making such a recommendation. LinkedIn is too open - anyone can google the name of the recommended individual and find this site with the recommendation. Also, as it was noted in the training slides we recommend that recommendations be given for specific jobs or positions - not a just a letter of recommendation to be used in any situation, as a LinkedIn recommendation does. If the individual wants to endorse/recommend his friend on LinkedIn, he should change his LinkedIn information to say "federal employee" so that the Department of Justice's name is no longer used." (b) (6) December 4, 2009.


177. (b) (6) called about post-employment information in materials given to her by the Commerce Department. She left NIST on November 13, 2009. She had a secretarial position. She was confused by the materials that she thought was saying that she could not work for the federal government again. I said that was not the prohibition but that she should discuss with a Commerce Department ethics official. She said she called them but no one answers the phone. I explained why she should get post-employment advice from the agency that employed her. She said she would try to reach them again. (b) (6) December 4, 2009

178. (b) (6) (see November 24 entry in log) called to express thanks for the assistance we gave her earlier but to complain that when OPR sent her a letter explaining that the earlier letter had been mis-addressed and thus did not reach her they failed to include a copy of the mis-addressed letter. I said that she would have to make the request for the mis-addressed OPR letter to OPR. (b) (6) December 4, 2009

179. (b) (6) AFMS, party guidance. (b) (6) called to find out if contractors could come to the AFMS holiday party. I reviewed the ban on soliciting contractors with her and told her if any of the contractors did attend, they could not charge the government for the time spent there. (b) (6) December 4, 2009.

180. (b) (6) (ENRD) had called on December 4 to ask who in the senior offices should receive copies of (b) (6) recusal. I confirmed with (b) (6) and sent her an email on December 7 with the persons to contact in OAG, ODAG, OAAG, and SG. The emails are in the log file. (b) (6) December 7, 2009

181. (b) (6) (ODAG, (b) (6)) called on December 4 to ask whether there would be any concerns about attending a meeting at 12:30 that day to discuss an issue that has arisen in connection with an (b) investigation of the (b) (5)



(b) (6) December 7, 2009

182. (b) (6) (CIV, (b) (6)) called with a gift question. She is involved in a case brought by a plaintiff against the United States and the State of Hawaii. It will be argued on December 14. The Hawaii attorney has invited about 8-10 attorneys for drinks and hors

d'oeuvres at his home on December 13. About 4-5 people have accepted. There might be some discussion related to the argument the next day. I discussed with (b) (6). Told (b) (6) she would need to use a gift exception as the gift would be from a prohibited source. She could use the \$20 de minimis exception but she would need to confirm that the per head cost was \$20 or less.

(b) (6) said she appreciated our looking into it but she was inclined to decline the invitation. She said that she could do whatever coordinating she needed to do on the phone. An email is in the file. (b) (6) December 7, 2009

183. (b) (6) ATR, gifts. (b) (6) called with a question from (b) (6) (b) (6). She had received an invitation from (b) (6) to attend the Congressional French Caucus event at the French Embassy. The Congresswoman received the invitation from the French Ambassador, who was hosting the event. It was a champagne cocktail party with a Dior fashion show to be held December 8. (b) (6) reported that (b) (6) and the Congresswoman had been friends for more than 20 years and that the Congresswoman was the godmother to one of (b) (6) children. I felt this more than met the personal acquaintance requirement and said the invitation could be accepted based on this. Email in file. (b) (6) December 7, 2009.

184. (b) (6) PAO, social media use. (b) (6) had a question about whether federal employees may post their official title or federal employment on sites such as Facebook and LinkedIn. I advised her on the restrictions that would be put into place if someone posted their federal employment (appropriateness of photos, posts, political activity, etc) and reviewed the specific restrictions for LinkedIn (no recommendations). Email in the file. (b) (6) December 7, 2009.

185. (b) (6) (COPS) asked who should approve the Director's attendance at a WAG. Checked with (b) (6) and it is (b) (6). Passed that on to (b) (6). The invitation was from the Police Executive Research Forum for an event on December 18. He is subject to the Pledge but this group is a 501(c)(3) organization so use of the WAG exception is permissible. (b) (6) was going to meet with (b) (6) later in the afternoon and said she would mention to (b) (6) then. (b) (6) December 3, 2009

186. (b) (6) (JMD) requested approval to teach computer science courses again in the spring at UMUC and to proctor some exams. (b) (6) approved on December 4, 2009. Recommendation memo to (b) (6) and advice memo to (b) (6) are in the memo binder. Background email from (b) (6) is in the log file. (b) (6) December 4, 2009

187. (b) (6) JMD, USAJOBS Workgroup. (b) (6) would like to know if it is okay for her to attend the USAJOBS working group being held at Monster's building. They are reluctant to participate because they are in a period of protest between AVUE and Monster over the recent procurement decision for which (b) (6) is the COTR. The working group would demo parts of Monster's offerings as they support USAJOBS. JMD Personnel has had no contact with Monster since the protest. Their only contact with AVUE is regarding the current contract. I advised that I don't see a problem with her participating in this part of OPM's process. If she serves an evaluator of Monster's product she would only be looking at what is provided, not evaluating past performance. It seems that it would be valuable to us to participate,

and if that is the case I do not think the protest is a reason to decline. (b) (6) December 8, 2009

188. (b) (6) CIV, Pledge question. A political appointee asked (b) (6) if he could attend his former firm's holiday party. I advised that He may not be able to attend. We are sending out guidance later today for politicals and invitations/gifts, but these are the issues I see here: If the firm is a registered lobbying organization, the gift is prohibited by the Pledge. We would not consider this to be based on a personal relationship since the firm is paying, it is clearly a firm event, and his attendance is directly related to his former position with the firm. Even if they are not a registered lobbying organization, key is whether there is anything pending before the division. He describes this as a drop by, but what he describes is a pretty substantial participation in the event. That is of more concern than whether he would have something to eat - it appears he is still with the firm. Also, even if the firm is not a registered lobbying organization, this would have to be considered under the WAG exception- and a factor is who else is there. If clients are invited, it would not be appropriate for him to attend - that isn't an issue because he said no clients would attend, but in any event this does not sound like a diverse enough group to meet the criteria for a WAG. Finally, yes, this would be complicated by the ban on communications in the course of official duties. If we use the WAG exception (which I don't think fits here), that presumes that his presence there is of benefit to the Department which means able to discuss official interests, which he cannot do with former firm. If he were to attend, he could not speak about any official business. The most that I think could be allowed is for him to truly "drop by" and say hello to his friends at the firm, not participate as the emcee, and then go on to his other party. This would be on the theory that it is so minimal that it does not constitute attendance - and I'm a little leery of going this far because the related argument will be that it is alright to attend an event if you don't have anything to eat or drink, and that is not the case. (b) (6) December 8, 2009

189. (b) (6) OSS, gift. (b) (6) called regarding a "fun lunch" he was invited to attend by one of the contractors he works with. At first he did not say it was part of a series, but later received more information from (b) (6). The lunch is valued at \$15 and the contractor holds approximately one per quarter. I explained to (b) (6) that the contractor is a prohibited source and therefore you cannot accept the gift of lunch from him without an applicable exception. In this case the meal was below \$20, but because of the type of relationship government employees have with contractors and the ability for an appearance of a conflict (if not an actual conflict) to be created, we advised that the government employees either not attend or pay for their lunch. (b) (6) asked what if they felt it was important to attend because the contractors discussed items related to their government work and how to accomplish certain tasks. I told him that we would recommend that the government employees not accept the lunch, but they may attend if there is a business purpose. Email in file. (b) (6) December 8, 2009.

190. (b) (6) PRAO, gift. (b) (6) serves on the DC Bar Rules committee in her official capacity. DC Bar provides lunch at each meeting, valued over \$20. (b) (6) wanted to know if (b) (6) could accept the lunch. I advised that since she was not in travel status and no other gift exception would apply, she could not accept the lunch. (b) (6) December 8, 2009.

191. (b) (6) OAG, WAG. I sent the following email to (b) (6) for approval of (b) (5) to attend a WAG: (b) (5)

(b) (5)

Approved. (b) (6) December 9, 2009

192. (b) (6) PRAO, Pledge question. (b) (6) is working with OLA on issues relating to a DOJ lawyer's upcoming detail to the Senate Judiciary Committee (of course the DOJ lawyer would continue to be paid by DOJ). Among the proposed duties for the DOJ attorney while on detail is joining the subcommittee's chairman in his meeting with lobbyists. (b) (6) would like to know if that will raise any issues under the President's ethics rules concerning lobbyists, given that the DOJ lawyer would continue to be DOJ's employee, paid by DOJ, but would be assigned to the Hill for the period in question. The person in question probably is SES. I advised that there shouldn't be an issue here: the EO and the Pledge provisions apply to noncareer appointees, but not to career employees; as long as the DOJ attorney is career, the Pledge restrictions don't apply. (b) (6) December 9, 2009

193. (b) (6) OVAW, Gifts question. (b) (6) nominated for (b) (6), would like to send chocolates to her office for the Holidays and would like to know if that was acceptable. Secondly, she would like to know if there are restrictions to her making contributions to charity at this point. I advised that Chocolates to the office are fine. Once she is here she will be limited in what she may accept from her subordinates, and in what she may give her supervisors, but may give gifts to her subordinates. I also advised that I didn't see any reason not to give to charities of her choice, certainly not this year. (b) (6) December 9, 2009

194. (b) (6) (NSD) requested approval to teach a course on law journal management at George Mason University Law School in the Spring 2010 semester. He is on detail to the Gitmo

Task Force, so the request went to (b) (6) approved. The emails are in the file. (b) (6) December 8, 2009

195. (b) (6) called again from Alaska to express her thanks to our office for the help provided and to complain generally about the lack of interest in her allegations of misconduct by federal prosecutors in Alaska (complaints concern mainly allegedly tainted evidence) by the Alaska bar, by OPR and others. (b) (6) December 8, 2009

196. (b) (6) (PRAO (b) (6)) called with a CFC question. She wanted to know if her office could use a staff person who is a contract employee to handle the pledges for the CFC. I said it might depend on what her duties were as a contract employee. If she is to assist the office generally in carrying out its business, then it might be okay. I suggested she talk to (b) (6) in JMD to see if there would be anything inappropriate about having a contract employee handle pledges, checks etc. (b) (6) December 8, 2009

197. (b) (6) (ODAG, (b) (6)), a non-career employee who came from Wilmer called about authorization to work on a detainee case in the D.C. Circuit that is being heard by Judge (b) (6) girl friend clerks for the judge. I called him back to obtain some additional information and he had decided not to work on the case and therefore was not pursuing the 502 authorization. There is an email in the file. (b) (6) December 8, 2009

198. (b) (6) and (b) (6) (OJP) originally called on October 1, 2009 with an expert witness question. (b) (6), the (b) (6), received a subpoena to appear at a deposition in Washington, DC on October 13, 2009. It related to a report of a statistical analysis that he completed prior to joining the Department about a year ago. The report relates to a discrimination complaint against Les Schwab Tire Dealers in the State of Washington. The complaint was filed by the EEOC in federal district court in Washington. The report is favorable to Schwab. They tried to introduce the report but the judge would not allow it without a foundation established by (b) (6) prepared a memo requesting a determination (he was merely asking for a resolution of the question) and we consulted with and obtained the views of the Civil Rights Division and the Office of Justice Programs. In order to do this, (b) (6) needed approval under 5 C.F.R. 2635.805. While (b) (6) did not think the testimony would relate to his official duties, he said that BJS does do some studies of sensitive issues such as the death penalty, sentencing disparities, etc. (b) (6) was also concerned that an ethics rule should not be used to prevent evidence from coming in to a proceeding. On the other hand, CRT was concerned about the adverse precedent of such testimony. They are working with (b) (6), the EEOC attorney in Seattle. We sent our recommendation that he not be authorized to testify as an expert witness to (b) (6) on November 6, 2009. (b) (6) (Perkins, Coie (b) (6) the attorney representing Les Schwab called on November 9, 2009 and November 18, 2009 to ask about the status of the matter. (b) (6) determined not to authorize on November 19, 2009. The various emails and the memos are in a separate expert witness file. (b) (6) December 10, 2009

199. (b) (6) Civil. (b) (6) called with two questions. 1) A Civil attorney who works in the Criminal Section would like to apply for a position on the ABA Criminal Council. She would hold the "young attorney" spot and it would be in her personal capacity. I advised (b) (6) she could do this, but would require component head approval because it was related to her official duties. I reviewed with (b) (6) the potential conflicts of this position, the restrictions on representing the council to the federal government and that her official position should not be used by the council. 2) An attorney in Civil wanted to represent a friend of her's in a child custody hearing. She was doing it pro bono but (b) (6) wasn't sure this met the community service test. I said that this was a wide interpretation and if she was doing it pro bono and there was a reasonable argument it was community service, we wouldn't see any issue with it (with the proper approval). He said the potential client was a single mother and wasn't sure she could hire an attorney. I told him I thought that was enough and to include those facts when he wrote it up for approval. (b) (6) December 10, 2009.

200. (b) (6) EOUSA, outside employment. (b) (6) called regarding Department employees working a second job as census workers. I sent her the following email explaining our past research and determinations of the matter: "In 1999, and again this year, our office has received inquiries regarding Department employees working a second job as a Census workers. In 1999 our office researched the issue and discovered an executive order had been issued, calling for cooperation and support of the 2000 Census. This executive order requested, among other kinds of support, that federal agencies help recruit census workers by encouraging their employees to work on the Census as a second job. At that time the Census had issued a waiver for federal employees stating that working as a Census worker was an authorized exception to the dual compensation ban at 5 USC 5533 and subpart E of 5 CFR part 550, which normally prohibits holding more than one federal job for more than 40 hours per week. This authorized exception did not apply to DOJ employees, however, because of the Department's law enforcement mission. Therefore, DOJ employees were not authorized to take a second job as Census workers. In previous conversations with the Census Bureau regarding the 2010 Census, the Census attorneys advised that they did not expect the policy to change and that the same limits would be in place restricting federal employees who work for agencies with a law enforcement mission from working as a Census worker. The Census Bureau planned to educate their recruiters so that any interest from DOJ employees receives the appropriate response indicating that they may not be employed as a Census worker. In order for DOJ employees to be able to work for the Census as a second job, they would need to receive an exception to the dual compensation ban. The ODAG would be the appropriate office to authorize this exception for the Department." (b) (6) December 10, 2009.

201. (b) (6) (b) (6)) called to ask about an invitation that (b) (6) had received from (b) (6), a partner in Phillips and Cohen, to attend a holiday party at Phillips personal residence on December 12. The law firm handles whistleblower (qui tam) cases and currently has litigation against the Department. (b) (6) thought that (b) (6) has known him for several years and worked with him in the Presidential campaign. (b) (6) did not know whether (b) (6) or his firm was registered as lobbyists. With (b) (6) assistance, searched the House and Senate

databases and did not find either (b) (6) or his firm. Also reviewed the firm website and did not find any indication that the firm was involved in lobbying. Called (b) (6) back and said that it was necessary to find an applicable gift exception that would allow him to go. It seemed unlikely that a party at a personal residence would qualify as a WAG. That left the personal friendship exception. We would need facts about the history of the relationship. (b) (6) was on his way to a meeting. He said he would discuss with (b) (6) and that if he did not get back to us, it would likely mean that (b) (6) would not be attending. An email is in the log file. (b) (6) December 11, 2009

202. (b) (6) CRT, gifts. (b) (6) called regarding a CRT employee who works in a nonlitigating section and works on technical compliance for language access. A working group of non-DOJ people would be coming to meet with the AAG, including one from the Seattle Law Center. The CRT employee and the Seattle Law employee had developed a friendship over the years of working together on this issue and the CRT employee wanted to know if the Seattle Law employee could stay at her home when she came to DC for meetings. We advised against it, stating while there is nothing that explicitly prohibits this type of situation, we do not think the facts support approving it. Our main concern is the DOJ employee's involvement with this meeting on language access. While it is not a litigating or grant making project, this meeting (or series of interactions) with Seattle Law School is because they are seeking a certain outcome. Allowing the DOJ employee to have the Seattle Law representative stay at her house at the very least creates the appearance of a conflict. If the employee wanted to have the Seattle Law rep stay with her, we would advise that she recuse herself from any involvement with Seattle Law and the meetings that they are attending. (b) (6) December 11, 2009.

203. (b) (6) JMD/PSS, social media. (b) (6) emailed with several social media questions based on the recent ethics training he had attended. He wanted to send out information to members of his staff. I reviewed the information he wished to pass along and provided additional information. Email in the files. (b) (6) December 11, 2009.

204. (b) (6) CIV, use of title. (b) (6) has been interviewed by a law journal regarding one of his past associates at his former firm. He was her mentor and the journal is writing an article about her and her recent argument to the Supreme Court. (b) (6) was concerned that he would be identified by his title. He is only speaking of his work with this other attorney, not commenting on any matters that would relate to the Department. Conferred with (b) (6) and we agreed that just as you may use your title in a letter of reference for someone, it would be appropriate to allow his title to be used here to identify himself. (b) (6) December 11, 2009.

205. (b) (6) CRT, gifts. The Housing Section received a book, sent to the entire section, valued at \$48. (b) (6) wanted to know if it could be accepted for the entire section. I sent him the proper paperwork and forms from our website and the following guidance. The AAG for Administration has the authority to accept gifts on behalf of the Department. He has delegated this authority for gifts under \$150 that will be used or displayed in the office of a Department component. Also, a letter should be sent to the individual who sent the gift, thanking them and

informing them it has been accepted for use by the Housing Division (and not by any individual.) (b) (6) December 14, 2009.

206. (b) (6) Crim, travel. Criminal employee traveled on a UN Program who was paying per diem and travel ground expenses. Employee accepted cash. (b) (6) wanted to know how they should return the cash. We advised that he should deposit the cash and then write a check back to the UN Program so there was a trail of the money and would be some proof it had been paid back. (b) (6) December 14, 2009.

207. (b) (6) Assistant to the Solicitor General, sought authorization to participate in the Hastings case which could affect public universities, including (b) (6) employer, the University of Virginia Law School. He is on leave of absence. (b) (6) approved on December 14, 2009. The emails are in the file. (b) (6) December 14, 2009

208. (b) (6) (NSD) had a question about a political fundraising event that (b) (6) a non-career employee, was invited to attend. (b) (6) is a close personal friend of the son of (b) (6) who is running for the Senate in Ohio. (b) (6) advised (b) (6) on passive attendance but asked us if DAG approval was necessary. We said it was. We concurred in his recommendation to (b) (6). We also advised that (b) (6) should be careful not to be photographed at the event. (b) (6) approved on December 14, 2009. The emails are in the file. (b) (6) December 14, 2009

209. (b) (6) JMD Audit Liaison for her ethics debriefing. After 42 years she is retiring as of 12/31. She is going to do nothing for at least a few months, then will likely seek work in private sector - she is thinking of seeking future employment with GAO contractors on audits of Afghanistan. We pulled up our DEO website together and discussed each post employment ban: she is not a supervisor so the 2 year ban does not apply to her. She is career on the GS schedule, so she is not a Sr Employee. She has done no procurement work for more than 5 years. We discussed what the Lifetime Ban meant in the context of GAO audits that are open items in Audit Liaison. She said she has talked about this with (b) (6) in the past. They would be particular matters - if she is working on such an audit matter now, she would be prohibited from representing a GAO contractor back to DOJ on that same audit for the lifetime of that audit. She clarified whether she would be able to work behind the scenes on information from DOJ in that audit, and I confirmed that she could review materials behind the scenes only. She will contact us in the future with any questions on specific matters and audits when she begins to seek work and as information develops. (b) (6) December 16, 2009

210. (b) (6) OAG, gifts. A medical clinic associated with Columbia Medical School requested a photo for the AG. The AG is prohibited from dealing with Columbia because of the Ethics Pledge. (b) (6) wanted to know if this prevented her sending the photo. Conferred with (b) (6) who agreed she could send the photo. The AG is not involved in the decision making and was not approached directly to send a photo. Basically we're saying this is an Exec Sec/administrative process and not one involving the AG so no restrictions on it apply. The

letter requested two other photos for two other clinics in the area and we advised they should ask for their own photos, which is OAG policy. (b) (6) December 16, 2009.

211. (b) (6) EOUSA, pro bono. (b) (6) forwarded a request to our office regarding pro bono work, which she was hesitant to grant approval for. The AUSA wanted to represent his sister-in-law and other merchants who had a contract dispute with the City of Santa Monica. Many of the merchants did not speak English. (b) (6) was concerned that because this was a commercial activity, it was not in the spirit of community service. We advised: "After looking over the facts, it appears to meet the community service requirement for the approval of outside practice of law. We share your concerns about allowing attorneys to represent commercial entities in their personal capacity. However, in this instance the attorney is requesting to represent his sister-in-law, so having a family member involved carry a good deal of weight in the determination. Also, the others potentially involved in the matter seem to not have the resources to be able to hire their own attorney and some may not speak English, suggesting that navigating the legal system would be difficult on their own. Therefore in these circumstances, we find the facts to fit within the community service scope. Our one concern would be the attorney's involvement with the City of Santa Monica. Does he have involvement with the City in his official capacity? We would not want him to represent these clients against or to the City of Santa Monica if he also has dealings with the City in his official capacity." Emails in file. (b) (6) December 16, 2009.

212. (b) (6) (CIV) sent an email with a draft memo approving attendance for three career employees at an annual luncheon to be hosted by the Maritime Bar Association in January at the Army-Navy Club. About 60 persons are expected to attend. (b) (6) asked if we concurred that this event qualified as a widely attended gathering (WAG). The association is made up of government and private practitioners, judges, academics and other professionals in the field. I discussed with (b) (6). Sent (b) (6) an email advising that we concurred that it qualifies as a WAG. The email and draft memo are in the log file. (b) (6) December 15, 2009

213. (b) (6) (ATF) had a post-employment question. A Special Agent in Charge (SAC) in the Columbus, Ohio field office is an SES employee and his salary is at a level that makes him a "senior employee" subject to 207(c). He is barred for one year from making a communication or appearance before ATF. He is retiring in January 2010 and he has an arrangement for employment with (b) (6) a company with offices across the United States, that provides asset forfeiture, money laundering and other services. The clients listed on its website are all federal agencies. (b) (6) has a contract with ATF. The SAC provided a 3 page list of the duties and responsibilities of his job with (b) (6). Virtually all of the activities would involve some interaction with ATF. I confirmed what (b) (6) had concluded which is that he could not carry out these activities for a period of one year after he left to the extent that the activity would involve communications with ATF. He would have to work behind the scenes. The emails are in the log file. (b) (6) December 15, 2009

214. (b) (6) a non-career employee in the AG's office, called with a recommendation question. A colleague of his from law school whom he had worked with in a clinic is interested in applying for an AUSA position in the USA in Michigan. I discussed with (b) (6) I advised him that it would be better not to become involved at the beginning of the application process when the first cut is made. The colleague should simply apply through the regular channels. If subsequently the colleague is asked for a list of references, (b) (6) could allow his name to be used. Any recommendation he might make should be based on his knowledge of the applicant's abilities such as by working with him in the law school clinic as opposed to simply allowing the applicant to make use of his position. (b) (6) agreed with this approach. (b) (6) December 15, 2009

215. (b) (6) (COPS) called to ask whether there is a prohibition on accepting a lunch from a Member of Congress. The Director was a guest of a Member of Congress in the members dining room. I told (b) (6) that if the lunch was either provided from government funds or by a Member personally that there was no problem. If some other party paid, then that would have to be analyzed as the source of the gift. (b) (6) said that was not the case. (b) (6) December 16, 2009

216. A West Virginia State employee called with a Hatch Act question. He said he was directed to us by the state ethics commission. I gave him the number of the Hatch Act Unit at OSC and their web address. (b) (6) December 16, 2009

217. (b) (6) OASG, gifts question. People in OASG would like to contribute to give a gift to (b) (6) their confidential assistant/office manager. They would like to know the limitations to this gift. I advised that anyone in the office (except the other career assistant) may give (b) (6) an individual gift - no limit on the value of the gift. Or, you can contribute to a group gift, and again there is no limit on the value. Or different people can do one or the other. The one thing to be mindful about is that no supervisor may solicit contributions from subordinates for the gift. So, e.g., the ASG can't ask everyone to make a contribution. (b) (6) December 16, 2009

218. (b) (6) (b) (6), Post-employment question. (b) (6) one-year bar is up January 18, 2010. He has been hired to represent a party involved in a Supreme Court case that will be briefed and argued this Term after his bar comes up. The United States is currently not a party or amicus in the case. It is likely that the current SG is considering whether to participate as an amicus in the case, though a decision on whether to participate and what side to support likely would not be public until January 28 at the earliest (the earliest time an amicus brief would be due) -- after his bar is up. He will not be involved in any discussions with the SG's office (or the Department) on this matter before January 18. He wanted to confirm that he can be listed as counsel of record on behalf of the party he has been contacted to represent, since the US is not currently a party or amicus. I advised (b) (6) that if the case was not pending in OSG before he left on January 18, 2009, then the one-year cooling off period is the only applicable post-employment bar. Assuming the case was not pending in OSG, and if the sequence of events is as he describe

(viz., that the Department is not currently participating in the matter but might be considering whether to participate as an amicus; that if OSG decides to participate it likely will not be known until after his one -year ban expires), then he may be listed now as counsel of record. (b) (6) December 16, 2009

219. (b) (6) (CIV) requested our review of a 502 memo for (b) (6) so that he may continue to participate in a matter in which a trade association is affected. A former client of (b) (6) is a member of the trade association. We suggested several changes in the memo which (b) (6) made and we concurred in the recommendation. The emails and draft memo are in the log file. (b) (6) December 17, 2009

220. (b) (6) EOIR, gifts. The office had received a box of cookies worth over \$20 as a holiday gift. I said it could be shared amongst the office but the giver should be thanked and advised that gifts are generally prohibited. (b) (6) December 17, 2009.

221. (b) (6) OIG, social media. (b) (6) had a few follow questions from training regarding social media. I replied: To your first question I say yes. The limitation on having a partisan political group listed on the same tab as your employment comes from the Hatch Act and that applies to all federal employees. So it doesn't matter whether you are generally identified as a federal employee or specifically identified as a DOJ employee, the prohibition will apply in both situations. The second answer is yes as well. If you are not identified as a federal employee but are a fan of "DOJ" you may be a fan of a partisan political group or candidate on the same tab. Anyone can be a fan of the DOJ, so doing that does not identify you as a federal employee. However, if someone were a fan of a group such as "I am Proud to be a FBI Agent" or some group that may identify them as a federal employee, then the above would apply." Emails in file. (b) (6) December 17, 2009.

222. (b) (6) (CRT) called to ask whether there were any ethics concerns for CRT employees who would be interviewing today an applicant for an attorney position. The applicant is currently an attorney with the Pennsylvania Human Rights Commission (PHRC). He is assigned to a matter that involves both PHRC and CRT. (b) (6) believes that the interests in the case are more or less aligned. He wanted to know if there were any problems from the CRT side. The PHRC attorney may have obligations under Pennsylvania statutes or ethics regulations. And there may be Professional Responsibility issues. I said I didn't see any ethics issues for our employees other than the possible PR issues and what they could talk about. They probably should not talk about the case. (b) (6) did not know how the question came up and did not have a lot of facts. (b) (6) was going to consult PRAO to see what PR obligations the CRT interviewers might have. (b) (6) December 18, 2009

223. (b) (6) (b) (6), requested advice regarding his possible participation in a matter involving a legal interpretation of 18 U.S.C. § 2511(2)(f). See log entry #181 dated December 7, 2009. The matter could possibly affect telecommunication

providers, including his former employer, Verizon. We discussed with (b) (6). Also discussed the matter with (b) (6) in OLC who is working on the legal opinion interpreting this statute who said it would be very useful to have (b) (6) assistance as he is an expert in this area. On December 17, (b) (5)

(b) (6) Neither the Pledge nor section 208 were applicable in this case. The memo is in the memo binder. Some background emails are in the log file. (b) (6) December 17, 2009

224. (b) (6) EOIR, serving as back up ethics official this week, gift question. A former intern whose employment with DOJ ceased on 12/4 has given her two former supervisors including the Immigration Judge each a holiday gift of a CD worth \$12.00. Ok to keep even though it is over \$10? (b) (6) did not research whether this particular CD is publicly available for less than \$10. The former intern is no longer limited to the \$10 limit on gifts between employees. However, this would be a prohibited gift offered by an outside source because of their official position. The gift can be kept, though, because each CD is less than \$20.00. We caution departing interns on parting gifts to their bosses - that they must be very modest so as not to appear to be trying to influence future hiring decisions. Per (b) (6) this would not be the case here - the two former bosses are not in any position to be able to make or influence future hiring decisions about this intern, and a \$12 holiday CD would not create such an appearance. I agreed with (b) (6) that these two CDs may be kept. (b) (6) December 22, 2009

225. (b) (6) JMD/HR. Called to ask (again) where the prohibition on hiring contractors is written. She said we discussed this a few months back (although I do not recall it specifically). I directed her to 2635.502 - that a former employer is a covered relationship. If a contractor employee is hired as a federal employee in the same office where they worked as a contractor, they would be prohibited from taking any action which could affect the financial interests of their former employer for one year, which would limit the work they could do in the office on that contract. She said that she was getting questions from another office in JMD about hiring a contractor, and I told her to tell them to contact our office with questions on the ethics rules. She will. (b) (6) December 22, 2009

226. (b) (6) (OJP, (b) (6)) called with a gift question. The police attache at the Israelis Embassy sent 4 bottles of wine, one for each of 4 SES employees in NIJ. He checked prices on the Internet and learned the value for each bottle was \$16-\$20. (b) (6) wanted to know if there was any DOJ policy against accepting a gift of an alcoholic beverage. I discussed with (b) (6) and advised (b) (6) that there was no policy prohibiting such acceptance. In this case each employee could accept the gift of a single bottle of wine under the de minimis exception. The NIJ does work with the police attache on matters of mutual interest. For a more expensive bottle, it would have been possible to use the authority under the Foreign Gift Act. However, if the wine were very expensive, it would be necessary to inquire into pending matters how sensitive they were. In that case, it would be permissible to accept for use in the office on an appropriate occasion. Here, however, the value was modest so the individual employee could accept and keep the gift. An email is in the file. (b) (6) December 22, 2009

227. (b) (6) (ATR, (b) (6)) called with a Pledge question. (b) (6) a (b) (6) and non-career, has been working on a merger matter involving (b) (6), a health insurance provider. The matter is at an advanced stage. (b) (6) was never (b) (6) client. She received a call from a partner at the (b) (6) who wanted to talk about the case. When she asked why, he explained that (b) (6) owns (b) (6). (b) (6) is a former client of (b) (6). She did about an hour of work for them in 2009, and a fraction of an hour in 2008 and 2007. She stopped working on the matter when the call came in. I discussed with (b) (6). He was going to contact the lead attorney working on the case to inquire about (b) (6) ownership of (b) (6) and also to attempt to determine what interest (b) (6) might have in the case beyond the ownership of (b) (6). In the meantime, (b) (6) will not resume working on the matter. We discussed a Pledge waiver which is unlikely even though the work done for (b) (6) was truly de minimis. (b) (6) December 22, 2009

228. (b) (6) (EOUSA) had sent an email asking a question about the possible application of 18 U.S.C. 203 & 205 to payments that (b) (6) an AUSA, expects to receive from his former law firm, Akin, Gump, where he was a partner. Discussed with (b) (6). Called (b) (6) and discussed with her an (b) (6). In order to avoid issues under 203, the firm will have to ensure that his partnership distribution is not based on firm revenues from matters in which the United States had an interest. This could be done by not sharing in earnings after September 30, 2009, his last day at the firm. In order to avoid issues under 205, he would have to take steps to ensure that when he received his distribution that it did not include revenues from matters involving a claim against the United States, such as a tort claim or a contract claim. We discussed advice that OGE had given on 205 in connection with a new Department employee earlier in 2009. (b) (6) was going to ask the AUSA if claims against the United States were the source of firm revenue that he would share in. If that is the case, then she would ask whether he participated personally and directly in a claim matter. If he did, she would find out how long ago that happened. His practice at the firm was white collar defense, so he may not have worked personally on any claims against the United States. The emails are in the log file. (b) (6) December 22, 2009

229. (b) (6) (NSD) called with an outside practice of law question. An NSD attorney wants to help her sister who is getting a divorce. She would help her sister behind the scenes. The sister has an attorney representing her. She wanted to be able to advise her sister on matters such as whether a proposed settlement was fair and reasonable, etc. She would not make any communications or appearances as her sister's attorney. She would not contact the husband's attorney. Discussed with (b) (6). Told (b) (6) that what she wants to do at this point would not require approval. However, if she wanted to go beyond that, for example, by discussing the matter with her sister's attorney (but NOT the husband's attorney), she should as a matter of prudence, get approval. The component head could approve. (b) (6) said that is unlikely since she is not licensed in South Carolina. (b) (6) December 23, 2009

230. (b) (6) JMD/SEPS, gifts question. A subordinate of his has offered him a ticket

to the Redskins game this weekend. He would be going with him, his father and his brother. (b) (6) will definitely will pay for the ticket, however, he was a bit concerned about the perception of him attending the game with the colleague and his family would have for the rest of his staff. He doesn't believe there would be an ethics violation but wanted to get my opinion on his perception concerns. I advised (b) (6) he could accept the invitation if he paid for the ticket; but his concern with the optics of the situation is well-founded. Suggested he speak to his own supervisor to get a different but informed view. He felt it would be better to decline. (jmr)
December 22, 2009

231. (b) (6) DEA, Outside employment question. (b) (6) asked how do we define "any criminal or habeas corpus matter" for purposes of the outside employment prohibition. Would it apply just to parties in criminal proceedings (e.g., defense counsel), or extend to parties that support a criminal proceeding (e.g., probation officer). The specific question is that they received a request for outside employment from an individual that provides polygraph testing for probation departments and parole offices testing pedophiles, rapists and other sex offenders to ensure they are not re-offending and part of disclosures in counseling groups (appears to apply to post-conviction, but the defendants maybe on probation). (b) (6) would argue that the prohibition would not apply here if these cases are post-conviction and no longer "officially" before the court. However, he believes that a stricter interpretation of this provision could suggest that the case involves a criminal matter if the subject of the polygraph is under the scrutiny of a probation office. Additionally, in the request, the requestor indicates that he takes direct appointments from "District Court Judges and District Attorneys", which suggests there may be some work during the case. I advised (b) (6) that the activities he mentioned would fall within the scope of the prohibition. If the employee would like ODAG to consider a waiver, (b) (6) should forward a recommendation to (b) (6) either through our office or cc'd to me. (b) (6) December 22, 2009

232. (b) (6) (b) (6) now with (b) (6) sent an email asking whether a specific matter was pending under his official responsibility on or before June 2, 2008, which was his last day as an employee of the Department of Justice. He was sworn in (b) (6)
(b) (6)
. The matter related to a February 5, 2008 appeals court decision in (b) (6)
On July 2, 2008, (b) (5)
(b) (6)
On August 9, 2008, action was taken on this matter by (b) (6) (b) (6)

(b) (6)

(b) (5) [REDACTED]. OSG was unable to find any record that would indicate that this matter was pending in OSG prior to his termination (b) (6) [REDACTED]. In addition, a senior official in OSG did not recall that the matter was pending in OSG prior to (b) (6) [REDACTED] departure from the Department. We also discussed this matter with officials of ENRD and they had no information that would indicate that this matter was discussed with anyone in OSG prior to (b) (6) [REDACTED] departure from the Department. We found no information that would indicate that the (b) (6) [REDACTED] was pending in the OSG on or before June 2, 2008.

Subsequent to (b) (6) [REDACTED] inquiry regarding the (b) (6) [REDACTED], we received a question regarding another case that related to the same underlying tri-state water rights dispute. (b) (5) [REDACTED]

[REDACTED] he did not recall that Mr. (b) (6) [REDACTED] had participated personally and substantially in the May 27, 2005 decision.

(b) (6) [REDACTED] Subsequently, the OSG filed a brief in opposition to a cert petition in this case. The brief is dated May 2006. Mr. (b) (6) [REDACTED] name was printed on the cover page (b) (6) [REDACTED]. His signature did not appear on the brief. He indicated that he had no recollection of ever having participated personally and substantially in the opposition to the cert petition. He also indicated that the fact that his name appeared on a brief does not indicate that he participated personally in a matter. We discussed this with (b) (6) [REDACTED] and he did not recall that (b) (6) [REDACTED] had participated personally and substantially in this phase of the (b) (6) [REDACTED]. He also indicated that the fact that (b) (6) [REDACTED] name appeared on a brief (b) (6) [REDACTED] would not, standing alone, indicate that he participated personally and substantially in a matter. It would not be unusual, especially when the brief was not a merits brief, for (b) (6) [REDACTED] to not be involved in a matter. We have not been able to identify any other information that would indicate that he was personally involved in the (b) (6) [REDACTED]. There is no information that would indicate that he was personally involved in either the (b) (6) [REDACTED] appeal recommendation or the [REDACTED] brief opposing cert. Given the practice within the OSG, his name on a brief, standing alone, does not establish personal and substantial participation.

(b) (6) [REDACTED] have been consolidated along with a number of other cases in the tri-state water rights case that is currently pending in a federal district court in

Florida. We asked ENRD whether any of the other cases had been referred to OSG and they confirmed that none of them had.

By email dated December 17, 2009, we advised Mr. (b) (6) that there was no information indicating that he participated personally and substantially in either the (b) (6) or the (b) (6), and that he was not subject to the permanent ban under 18 U.S.C. § 207(a)(1) with respect to either of these cases.

By email dated December 17, 2009, we advised (b) (6) in ENRD that (b) (6) had not participated personally and substantially in the (b) (6) and was not subject to 207(a)(1) with respect to that case. (b) (6) asked whether that conclusion took into account the May 2005 memo as well as the May 2006 brief. I called (b) (6) on December 18, 2009 and left a message confirming that it did take the May 2005 memo into account and that the 207(a)(1) bar did not apply to him in the (b) (6). A separate file contains emails and other background materials. (b) (6) December 23, 2009

233. (b) (6) OLC, Conflicts question. Until OLC can hire a new (b) (6) (b) (6) is serving as an accountable officer in OLC and is signing forms to obligate funds. He would like to know if I feel it is appropriate for him to sign the form that obligates the funds for employee parking, since he parks in the Main Building. The charges cover 16 spaces (not all filled at present), so the decision might not "individually or specially affect" his own benefits. 5 C.F.R. 2640.203(d)(1). I advised that I think it is fine. (b) (6) December 24, 2009

234. (b) (6) CRT, conflicts. A political in CRT was previously employed by the (b) (6) (b) (6) (b) (6) represents a group of Mexican nationals who were involved in a case determined by an international tribunal to have been denied their consular rights. They are all now on death row in the US and DOJ has been asked to look into the matter. She asked if she could be involved in the case. Not all the of those involved in the case are represented by (b) (6) but a large percentage are. We advised, "This is probably not a particular matter under the pledge, but we would need more information as to what her involvement and work here at the Department would be to make a determination. The Pledge will definitely prevent her from speaking to anyone at the (b) (6) about this. She should not work on any policy/determination that would effect the 50 persons (including the (b) (6) clients). She may work on the policy going forward type work - what the policy/procedure will be in the future. Even if it was determined that working on matters directly effecting the 50 persons were not a particular matter under the Pledge, under the traditional 502 analysis our office would not recommend a waiver that would allow her to work on it." Emails in the file. (b) (6) December 24, 2009.

235. (b) (6) COPS, Director recusal matters. (b) (6) inquired about particular recusal matters affecting the (b) (6) and the (b) (6) (b) (6). I advised that (b) (6) is currently a PhD candidate at (b) (6), will be completing classes

online, and then writing his dissertation. As a student at [REDACTED] he has a financial and contractual relationship with the school and therefore has a "covered relationship" under the impartiality standard of conduct, 5 CFR 2635.502. Under the standard of conduct, (b) (6) is recused from all particular matters with parties in which [REDACTED] is a party or represents a party, or which directly affect [REDACTED]. This includes grants and cooperative agreements, and it would also include any particular consideration that could result in the expenditure of funds to (b) (6). However, if [REDACTED] is involved in a more general matter, such as meeting with COPS as one of many universities interested in an issue, we believe that (b) (6) may participate in those meetings and issues. He posed the question whether he may contact [REDACTED] as one of a small number of California schools, for a possible initiative in which he anticipates them playing a substantial role. We believe this would fall within the scope of the recusal, and that he should not participate unless he first seeks and obtains written authorization under the regulation, section 2635.502, from the Associate Attorney General. We consulted with the U.S. Office of Government Ethics (OGE) before providing this advice, and they concurred. The simplest approach may be for (b) (6) to seek your advice before he has any contact with (b) (6) on behalf of COPS." (b) (6) December 24, 2009

236. (b) (6) (b) (6). Currently (b) (6) is a member of a couple of committees of the National Council of Juvenile and Family Court Judges. She is a chair of one (b) (6) but just a member of the other [REDACTED]. NCJFCJ is having its mid-year meetings in a few weeks where these committees will be holding meetings and (b) (6) would like to know if she may attend. She does not want to (b) (6), but wonders about the propriety of attending and participating when she will need to resign soon. The second matter is that she has received an invitation to attend the Family Violence Prevention Fund's groundbreaking ceremony for its International Center to End Violence on January 8. [REDACTED] I spoke to OVAW's ethics official, (b) (6) who advised that OVAW's Director likely would be invited to this event. If (b) (6) was still the (b) (6) and were being invited in that capacity that might affect the advice, but I think it better to assume it is her current status as (b) (6) that is the basis for the invitation. She didn't mention whether they have offered to pay or if she would be willing to pay her own way, but in either case I advised against attending. OVAW would pay for the Director to go; we do not accept payment from a grantee for attendance at an event. (b) (5)

[REDACTED] I recommended against attending. After (b) (6) gave me more information, I advised that since there is a legitimate (considerable) (b) (6) basis for the invitation and she is paying her own expenses, I think it is alright as long as she does not actively participate, e.g. no speaking or cutting a ribbon, etc. And, if for some reason she is introduced, please do not have them include (b) (6). (b) (6) weighed in also with concern about the optics of (b) (6). (b) (6) then advised that due to our concerns she would not attend. (b) (6) December 29, 2009

237. (b) (6) CRM. (b) (6) called looking for the pay threshold for senior employees. I forwarded him the pertinent emails and websites. (b) (6) December 29, 2009.

238. (b) (6) PRAO, Pro Bono. (b) (6) was wondering whether a wrongful death action is something which, although civil in nature, is problematic for a DOJ attorney. The Bar has referred a case to them which they categorize as personal injury, but which is a wrongful death action. The client appears to have hit a woman with his truck and she died and her estate is seeking damages from him. He was taken to the police station after the accident, drug tested (came back clean) and then released. He says no offense has been filed against him and there are no pending criminal cases against him in the public record (there are a number of closed matters from earlier years when he was a substance abuser). It is solely a civil matter. The client is on disability and suffers memory loss from an earlier head injury, so the estate is not likely to get any money if it prevails in this suit. I advised that I think it technically is okay, but if there is a non-DOJ attorney who might be interested we should pursue that. (b) (6) will pursue that route. (b) (6) December 30, 2009

239. (b) (6) (b) (6), post employment questions. (b) (6) is close to leaving Government service and needs advice on her restrictions in representing private parties before the Government. She would like answers to the following: "1. What are the restrictions (b) (6) (b) (6) When can I represent someone who is dealing with the Criminal Division? Also, do those restrictions extend to my dealings with matters before USAOs? 2. What are the restrictions (b) (6) (b) (6) When can I represent someone who is dealing with the Criminal Division? Also, do those restrictions extend to my dealings with matters before USAOs? 3. I have been a line AUSA (b) (6) (b) (6) I have never served as a supervisor in this USAO. What are the restrictions on my appearing before this USAO?" I advised that a one-year cooling off period for "senior employees" which applies to all or parts of the Department, depending on where the individual was employed or detailed. Because "senior employee" status is wholly a function of appointment and salary, and since she remained compensated as a non-supervisory AUSA during her details, she was not a senior employee and this ban does not apply to her. (This is the much broader "no-contact" bar that applies to many senior official. The ban would apply to a permanent AAG for the whole Department, and to PDAAG and DAAG's for CRM if they were SES officials above the pay threshold). The lifetime ban on particular matters with parties. This prohibits her from representing anyone before any executive branch official or in any court, in any particular matter with parties in which she participated personally and substantially while serving with the government. Therefore, this ban applies to any matter in which she participated while at DOJ, as long as it is the same matter. Determining whether something is the same particular matter can sometimes be difficult; I asked that she please seek the advice of an ethics official - in the USAO if that is the most relevant place, or (b) (6) in CRM or my office. Also, the bar rules may impose additional obligations with respect to client confidences, and she may want to consult with PRAO. The two-year ban on representing anyone before an executive branch official or a court in a particular matter with parties which was pending under her official responsibility during her last year of government service. These are matters in which she did not participate personally and substantially but which were pending under her official responsibility.

If she is leaving Dec. 31 (I'm just using this date for purpose of this discussion), this ban will apply for a period of two years after she leaves, through Dec. 31, 2011, to any particular matter that: was pending in CRM during her tenure (b) (6); was under her official responsibility as (b) (6) during the periods she served in that position. The open question is what was under the official responsibility of (b) (6) based on existing delegations and the organization of responsibility in the division; (b) (6) and I will discuss this when she returns on Thursday. If she is a non-supervisory AUSA in the district, most likely the only ban that would apply to matters there would be those in which she participated personally and substantially. There likely would not be matters under her official responsibility in which she also did not participate personally and substantially. The post-employment statute does not bar her from working behind the scenes in matters that fall within the scope of the bans. However, as an attorney she would of course be prohibited by the bar rules from switching sides (or representing anyone other than the U.S.) in any matter in which she actually participated while at DOJ. However, she is not prohibited under the bar rules or the statute from giving behind the scenes advice in matters which are within the scope of the 2-year ban. What she needs to be careful about is that she does not make any communications to the government, directly or indirectly, in such a matter. For example, an indirect communication may take place through someone else's disclosure to DOJ that she is working on the matter albeit behind the scenes. I also advised that she is not subject to the one-year cooling off period of sec. 207 (c), based on the specific terms of the President's Order. (b) (6) and the other officials were "directed" by the President to "perform the functions and duties of the [... office] in an acting capacity", which is an assignment of additional duties, rather than an appointment. Her underlying appointment as an AUSA did not change, and she continued to be compensated as an AUSA, so she is subject to the lifetime ban and the two-year ban. (b) (6) December 30, 2009

240. (b) (6) EOUSA, conflicts. A former USA had questions regarding conflicts with future activities and Tom sent their interpretation of the conflict rules. We concurred, emails in the file. (b) (6) December 30, 2009.

241. (b) (6) (b) (6), Law Firm announcement. (b) (6) would like to know if a Law Firm may make an announcement that she will be joining the firm as of a certain date, likely a press release. I advised that the Law Firm should not make a public announcement until after she leaves. If she is taking terminal leave and will not be returning to the office or performing work while on leave, they can make the announcement once she has left for terminal leave. (b) (6) December 30, 2009

242. (b) (6) NSD, AAG conference. (b) (6) will speak at a conference on technology and national security law in early February hosted by the University of Texas. One or more NSD attorneys may attend the conference. The University has also invited (b) (6) (b) (6) and (b) (6) to speak, and has offered to pay for their travel expenses. (b) (6) will speak in his official capacity. With respect to (b) (6) (b) (6) and (b) (6) there are two ways that they may participate in this event. The first is in their personal capacity. If they are speaking in this capacity, they would use personal and not Government time to prepare their remarks.

They would also take annual leave for the time that they are out of the office to attend the conference. The University would send any reimbursement directly to the attorneys. Because the topics that the attorneys will address (the FISA Amendments Act, the Court of Review decision, and encryption) are important parts of NSD's work, it would be appropriate for NSD to decide to have them participate in their official capacity. Indeed, it might seem odd that the AAG is speaking at the conference in his official capacity, and one or more NSD attorneys are attending in their official capacity, but these speakers are there in their personal capacity. I advised (b) (6) that I strongly recommend sending them in their official capacity. Sending these speakers in their official capacity is consistent with NSD's prior practice going back at least six years. If they speak in their official capacity, the University would reimburse the Department for their travel expenses. No speaker or attendee may disclose nonpublic information or take a position adverse to the interests of the Department without the Department's consent. (b) (6)
December 30, 2009

243. (b) (6) ethics official, EPA, gift question. Invitation from (b) (6), (b) (6) U.S. (b) (6) for event given by (b) (6). A federally registered lobbyist is extending the invitation, but the foundation side of the organization is paying for it which is a non-profit. Since the foundation is paying for the dinner, it's a non-profit, and the lobbyist gift ban doesn't come into play. They can't WAG the event because a "non-sponsor" is extending the invitation and it's less than 100 people. They're prepared to use the (g)(1) gift exclusion - providing the following advice that the official must make the determination that she has specific, substantive information to present to this group of people and this is an appropriate venue for her to present this info. This seems to (b) (6) the type of event that one should avoid per the lobbyist gift ban. I advised (b) (6). The (b) (6) is the only sponsor and is paying for the event. The invitation is from (b) (6), (b) (6), so she cannot use the WAG exception because fewer than 100 attendees are coming. Frankly, I think it's a little hard to separate (b) (6) from (b) (6), (b) (6) and lobbying. We have not used the (g)(1) exception for an event like this unless our official was making remarks (something short of a formal presentation, but more than reception conversation). We have used it for smaller groups - maybe 20 where the attendees would be expected to actually speak. But I think it's difficult to use the exception with a larger group, which is where we would normally apply the WAG. Here, I would definitely want to know who the other attendees are, and that would guide the determination whether the Administrator wants to talk to them, and whether the information/views they could provide to her are valuable enough for (b) (6) to approve. I think the optics are a bit dim. (b) (6) December 31, 2009

244. (b) (6) NSD, Acceptance of meals overseas. I approved the following guidance on the accepting of meals overseas and added my additional comments in blue italic font: 1) Before traveling try to find out what the schedule is for meals. That will give you a chance to plan. You always need to be clear about who is giving you a meal. As described below, the rules are different for a private business or trade association than for a foreign government. 2) Keep a record of what you accepted and from whom. 3) An employee may never request or otherwise encourage the offer of a gift. 4) As a general matter, under the Foreign Gifts and Decorations Act, you may accept a meal offered by a foreign government so long as the value is less than the

"minimal value" amount established in the regulations. The current amount is \$335. The Department interprets this provision to mean that, while in Paris, you could accept a dinner given by the French Government whose market value is \$250 and then accept, as a separate gift, a lunch the following day whose market value is \$200. [CORRECT?] *Yes, this is correct. I think you should mention the reporting requirements for gifts - if gifts worth more than \$335 are accepted from the same source (e.g., French gov't) in a calendar year, they must be reported on 278 or 450; however, for purposes of determining whether the \$335 has been met, you only have to aggregate individual gifts of \$134 or more. In the absence of actual values, they should make reasonable estimates.* 5) For meals offered by private entities, as a general matter you are subject to the same rules that apply in the United States. (Under those rules, you may not accept anything of value given because of your official position or given by a prohibited source. There is an exception for a meal or item whose market value is less than \$20 per occasion, with no more than \$50 being accepted from the same source in any calendar year.) Nonetheless, 5 CFR 2635.204(i) contains a major exception. That section provides that an employee on official travel outside the United States may accept a meal provided by a person other than a foreign government if (i) the market value of the meal does not exceed the per diem rate for the area; (ii) non-US citizens or representatives of foreign governments or other foreign entities participate in the meal; and (iii) attendance at the meal is part of the employee's official duties. (b) (6) December 31, 2009

245. (b) (6) (ODAG) had a follow up question relating to the December 17 entry in the log file. He said that the government pays providers whenever it obtains (b) (6). He asked if this would affect our analysis or conclusions in our earlier memorandum. Sent him an email on December 24, 2009 advising that it did not but might be relevant in the future if he would seek to participate in matters affecting operations. The email is in the log file. (b) (6) December 24, 2009

246.

DEO Counsel Log, First Quarter, 2010 (January 1 - March 31, 2010)

1. (b) (6) a retired GS-13 non-supervisory computer specialist with JMD called for his ethics debriefing. He retired on January 2, 2010 after 38 years and was told that he needed to call for his ethics briefing. He has no immediate employment plans and said he does not expect that he would have a job that involved communication with the Department. I discussed the post-employment restrictions generally and said that if he did get a job that involved communication with the Department he should call us for specific advice. (b) (6) January 5, 2010
2. (b) (6) (b) (6) (b) (6) had a question about the two year restriction and when a matter was pending under his official responsibility. He left his position as (b) (6). With respect to that position the restriction applies to matters that were in the office during his last year there. That two year restriction expires on April 1, 2010. He left his position as (b) (6). The two year restriction from that position does not expire until January 20, 2011. He wanted to know how he could determine if a matter was pending under his official responsibility. I said he could call us and we could make the inquiry. He asked about attribution, i.e., he submits something to (b) (6) after his two year restriction for that office expires which subsequently is passed on to Tax. I said he could advise the attorney in (b) (6) that while he is no longer subject to a restriction on communication with them after April 1, 2010, he remains subject to a restriction on communication with the Tax Division. (b) (6) January 5, 2010
3. Anonymous caller asked if we had conflict of interest form for a private individual applying for a DOJ grant. Showed her the place on the DOJ website that has information for grant applicants. Suggested she review that and if she still had questions to contact OJP about requirements for applicants. (b) (6) January 5, 2010
4. (b) (6), OCIO/JMD, post employment. (b) (6) is about 1 month away from retirement and beginning to look at post government employment options. He has worked with Facilities for OCIO since 1986. He oversees the Rockville Data center, as well as other facilities used by OSS. Wants to know if he would be able to get a job with the management company who leases Rockville to the government. I reviewed with him the restrictions for what contracts he may and may not be able to work on with this group and discussing job seeking requirements. He said he was going to wait until he retired to start seeking a job. I told him he could call us back then if he had a specific position in mind and we can advise him better as to the restrictions. (b) (6) January 5, 2010.
5. (b) (6) NSD, Hatch Act. (b) (6) wanted to know if a Schedule C could make a political contribution. I reviewed the guidance with her (cannot solicit, can't do it from workplace or government computer, shouldn't use title, no government email, etc) but told her there was nothing prohibiting a private donation. (b) (6) January 5, 2010.

6. (b) (6) (CRS) sent an email asking if there were any issues connected with CRS (b) (6) (b) (6) paying the ticket price of three events connected with the inauguration of Virginia Governor-elect Robert McDonnell. There are no Pledge issues involved because (b) (6) is a holdover appointee on a term appointment and is not required to execute the Pledge. There are no gift issues involved because he is paying the ticket price. There are no Hatch Act issues involved because these events are not campaign events. Discussed with (b) (6) (b) (6) is going to advise him not to be identified by his title and to be careful about photographs as he cannot control their use. (b) (6) was going to let the Associate Attorney General's Office know about (b) (6) plans. The emails are in the file. (b) (6) January 6, 2010

7. (b) (6) (JMD, OSDDBU) called to ask what restrictions would apply to a regular DOJ employee who wanted to be contractor with the Department. I explained that the restrictions under the Federal Acquisition Regulation and under federal ethics laws and regulations make this extremely difficult, if not impossible, to do. It would also involve a review and recommendation by our office and would require approval by (b) (6). She was asking only in a general way what would be involved and did not have the specifics of any particular proposed outside business. (b) (6) January 6, 2010

8. (b) (6) PAO.. (b) (6) called regarding (b) (6) who had signed the OVW "List" and was hosting an event for Stalking Awareness Month. (b) (6) works for the Discovery Channel, hosting one of their investigative shows. (b) (6) asked 1) can the CEO and General Manager of (b) (6) have their picture taken with the AG, (b) (6) would be getting her photo taken with the AG. I told her that the CEO and GM could have their photo taken if he was attending the event and others attending the event could have their photo with him. The Discovery People should not gain special access to the AG. 2) One of the panel members of the (b) (6) event is a lobbyist, but she is speaking in her personal capacity as a stalking survivor. She is a leading member of the stalking victim community. She has no matters before the DOJ and is not lobbying the Department. I told (b) (6) that there was no issue with her participation. 3) National Center for Victims of Crimes receives grants from OVW and is co-hosting the event, how can they be listed. Asked (b) (6) not to use the work "partnered" because of the connotations of that. (b) (6) January 6, 2010.

9. (b) (6) ODR, speaking engagements, (b) (6) has been asked to speak at two training sessions for DOD for which she believes she needs permission. I advised that since this is a gov't sponsored conference for gov't employees, her participation and travel just needs to be approved by her supervisor. Her travel would be paid/reimbursed by DoD under normal inter-agency procedures- she should check with whoever handles her travel authorizations, etc. I think it's called a reimbursable agreement (but that's out of our area). (b) (6) January 6, 2010

10. (b) (6) ODAG, Conference question. (b) (6) asked that I weigh in on whether or not (b) (6) should attend a conference on Privacy Issues. I advised that this is a major conference for privacy issues, with over 1000 attendees. If (b) (6) is an appropriate DOJ participant for this topic, (Cybersecurity, Network Infrastructures and Privacy), it looks fine. Since it is in

DC there would be no travel expenses. If (b) (6) approves (b) (6) to go, he would be able to accept, if offered by the sponsors, free attendance on the day he is speaking, which includes other sessions and meals offered to the participants. January 6, 2010

11. (b) (6) ODAG, conflicts question. She has been working on matters related to the Arar case (the young Canadian detainee at GTMO, rendition issues), where a petition for cert is due to the Court shortly. Her husband is now a visiting researcher at Georgetown National Security Law Center, until probably June. He is assisting (b) (6) who is representing Arar. He expects (b) (6) will ask him to review the petition and possibly do additional research projects related to the case. He would be paid an hourly rate for the work. It is not known at this time whether he may be asked to participate further in the matter if cert is granted. (b) (6) would need a 502 determination; the most important factor would be ODAG's need for her to continue to work on the case; I am willing to do a 502 recommendation, but I think the optics may weigh in favor of reassigning the matter. I asked her to consult with her supervisor. She spoke to (b) (6) and ODAG decided to reassign the matter to another attorney. (b) (6) January 7, 2010

12. (b) (6) CIV, (b) (6) participation in non-profit. (b) (6) wants to be on the benefit committee of a non-profit global women's mentoring organization (Vital Voices). (b) (6) describes her involvement as: "The benefit committee would be essentially for my name to be on a letterhead regarding a big dinner they will be having in March to honor some women - including Melinda Gates, for her work. The dinner is at the Kennedy Center. I do not believe that I will have any involvement whatsoever other than that - and I will be writing them a big check for the dinner!" (b) (6) knows that (b) (6) would need to do this in her personal capacity and without any use of her official title. (b) (6) is also restricted from soliciting subordinates or people who have or seek business with the department for the event. (b) (6) would like to remind her of restrictions (so she doesn't make any phone calls etc. . . that she shouldn't even though clearly that's not her intent now), but asked if these latter restrictions mean that Vital Voices cannot send an invitation with her name on the letterhead to any of her subordinates or anyone doing business with the Department. If this is the rule, (b) (6) thoughts are that (b) (6) probably can't participate because Vital Voices wouldn't know who's in those categories. I advised that it depends on how broad or narrow the solicitation is and what groups they are targeting. If it is broad (and I imagine it is), the fact that some subordinates/prohibited sources are among the persons solicited will not prohibit her from participating by having her name on the letterhead. One other note on personal/official - especially if she hasn't been involved with the organization before - she needs to make sure they know she can't be identified on any materials with her DOJ affiliation. (b) (6) January 7, 2010

13. (b) (6) CRM, Gifts of food under the pledge. A political appointee under the pledge received a box of candy over the holidays from a law firm that is a registered lobbyist. (b) (6) would like to know if the appointee can put the candy out for the office to share or if she should return it. (b) (6) then advised that the firm is not a registered lobbyist and assuming there were no matters before CRM, that was ok. (b) (6) January 7, 2010

14. (b) (6) CRM, Divesting of assets. (b) (6) got an email from (b) (6) making sure that it was okay for (b) (6) to sell two accounts he has with Wells Fargo. He wants to sell shares in (b) (6)

(b) (6) because of hefty monthly fees. Apparently, (b) (6) is under the impression that he needs to get clearance to sell any of his holdings. (b) (6) never heard of this but wanted to check with me before she tells him that he could sell. He may be confusing this with the possibility of getting a certificate of divestiture if directed to divest. Assuming there are no matters in the Criminal Division concerning Wells Fargo then (b) (6) thinks it's fine for (b) (6) to sell these holdings. I advised (b) (6) that he does not need to receive approval to divest of these (or anything at this point). Even if Wells Fargo has a matter with the division, he's fine. These accounts are the rollover of his (b) (6) retirement funds, and he is probably being cautious because that to be carefully orchestrated at the time. (b) (6) January 7, 2010

15. (b) (6) (b) (6) PRAO Inquiry. (b) (6) had been asked by (b) (6) in OSG for advice on a case. (b) (6) sent the following email to (b) (6) (b) (5)

[REDACTED]

(b) (5)

(b) (5)

(b) (5)

Per (b) (5) email (b) (6) checked in with me also. I advised that I had also spoken to (b) (6) about this last summer, and advised then that her participation did not require a determination under the impartiality standard of conduct. That is still my view, and I endorse (b) (6) recommendation to advise the DAG of her prior testimony. (b) (6) January 7, 2009“

16. (b) (6) EOUSA, Applicability of the Pledge. EOUSA GCO contacted regarding the applicability of (b) (6) Ethics Pledge in cases and matters in which the State of Georgia is the victim of crime, e.g., Medicare/Medicaid fraud, and whether (b) (6) must be recused from these cases. GCO is of the opinion the State of Georgia is not a “party” as contemplated by the Ethics Pledge or the regulations in those cases in which it is simply the victim of crime being investigated or prosecuted by the USAO. However, before advising the USAO, they wanted to ensure their interpretation is correct. If recusal is not required in such cases, (b) (6) intends to advise the USAO Ethics Officer that she should monitor these cases

closely and she should contact GCO for further guidance in any case in which the State seeks to asserts its rights under the Crime Victims Rights Act, 18 U.S.C. § 3771. In those such cases, (b) (5) [REDACTED] recusal may be required. I advised that he was correct on both counts. A victim is not a "party" within the meaning of the regulation. I also think it is important that the district and (b) (6) [REDACTED] keep current on the actual status/interest of the State in any given matter. (b) (6) [REDACTED] January 8, 2010

17. (b) (6) [REDACTED] PAO, social media. (b) (6) [REDACTED] sent the following email: "In the age of new media and social networking, I planned to start a twitter account. Twitter is fairly new and is essentially a micro-blog. My thought was to post interesting items that I read or come across and I planned to link to the URL on the Internet. As I am interested in the work of the Department, I assume that much of what I read will be related to news about actions the Department has taken. The account would essentially be a re-posting of news articles that I found interesting. I would not give my opinion only repost what has been written. (I assume there would be posts unrelated to the Department as well.) The posts would all take place before or after work hours and would not interfere with my current work. I wondered though if rules had been set for Department employees regarding this type of social media. I was not able to find anything on the Department's ethics site." I replied to (b) (6) [REDACTED] telling him personal use of social media was not prohibited and reviewing the restrictions with him. Emails in file. (b) (6) [REDACTED] January 8, 2010.

18. (b) (6) [REDACTED] post employment. (b) (6) [REDACTED] is a former (b) (6) [REDACTED] and had a question regarding his 207 restrictions. He was a line (b) (6) [REDACTED] and not in a supervisory position. He was also on a detail to (b) (6) [REDACTED] and a counselor (b) (6) [REDACTED]. I reviewed with him his restrictions - it was determined that he would most likely not have anything "under his official responsibility" based on his positions. I sent him a link to our website with the review of post employment information. (b) (6) [REDACTED] January 8, 2010.

19. (b) (6) [REDACTED] ATR, 502 question. For purposes of making a list of a new employee's clients in the last year, (b) (6) [REDACTED] would like to know if there is any reason to include co-defendants of his client where there was a joint defense agreement. (b) (6) [REDACTED] and I agreed that the co-defendant should not be included on an attorney's recusal list. The attorney is still bound by bar rules on disclosure or use of any privileged information he or she has as a result of the representation, which may limit participation in related matters. But otherwise, the fact that it was in the former client's interest to share information with another party in one matter doesn't trigger a general recusal requirement for that non-client. (b) (6) [REDACTED] January 12, 2010

20. (b) (6) [REDACTED] ENRD, 1353 travel. (b) (6) [REDACTED] have been invited to speak at an event in China, sponsored by the Vermont Law School. The program in China is part of Vermont Law School's environmental law program which is partly paid for by grants from USAID. EPA was also invited and their ethics people stated this was a misappropriations of funds and they could not travel on these government funds. We spoke to OJP which confirmed the long held DOJ interpretation that use of grant money in these situations is not an augmentation of government funds. Email in file. (b) (6) [REDACTED] January 12, 2010.

21. (b) (6) [REDACTED] Crim, conflicts. A crim attorney in the fraud section is in the LEAP Program.

As part of LEAP he will be doing a short detail at the Financial Crisis Inquiry Commission, the Congressional appointed board. (The attorney will be a staff attorney). The AAG/Crim was invited to testify in front of the commission and the attorney was asked to help write his remarks because he is the expert on these matters. (b) (6) wanted to know if this would be a conflict since he is going to the commission. I told her since it was all government, I did not see any conflict. I felt it was analogous to someone coming from the legislative branch to the Department who may have worked on certain legislation and may still be working with that same legislation here. (b) (6) January 12, 2010.

22. (b) (6) OASG, (b) (6) r (b) (6) question. (b) (6) asked for my thoughts re: (b) (6) (b) (6) arguing a case before D.C. Circuit originally on February 12th but the Court has postponed the argument with no new date. Case is (b) (6) (b) (6) is asking if it is alright for (b) (6) to cite their (b) (6) (b) (6) the reason for holding argument on February 12th; either under seal or not. I advised (b) (6) that if the only reason to file under seal was to not disclose (b) (6) (b) (6) with DOJ, that did not seem an appropriate basis on which to ask the Court to keep the filing sealed. If they filed not under seal, that may disclose (b) (6) (b) (6) DOJ before the Administration/DOJ wants to do so, so that is the ASG/WH's call. (b) (5)

(b) (6) January 13, 2010

23. (b) (6), OAG, (b) (6) recommendation and reference question. (b) (6) served as a Counsel to (b) (6) in the late 90s. (b) (6) now is applying for a position on the newly-created Palm Beach County Ethics Commission. The Commission was created by the State Attorney because of increased incidences of public corruption. (b) (6) would like to list (b) (6) as a reference and (b) (6) would like to know if she can do so. I advised that the rules allow (b) (6) to write a recommendation or reference for her and use his title and/or letterhead (since he has worked with her in the course of his federal employment). They do not specifically address being listed as a reference (presumably with his title), but we have viewed it as analogous to the recommendation letter. Therefore, if he would like to serve as a reference she may list him. As always, my advice for recommendations or references is that the Department official should feel they have an adequate knowledge of the individual to be able to address qualifications for the job or aspects of the individual's character. When this level of knowledge is not present, it can be a misuse of position for someone as senior as (b) (6) serve as reference. It does not sound like this is a concern here at all. (b) (6) January 13, 2010

24. (b) (6) OVW, fundraising question, natural disasters. An employee is Haitian-American and sought advice from (b) (6) as to whether she can email the office asking for donations to Haitian earthquake relief efforts. (b) (6) knows the answer to that specific question is no, but recalls that after Hurricane Katrina something was allowed, she just can't remember what it was. (b) (6) would like to be able to advise the employee on what, if anything, she can do in the workplace to help Haitian-earthquake relief efforts. Reminded (b) (6) that authorization for any such fundraising outside CFC comes from OPM. We quickly checked OPM's website and saw

no such efforts described there. It is not really likely there would be such targeted fundraising authorized during CFC open season. (b) (6) quickly checked CFC's website to see if there were any efforts to highlight what participating charities may be helping Haitian earthquake efforts but saw nothing. Perhaps the employee could contact her CFC Key Worker, who is likely sending out pleas for CFC participation as the season closes this Friday, to see if there could be a reminder that participating CFC organizations assist victims of natural disasters such as the recent earthquake in Haiti. No one could recommend designation of one charity over another, but just highlighting the good work done by such CFC charities in such efforts would likely be allowed by the Key Worker. Not exactly what the employee has in mind, but that's all that I can think of to give encouragement to the employee. (b) (6) will advise. (b) (6) January 13, 2010

25. (b) (6) USANYS, Departure and firm announcement. (b) (6) last day will be in the office will be January 22, although she'll be on the payroll until February 3. So she'll be taking two weeks of annual leave after her last day. She would like to know if (b) (6) is allowed to make a public announcement that she will be joining the firm after Jan 22, before February 3 – while she is on annual leave. I agreed with the USAO that I don't have a problem with that as long as they refer to her AUSA experience in the past tense so it doesn't look like an endorsement of the firm by a current federal employee. (b) (6) January 13, 2010

26. (b) (6) (b) (6), Speaking invitation question. As (b) (6), (b) (6) got to know a lawyer named (b) (6), who is an alumnus of and donor to the school. (b) (6) is a partner at (b) (6), the managing partner until (b) (6) believes) last month. He is also a highly influential banking attorney in New York; he has a hand in pretty much everything involving regulation of financial institutions. He and his wife (whom (b) (6) doesn't know) are being honored at a dinner this spring of the Legal Aid Society of New York. The event will be a fundraiser, with people and firms paying for tables, with the proceeds to go to Legal Aid. (b) (6) asked (b) (6) if she would speak at the dinner; the idea of the speech is to say nice things about (b) (6) as well as to say nice things about Legal Aid. I advised that if (b) (6) knows him well enough to be a logical speaker in his honor at this event, I think it's fine for her to participate in her personal capacity. Because there are limitations on government officials actively participating in fundraisers, this would mean she could be identified as the Honorable (b) (6) (b) (6) but not as (b) (6). Of course, if they introduced her they could include that she is presently serving (b) (6) but the emphasis should be on her former service as (b) (6) since that is how she knows him. Also, even though she would be participating in her personal capacity, because she is who she is, she doesn't have a lot of personal capacity among the legal community. Therefore, some additional caution is advisable in order that people who come are doing so to support (b) (6) (b) (6) or Legal Aid, and not to see/hear (b) (6). It would be best if her name (even without her title) was not included on any of the invitations/notices for the dinner. Including her name as part of the "draw" comes close to allowing someone else to use her position to promote a non-official interest - in this case Legal Aid (and remember, the worthiness of the cause is not a consideration). It's fine for the program to say Hon. (b) (6) (b) (6) since at that point people have decided to come and purchased their tickets. Also, by keeping a clear line between her as (b) (6) and her as (b) (6) former (b) (6), she is freer to say nice things about Legal Aid should she wish to. (In her official capacity she would be more restricted in what she could say; specifically, could not ask for contributions of money or other support for the organization). The other

limitation would be that her remarks should be personal and based on her knowledge of (b) (6). (b) (6) and Legal Aid, but they should not be an official speech since she would be participating in her personal capacity. She can make some mention of her experience as (b) (6), but that should be a minor part of her remarks. Also asked her to let me know if (b) (6) has anything pending before OSG that raises additional sensitivities and we should discuss further. Updated: (b) (6) decided not to participate in this. (b) (6) January 13, 2010

27. (b) (6) (former non-career employee of OLP) sent an email with a post-employment question. She wanted to know if she could assist a client in completing paperwork and providing other strategic advice in connection with the client's potential nomination for a judicial position. She would be paid for these services. (b) (6) never worked on this nomination when she was in OLP and would provide only behind the scenes assistance and would not communicate with DOJ. She was a GS-15. She would not make use of any non-public information. I advised that under these facts she could provide this assistance to her client. The emails are in the file. (b) (6) January 6, 2010

28. (b) (6) (ATF) had a question about service on a police department auxiliary. (b) (6) wanted to know if he could be an auxiliary with the Framingham Police Department. He is an auditor, not a law enforcement officer. He had served in the position and then resigned. He wanted to know if he could be approved to do this. I discussed with (b) (6). Advised (b) (6) it was not absolutely barred but that he would need DAG approval. Some of the factors would be what duties he would have, could he make arrests, would he have a weapon, etc. (b) (6) said a draft policy order of ATF was going to prohibit such a position in all cases. (b) (6) will change that. (b) (6) said he would not recommend such a position for an ATF employee who was a law enforcement officer, but that he probably would in this case for an auditor provided that the various factors cited above supported approval. The emails are in the file. (b) (6) January 6, 2010

29. (b) (6) (CIV) called about a matter relating to a bar complaint made against (b) (6) in connection with (b) (6). PRAO had suggested that they contact our office to see if a 502 determination was necessary to allow her to continue to participate in related litigation. (b) (6) did not think a 502 determination was necessary. I agreed. This essentially is a management decision as to whether given all the circumstances she should continue to work on the case. Her supervisor supports her continued participation. The email and related documents are in the file. (b) (6) January 7, 2010

30. (b) (6) (EOUST) had sent an email about a trial attorney, (b) (6) who is interested in a U.S. Trustee position and wanted to know what the limits are in terms of who she can seek support from under various scenarios. Discussed this with (b) (6). (b) (6) generally advised (b) (6) that if an attorney supports her candidacy, she should not work on a case in which that attorney is representing a party. We agreed. Under scenario 1, (b) (6) with (b) (6) discussed supporting her but (b) (6) has no knowledge that he ever did. (b) (6) a (b) (6) attorney in another office of the firm is participating in one of her cases. (b) (6)

has not talked with (b) (6) about her candidacy. She does not supervise (b) (6) and I agreed that she could continue to work on this case as (b) (6) had no involvement in her candidacy, it is a very large firm and he works in a different office. Under scenario 2, (b) (6) supported her candidacy while with the (b) (6) firm. Now he has joined the (b) (6) firm, a very small firm. (b) (6) with (b) (6) has a number of cases. We agreed that she would not need to be recused from these cases on the basis of prior support by a different attorney. However, because it is a small firm she may not be able to continue of (b) (6) would continue to be active in supporting her. Under scenario 3, (b) (6) asked (b) (6) a partner in (b) (6) for support of her candidacy. Another partner, (b) (6) supported her as well. (b) (6) and a third party, (b) (6), were solicited by ABI for a candidate and gave her name. She wants to know the scope of her recusal from cases in which (b) (6) attorneys are involved. Suppose the firm was only involved in a small mechanics lien. I said these recusal questions are fact driven and that we would generally defer to (b) (6) judgement based on her expert knowledge of bankruptcy practice. On a more general level, we said there is a concern with her becoming conflicted out of too much work as a result of campaigning for this job and that she can't materially impair her performance of her duties by engaging in a job campaign that would trigger too many recusals. (b) (6) agreed. (b) (6) also asked an unrelated question about processing the Ethics Pledge. (b) (6) is anticipating the possibility of 2 new U.S. Trustees this year. She had questions about timing of signing of the Pledge and collecting the Pledge. I said the Pledge should not be signed before they are appointed but should be signed on the first day. Discussed with (b) (6) Called (b) (6) back and left message that she should contact (b) (6) directly about procedural questions. The emails relating to the recusal question are in the log file. (b) (6) January 7, 2010

31. (b) (6) (ATR) asked us to review a letter from the (b) (6) describing (b) (6) ownership of (b) (6) to determine whether (b) (6) could continue to work on the proposed merger of (b) (6). This relates to log entry on December 22, 2009. (b) (6) and (b) (6) believe that (b) (6) is a party and asked if we concurred. I said we agreed. (b) (6) had done a small amount of work for (b) (6) as her client that triggered the terms of the Ethics Pledge. She would need a waiver. (b) (6) said she would not resume participation in this case. The (b) (6) letter is in the file. (b) (6) January 7, 2010

32. (b) (6) (OSG, (b) (6) asked what would be involved in terms of post-employment restrictions if he were to be promoted to one of the two SL positions in OSG. I explained that if he served in this position and met the salary threshold he would be subject to 207(c). He was concerned about the restriction and was weighing the merits of it. Last year in April 2009 this issue came up for (b) (6) and (b) (6). Discussed with (b) (6) the prospect of getting a waiver for these positions. U.S. Trustees have such a waiver. (b) (6) called to discuss the waiver. I explained the waiver process and said we would need OSG to write up a justification that would explain the hardship of having this restriction apply in terms of recruiting and retention. (b) (6) said he believed OSG was interested and he would follow up with us when they were ready to initiate that process. Email is in the file. (b) (6) January 7, 2010

33. (b) (6) (JSOC) asked if it was permissible to have a non-monetary recognition award (such as a certificate) to acknowledge people who report suspicious email. Regular Department employees and contractor employees in any component would be eligible. Checked with (b) (6) to see if there were any procurement issues. He consulted with (b) (6) in OGC. Advised (b) (6) that the recognition program would be okay as long as contract employees whose job was to identify and report suspicious email were not eligible. (b) (6) was fine with that restriction. Emails are in the file. (b) (6) January 7, 2010

34. (b) (6) (Civil) had an outside practice of law question. A Civil attorney wants to review a friend's severance agreement and provide follow up representation if needed in connection with the friend's termination from the Propane Education Research Council (PERC). Her specific question was whether the United States had an interest in the matter. Here the question was whether PERC was a federal entity, had federal employees, had any federal authority, or federal funding. The question arose because federal legislation authorized PERC to be formed by industry. A review of the legislation did not indicate that it was a federal entity. (b) (6) was going to check and see if it was a 501(c)(3) organization. The email is in the file. (b) (6) January 8, 2010

35. (b) (6) called with an Ethics Pledge question relating to her former client, Comcast. She asked about the Comcast NBC merger. I said the Pledge would bar that. She asked about an FCC rulemaking on broadband policy (i.e., net neutrality) and I asked her for some additional background. In the meantime she was reviewing her billing records to see if she had provided any services for Comcast during the two years prior to her appointment. She was able to confirm that she had not and therefore Comcast was not a "former client" within the meaning of the Pledge and the Pledge prohibition did not apply. The email is in the file (b) (6) January 11, 2010

36. (b) (6) (OPR, (b) (6) had a question from (b) (6) who wanted to know if there were any notification requirements prior to testifying as a fact witness in a hearing for a civil protective order on behalf of her neighbor in an apartment complex who threatens people with his dog. The matter had nothing to do with the Department so Touhy regs were not involved. Discussed with (b) (6) Told (b) (6) she could do this but she should advise the person who wants her to testify not to use her DOJ position in any way. She should let her supervisor know and she could do that in connection with her request for approval of annual leave. The email is in the file. (b) (6) January 11, 2010

37. (b) (6) (CRT) called with a Hatch Act question. An employee wants to serve as Treasurer for his brother's campaign for the Calvert County council. Calvert County is on the list of designated localities that have somewhat less strict rules. The applicable rules are in 5 CFR Part 733. It is a partisan election and the brother is running as a party candidate. Unlike the rules in non-designated areas which prohibit fundraising and bar soliciting, accepting or receiving funds, Part 733 bars solicitation but not accepting or receiving. See related log item for

November 11, 2009 dealing with serving as Treasurer for a D.C. election. So he could not solicit which means any request for funds could not have his name on it. Also campaign literature that included a request for funds could not say by authority of Treasurer. The email is in the file.

(b) (6) January 12, 2010

38. (b) (6) ORMP, WAG. (b) (6) was invited to speak at the Ediscovery Readiness Summit. All speakers were offered free attendance at the conference. Sent a WAG approval to (b) (6) Approve. (b) (6) January 14, 2010.

39. (b) (6) (CRT) called for the names of contact persons on FACA questions. I sent her the names of (b) (6) in FASS and (b) (6) in OGC. The emails are in the file. (b) (6) January 14, 2010

(b) (6), Library, Pro bono. Ms. (b) (6) requested permission to take on a pro bono case through the Washington DC Bar pro bono program. It was a divorce case with child support and custody matters. Sent approval to (b) (6) Approved. (b) (6) January 14, 2010.

41. (b) (6) (JMD, (b) (6) wanted to know if she had a conflict as a result of having purchased 500 shares of a penny stock for a total investment of \$125. She had thought the company was in the medical field and then discovered it produced software applications for medical professionals. The company has no business dealings with the Department and she does not expect it to. Advised her that she did not have to sell the stock at this time. Also explained the exemption for publicly traded stock. She asked about buying stock in a wireless company. Advised that an employee has a responsibility to use due diligence to find out what a company does before the employee buys stock and to monitor its value once she owns it. The email is in the file. (b) (6) January 14, 2010

42. (b) (6) NSD, Ethics pledge and proposed speech. (b) (6) provided a detailed analysis of (b) (6) proposed participation as a guest speaker in a course at Georgetown Law, which is his former employer. I agreed with the analysis that he could do it, and I suggested counseling (b) (6) of the concerns and advise that he should not commit to future appearances (meaning they should be addressed at the time), and Georgetown should not advertise or report (e.g., on its website) on his participation in the class. Emails of entire analysis are in file. (b) (6) January 14, 2010

43. (b) (6) (Civil, (b) (6) had a seeking employment question. A Civil attorney received a voice mail from a law firm that was an employment overture. The attorney has 3 cases currently in which that law firm is involved. The cases involve wiretapping and the firm represents a large telecommunications company. He has not responded to the voice mail. Civil advised him that he can either immediately reject the overture and continue working on the cases or pursue the opportunity and recuse. (b) (6) asked for confirmation of that advice and I said that

was correct. (b) (6) asked if he needed to file a notice of withdrawal with the court. Consulted with (b) (6) and advised (b) (6) that that was a PRAO issue. The attorney also is working on three other cases that are related but do not involve the law firm. We discussed whether he would have to be recused from those cases. (b) (6) said that he might depending on how closely related the cases were but said they would need to get more information to determine that. (b) (6) January 15, 2010

44. (b) (6) (Civil) called with a question about representing a family member. She had sent up a memo approving a Civil attorney's representation of his daughter in a case she brought against Guardian Food Concepts for non-payment of wages. The statute allows for treble damages and attorneys fees. (b) (6) did not know about the attorneys fees when she sent up the memo and she had said in it that the representation would be uncompensated. So she was asking whether eligibility for attorneys fees meant that the representation was compensated. Discussed with (b) (6). Told (b) (6) we did regard attorneys fees as compensation. If he wanted to seek approval for compensated outside practice it would have to go to the DAG. (b) (5) [REDACTED] he attorney wanted to be able to use the threat of treble damages and attorneys fees in negotiating a settlement. (b) (6) January 15, 2010

45. (b) (6) BOP, Fund-raising. (b) (6) called to find out if OPM had issued guidance or approval for supplemental Fund-raising for Haiti. As of this date they had not and I advised (b) (6) that until OPM released the guidance, there could be no solicitation in the workplace. (b) (6) January 15, 2010.

46. (b) (6) OAG, has been asked to give the keynote address at his alma mater, U of Mich Law School's spring event, which is a memorial banquet and fundraiser in honor of a law student who died in 1978. Event is sponsored by the Black Law Students Association. (b) (6) family has long-standing ties to the school; both parents are alums and his grandfather was a professor, etc. He would be speaking in his personal capacity, he described his intended remarks and they are fine. Sponsoring organization can identify him including his name in the announcements, etc., but not his title or DOJ affiliation. They may use his include his title in a bio and in the introduction if given no greater prominence. He will give a disclaimer that his remarks are his personal and he is not speaking on behalf of the Dept.. He may accept reimbursement from them for his travel. (b) (6) January 19, 2010

47. (b) (6) (CIV) sent a draft 502 determination for our review. It involved (b) (6) participation as the (b) (6) Deputy Attorney General's Working Group on Immigration Policy. (b) (6) (b) (6) is the Executive Director of KIND a group that advocates on behalf of unaccompanied alien children. We had previously advised (b) (6) that this should be approved by the DAG because it involved the DAG's working group and more than one component. See log file entry #86 dated November 3, 2009. (b) (6) draft was for approval by the AAG of Civil. We advised (b) (6) that we continued to believe that this determination should be made by the

DAG rather than the AAG because the working group is an ODAG initiative and involves more than one component. (b) (6) said that (b) (6) had indicated that the working group was open to submissions by outside groups but that KIND had not made any submission. I told (b) (6) that he could represent that we concurred provided that the approval is sought from the DAG and that the authorizing paragraph indicate that (b) (6) will not communicate with KIND. The email and draft memo are in the log file. (b) (6) January 15, 2010

48. (b) (6) (CIV) sent a draft memo seeking approval for (b) (6) to represent his wife in a harassment complaint against her former employer, the Department of Agriculture. The memo would authorize the outside practice of law under the supplemental regulation and waive the prohibition under 18 U.S.C. 205 using the authority to represent certain family members in section 205(e). I responded to (b) (6) by email with 5 changes that should be made in the memo. With those changes being made, I advised he could represent in the memo that he consulted with DEO and that we agreed that it is permissible for (b) (6) to be authorized to undertake this representation. The emails and draft memo are in the log file. Also see a related log entry #18 of October 10, 2009 (b) (6) January 15, 2010

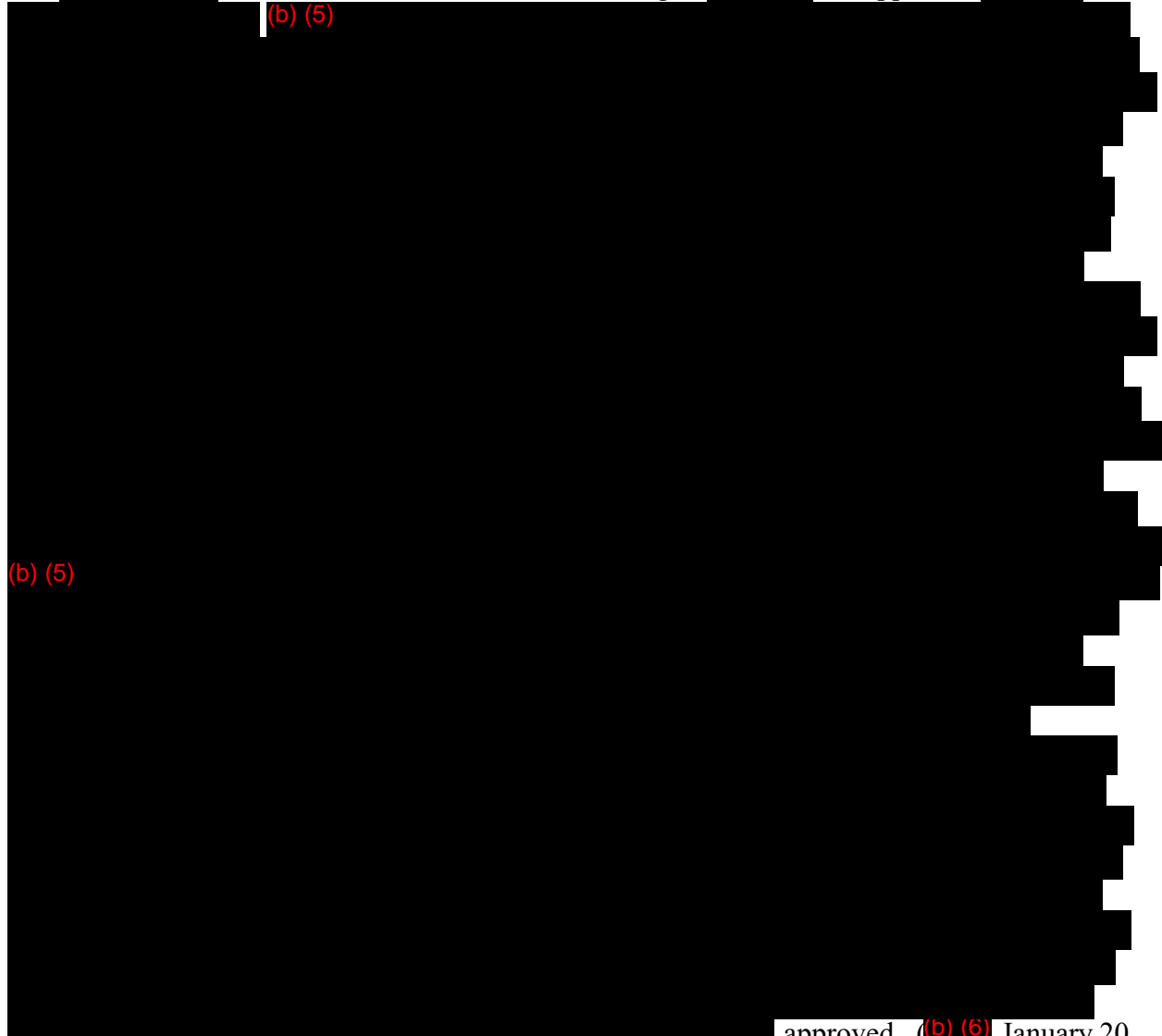
49. (b) (6) OAG, (b) (6) event and whether specific approval for staff are needed if attending events other than AG speech. (b) (6) advised that (b) (6) would be speaking at the NOBLE event on February 12th and asked if there were any problems. I advised that this was fine and to let me know if (b) (6) is attending any events other than the day he's speaking (e.g. Reception the night before) and if accompanying staff will be attending with him - that would just need specific approval. (b) (6) then advised that (b) (6) would be attending. I advised that he would not need approval since neither of them were attending a lunch, dinner or a reception. (b) (6) January 19, 2010

50. (b) (6) ATR, Invitation/gift to (b) (6) (b) (6) will be in Paris for the OECD meeting and she has received the invitations described (emails in log file) from a European law firm that is sometimes before ATR. (It is the firm that her special advisor for international matters has just retired from.) The event would be a small lunch or dinner with Paris-based antitrust practitioners from international law firms. The other event referred to is an invitation from a European elevator/escalator company to speak to a group of General Counsels / Chief Legal Officers for large multinational companies. The company that has invited her does not have any matters before ATR. This would be a fairly small event with entities that (b) (6) believes it is valuable to speak to. It does not involve a meal. I advised that on first one, although the exception goes more toward Commerce and State Dept employees whose duties include meeting with foreign business, it would fall within the exception if the dinner was limited to the per diem amount. (b) (6) and I both think this is unlikely to be the case and if we are correct, she may either pay for the dinner or should not accept. The second event we decided was fine. (b) (6) January 19, 2010

51. (b) (6) OAG, (b) (6) event. (b) (6) has been invited to speak at the Constitution Project's 3rd Annual Constitutional Champion Awards Dinner, on April 15. I

advised that this looks fine and the honorees do not raise any issues that need vetting. I reminded (b) (6) to give them the usual limitations since it is a fundraising event - not to use (b) (6) participation to promote the event but he may be listed along with the honorees and other speakers on the invitations. (b) (6) January 19, 2010

52. (b) (6) OSG, WAG. I emailed the following to (b) (6) for approval: (b) (6)
(b) (5)



(b) (5)

approved. (b) (6) January 20, 2010

53. (b) (6) ATR, (b) (6) question. There is also a third event in Paris hosted by the Women's Competition Network. It was described to (b) (6) as: "Women's Competition Network. They are planning on hosting a cocktail party/reception for (b) (6) at the Westin on Feb. 11. The event's official host is the Women's Competition Network, but Sidley & Austin and a French law firm, Bredin Prat, will primarily be underwriting the event. One of the principals behind the WCN is also a partner at Sidley and is able to get her firm to help underwrite. But the event is

most definitely NOT a Sidley event. The Women's Competition Network (WCN) is a professional forum for senior EU competition law and policy professionals, so the audience will be open to any of its international members. There will be very brief remarks by (b) (6) with Q&A." I advised that since Sidley & Austin, which is a registered lobbying organization, is not a sponsor of the event, it does not fall within the Pledge restrictions on accepting the invitation. She can analyze it as a traditional WAG and based on her description it sounds appropriate to me for the AG to accept. (b) (6) January 19, 2010

54. (b) (6) (b) (6) (EOUST) asked for our review of a request by (b) (6) and attorney in the Tennessee field office to represent (b) (6) in a State court proceeding involving a petition by Ms. (b) (6) former husband to modify child support. I spoke with (b) (6) on January 15 and confirmed that she is a legal clerk in the same office as Mr. (b) (6) but does not work for Mr. (b) (6). Subsequently, (b) (6) sent us an email with more background. I discussed with (b) (6) and spoke with Sean (b) (6). I said the request does fit within the Department's pro bono policy. We went over the rules that apply to this outside activity. I emphasized that although the pro bono policy on the DOJ NET indicates that some use of external email is permissible that a DOJ email account should not be used in this case. We discussed a current case that involves the question of privilege for private communications made using a government email account. (b) (6) agreed to include that in their memo. He will make no use of any DOJ resources, time, title, staff, letterhead, etc. I said that in exercising their discretion to approve, they can take into account management concerns in terms of the potential disruptive effect of this activity on a small office. (b) (6) said (b) (6) supervisor has already approved it. (b) (6) said the only issue they had was whether he could represent another DOJ employee. I said that is something that needs to be factored in to the management aspect of this matter. (b) (5)

(b) (6) January 20, 2010

55. (b) (6) (CRM) called on January 19 with a Pledge and 502 question relating to (b) (6) and his Counsellor (b) (6), both of whom came from Covington. They discovered that Covington is representing (b) (6) in connection with a criminal investigation of (b) (6). (b) (6) (b) (6). Press reports indicate he is a witness but also state that he served as an intermediary for (b) (6). I said that they needed to be very confident that (b) (6) was and would remain a witness and not become a subject. If he became a subject, then the Ethics Pledge would apply and Pledge waivers are rare in the extreme. If the Pledge is not likely to be implicated, there is still the matter of 502. Discussed again with (b) (6) on January 20. (b) (6) does not believe this is a good candidate for a 502 waiver because there does not appear to be a clear need for them to be involved in this case. (b) (6) is not inclined at this time to write up a request for a 502 waiver based on available information. News reports providing background are in the log file. (b) (6) January 20, 2010

56. (b) (6) ORMP, WAG. Recommended that (b) (6) be allowed to accept attendance at the Ediscovery Summit Conference, where she would also be speaking. (b) (6) approved. Emails in file. (b) (6) January 20, 2010.

57. (b) (6) (NSD) is on detail as the Deputy Director of the Guantanamo Review Task Force. He will be attending a DOD, State, International Red Cross at the Aspen Wye River Conference Center on January 20-22, 2010. He is attending in his official capacity and will give a presentation. DOJ is paying for all of his expenses. He wanted to know if there were any ethics concerns he should be aware of. Specifically, he asked about attending a reception that might be hosted by the Red Cross. I said that would be integral to the event. He asked about getting something like a pen and a covered notepad. I said those kinds of items would not be a problem. (b) (6) January 20, 2010

58. (b) (6) (b) (6) (b) (6) Post-employment question. By his count, he left the Department more than a year ago (his resignation was effective January 18, 2009). So he wanted to be clear that he may contact (b) (6) (or anyone else in the Department) about a matter that he is not otherwise barred from handling. I advised that was correct - if his one year has run, he may contact OSG/DOJ as long as the matter does not fall within the scope of lifetime ban (matters in which he participated personally and substantially) or the two-year ban (matters pending under his official responsibility during his last year of government service). (b) (6) January 24, 2010

59. (b) (6), PAO, gifts question. (b) (6) wanted to be sure she did not need approval for attending a field trip to the Canadian Embassy with her son. I advised that she did not need approval. (b) (6) January 25, 2010

60. (b) (6) CRT (but detailed to Office of Vice President), Gift acceptance. I email (b) (6) the following for approval: "(b) (6) (b) (5)"

(b) (5)

(b) (5)

(b) (5)

(b) (6) January 25, 2010

61. (b) (6) called with a gifts question. He is in transition from Civil to USA EDVA. He (together with his wife) has been invited by an employee of United Health Group to be the company's guest at an Alvin Alley Gala at the Kennedy Center. It includes a performance, dinner and dancing. The ticket price is around \$350. (b) (6) had purchased tickets of his own on hold and then got this invitation. (b) (6) was not clear as to whether United Health was a prohibited source but it seems from the circumstances that he was being invited because of his position at DOJ. He did not consider the relationship to be one that would qualify for the personal friendship exception and in any respect he did not think that the person who invited him would be paying for it out of his own pocket. We also discussed the WAG exception and I said that performances, sporting events, etc. would not qualify as a WAG. (b) (6) decided that he would just go ahead and complete the transaction to purchase the tickets for the event himself.

(b) (6) January 22, 2010

62. (b) (6) (NSD) had asked a question about Weight Watchers in the DOJ work place. (b) (6) from CRM had sent an email about a Weight Watchers program at Main to (b) (6) at NSD and she had forwarded to all NSD employees. (b) (6) wanted to know if this raised any ethics concerns. I talked to (b) (6) and she said that she had brought this matter up at an ethics lunch in December and that it was okay. (b) (6) said that (b) (6) was the organizer but she was not being paid for it. I discussed with (b) (6) I called (b) (6) and said that the program was permissible but that I was following up with JMD HR to try to get a more comprehensive view of how these kinds of programs are handled at the Department and whether there is any

Department work/life policy that would be relevant. I sent an email to (b) (6) and he forwarded an email he had sent to (b) (6) indicating that CRM could have someone come in as the "leader" from CRM and conduct a confidential weigh in and meeting. They could use flyers on a public bulletin board to publicize the event but should not promote Weight Watchers by sending out a mass email. (b) (6) gave me a work/life contact person, (b) (6) and I discussed this with her. But she was not aware of any written DOJ policy dealing with outside groups that might want to have fitness sessions, or diet or other health related employee self-improvement opportunities. The only guidance she was aware of was on the OPM Healthier Feds website which does not address this kind of question. I called (b) (6) again and said that the event was ok but in the future people should understand that they should not use government email to promote Weight Watchers or some similar outside group. The emails are in the file. (b) (6) January 22, 2010

63. (b) (6) (OAG) called about a press release related to a keynote speech that (b) (6) will give at an awards luncheon of the FBA chapter in Detroit on February 17. (b) (6) was concerned about the last two paragraphs which promoted the FBA luncheon series in general and gave ticket information. I agreed that it would be better to separate that material from the announcement of the AG as the speaker and his professional bio. (b) (6) said she would convey that to the FBA contact person. The emails are in the file. (b) (6) January 22, 2010

64. (b) (6) (OPA) sent an email asking whether she could attend a meeting of a group called Next Step that is dedicated to leadership development and leadership opportunities for women. The question was whether the group was political. Discussed with (b) (6) (pronounced (b) (6)) and she confirmed that it was a 501(c)(3) organization and not political. Told her she could attend the event in her personal capacity. She asked about being active on a committee or as a board member. I said she would need approval from her component head. The emails are in the file. (b) (6) January 22, 2010

65. (b) (6) (JMD) had a question as to whether the Board of DOJ Pride could forward to its members an email asking for support for legislation, the Domestic Partners Benefits and Obligations Act. I told (b) (6) that the Board could not use a DOJ email account to forward the message and could not use the DOJ email accounts of employees to receive it. However, the Board could use a non-DOJ email account and could send it to personal email accounts. The message itself acknowledged that DOJ email accounts should not be used to send support messages to the Hill. Using DOJ email accounts would constitute grassroots lobbying prohibited by the anti-lobbying act, 18 U.S.C. 1913. The emails are in the file. (b) (6) January 25, 2010

66. (b) (6) (ENRD) called on January 21, 2010 to ask if there was any problem about (b) (6) who is (b) (6) being involved in a matter in which (b) (6) was involved. Her husband is of counsel at the firm and has a bankruptcy practice. The matter did not involve his personal client. I said there would be no problem. Then I called

her back to say that she had to consider 502 not only for his personal clients but also for his employer, (b) (6). However, (b) (6) had already told (b) (6) she could attend a meeting at which the matter would be discussed. The case involves (b) (6) and the State of California and the U.S. is not yet involved in it. (b) (6) said she would tell (b) (6) when she came out of the meeting that she also had to consider recusal for matters that involved her husband's firm. Discussed with (b) (6). Called (b) (6) on January 22, 2010 and said that if ENRD needed to have her participate in the matter, that they should follow the regular 502 process and the fact that she had attended that meeting would not affect a 502 determination one way or the other. (b) (6) said they would want to pursue a 502 determination. She was not concerned about keeping track of (b) (6), but she asked how they could keep track of the spouse's personal clients. I said he should provide a list of his personal clients. (b) (6) thought bar rules might prohibit that. Discussed with (b) (6) on January 25, 2010, and sent (b) (6) an email confirming that maintaining an up-to-date list of the spouse's personal clients was a recommended practice for effective screening and recusal. Generally, bar rules don't prohibit disclosure of the fact of representation. Sent (b) (6) an email with the exceptions that OGE recognizes to a SF-278 filer's disclosure of clients (see DAEOgram dated April 7, 2006). (b) (6) replied and said it might be difficult because he is in bankruptcy practice and clients will have retained him before they file. She thinks bar rules may prohibit it. She may follow up on the bar rule question with PRAO. (b) (6) January 25, 2010

67. (b) (6) (CRT) asked for the cite of the requirement for live annual ethics training. I gave him the reference at 5 C.F.R. 2638.704. (b) (6) January 25, 2010

68. (b) (6) OAG, Constitution Project Fundraiser. (b) (6) wanted my approval on the revised 'Save the Date' language. I advised that because this is a fundraiser, they should not include (b) (6) on the Save the Date mailing. He may be included when the invitation is issued - along with the honorees and other participants, but not on this notice. (b) (6) January 26, 2010

69. (b) (6) (TAX, (b) (6)) sent an email asking if there were any ethics concerns raised by having a career employee serve on a DOJ committee that vets potential political appointments. (b) (6) said Tax had protocol and management concerns but wanted to know if there were any ethics issues raised by this. Told her I did not think there were. Subsequently, discussed with (b) (6) and sent (b) (6) an email confirming that advice. The emails are in the file. (b) (6) January 26, 2010 UPDATE on January 27, 2010 (b) (6) said that they were going to allow him to serve on the committee but that after consulting with the (b) (6) they determined that when they got a political appointee on board in Tax, they would replace him.

70. (b) (6) (Civil) sent a draft 502 determination and asked for our review. (b) (6) seeks authorization to work on (b) (6). She recently discovered that (b) (6) filed an amicus brief in support of a cert petition on behalf of the New Jersey Public Advocate.

(b) (6) is doing the case pro bono. (b) (6) is a partner in (b) (6). He will have no involvement in the case. (b) (6) agreed to add language to the memo stating that she will have no contact with (b) (6). The emails and other background information is in the log file. (b) (6) January 26, 2010

71. (b) (6) (CRS) sent an email asking for our advice with regard to a reception that the Anti-Defamation League (ADL) would like to host in connection with a week-long training event being put on by CRS for CRS employees on the new Anti-Hate Crime legislation. CRS will conduct the training at the hotel where its out of town employees will be staying. About 50 CRS employees will be attending. ADL would like to host a modest reception at its own space providing cookies and punch and no alcoholic beverages. There could be as many as 150 to 200 people in attendance. But it was not clear that the diversity of viewpoint requirement for a WAG would be met. However, if the cost per person of the reception was \$20 or less, CRS employees could attend. Our concern is that there be no suggestion of co-sponsorship or co-hosting of the reception by the Department and ADL. (b) (6) said he would get in touch with us if anything changed with regard to that understanding of the event ADL plans. Emails are in the file. (b) (6) January 26, 2010

72. (b) (6) (JMD) called for her exit ethics briefing. She is retiring from government service on February 28, 2010. She is in an SES position and is a senior employee subject to 207(c). I provided a briefing on the phone on the permanent, two year and one year bans. I followed it up with an email on January 27, 2010. I reminded her of the requirement to file a termination SF-278. The email is in the file. (b) (6) January 27, 2010

73. (b) (6) (OSG, (b) (6) called to follow up on the process of re-instating the two SL positions in OSG. She had spoken with (b) (6) and he mentioned the discussion we had had about requesting a waiver for these positions. (b) (6) is the new executive officer in OSG. (b) (6) wanted to know whether the waiver request to OGE should be made at the same time as OSG asks to have the two SL positions reinstated in the OSG. I said that it would be better to have the positions because part of the justification is based on recruitment experience. Discussed with (b) (6) and confirmed. Called (b) (6) and said they should go ahead with their process of re-instating the positions (having them returned to OSG) and then we can work together on the waiver. I said we would need their input on the justification. (b) (6) January 27, 2010

74. (b) (6) (Tax) called to confirm that (b) (6) [last name?] could not get a "waiver" of the two year restriction in 207(a)(2) so that he could represent a defendant in a tax case that involved Swiss banking. They checked and the case was in the case inventory in October 2008 which was in his last year. He left in January 2009. I went through the 6 exceptions in section 2641.301 and none of them fit. So any work he did would have to be behind the scenes. (b) (6) January 27, 2010

75. (b) (6) called with a follow up to his January 22, 2010 question about a gala at the Kennedy Center. He indicated that subsequently he received a formal invitation from (b) (6) for he and his wife to attend as their guests. He has already purchased his own tickets. He said that (b) (6) is a wealthy local businessman who moves in elite circles. I asked (b) (6) if he thought he had additional information that would indicate that (b) (6) was paying for it personally and that he had a relationship with (b) (6) that would qualify for the personal relationship exception. (b) (6) said (b) (6) could be paying for it personally but he did not know for sure. He said he gets together with (b) (6) about once a year and they are "friendly" but he did not feel that he could say he had the kind of personal relationship that would meet the requirements of the exception. So after talking it through he decided he would stick with his original decision to pay his own way. (b) (6) January 27, 2010

76. (b) (6) (OSG) requested on January 28 a 502 determination that would allow him to work on Smoking Everywhere, a case in which his former firm, Latham & Watkins, was representing a party. He has no financial interest in the matter or the firm. Prepared a 502 recommendation to (b) (6) which she approved. He needed to work on the case that day. The emails are in the file. (b) (6) January 28, 2010

77. (b) (6) (b) (6) Office of Assoc. AG) called with an Ethics Pledge question. A close personal friend of hers who was a classmate in law school has invited her to have brunch at his home as a guest of himself and his wife. He is a registered lobbyist. She works at NPR. She would like to have brunch at his home but also asked if she could go out to lunch at a restaurant and pay her own way. Called her back and left voice mail message that the exception for gifts or hospitality based on a personal relationship is not eliminated by the executive order so it would be permissible for her to accept this invitation. (b) (6) January 28, 2010

78. (b) (6) USTP. Private commercial CLE group is doing a CLE panel on the trustees program, bankruptcy, etc. A USTP employee will be speaking on the panel - a routine thing for them to do. Included in the invite was attendance for two other USTP guests. Invite was extended to all panelists. There is no other compensation for the speaker. Would like to bring two other USTP attorneys to the event. The panel is \$235/person. We discussed that the CLE group was a prohibited source so he would need a gift exception. He was going to explore if the CLE would be a WAG but understood now that the invitation was a gift. (b) (6) January 28, 2010.

79. (b) (6) (CIV) called with a question that came to her from the chief of staff for (b) (6). He is in San Francisco. He is taking his former secretary to lunch. He wanted to know if he could drop by his former firm, Morrison Foerster, to say hello. It would be strictly social. No discussion of business. No lunch or meals involved. I said that the Ethics Pledge would not prohibit him from making such a social visit provided that he had no discussion of DOJ business. (b) (6) January 29, 2010

80. (b) (6) PAO. (b) (6) called regarding a press release about the OVW "List". The NFL Players Association has joined the "List" and partnered with a grantee of OVW. (b) (6) wanted to know if they could mention the grantee and the NFLPA's partnership with them in the press release announcing that the NFLPA was joining the List. Conferred with (b) (6) and said that they could report the facts but could not "cheerlead" the groups. So can state that they have partnered but not much more. (b) (6) January 29, 2010.

81. (b) (6), (b) (6), called on January 19, 2010, with a post-employment question. He wanted to know if a case involving Tesoro Petroleum was pending under his official responsibility when he was (b) (6). He left on January 20, 2009. His firm is representing Tesoro and he sent a letter from EPA to Tesoro dated February 3, 2009 that was a notice of violation. The letter included a cc to (b) (6), the trial attorney on the case in ENRD. (b) (6) said that in February 2009 the Department had also asked Tesoro to agree to a tolling of the statute of limitations. So the question was whether this matter had been pending in ENRD prior to the date of the notice of violation letter and more specifically, prior to January 20, 2009. I worked with (b) (6) who asked (b) (6) to check the case tracking database. On January 29, 2010, (b) (6) sent an email which confirmed that the case was referred to ENRD on September 30, 2008. Therefore, it was pending under (b) (6) official responsibility and he is subject to 207(a)(2) with respect to this case. I sent (b) (6) an email to that effect and he replied with a thank you acknowledging the advice. The emails are in the log file. (b) (6) January 29, 2010

82. (b) (6) (ODAG) called to ask if he was permitted to buy a mutual fund. I told him he could buy a fund. We discussed the difference between diversified and sector mutual funds and the regulatory exemptions that apply to each. He had not yet selected any fund but seemed inclined to invest in a diversified mutual fund. I told him that the sector fund exemption has a \$50K limit, must be aggregated, monitored etc. If he purchased this year, he would report it on his annual report filed in 2011. (b) (6) February 1, 2010

83. (b) (6) (ENRD) called with a post-employment question. (b) (6) (b) (6) left on January 19, 2009. While he was here he participated in the early stages of three rulemakings that EPA was doing on the subject of climate change. It may have been an Advanced Notice of Proposed Rulemaking. (b) (6) said the rulemakings are not specific party matters. The rules will soon be final. He wanted to know if he could participate in a facial challenge to the rules. I said his one year bar has expired and the two year and permanent prohibitions are keyed to specific party matters. So section 207 would not prohibit him from challenging the rules. (b) (6) said she would remind him that it is his responsibility to obtain advice regarding his obligations under the bar rules. (b) (6) February 1, 2010

84. (b) (6) (b) (6) sent an email asking whether he could work on a case involving an appeal of a Federal Claims Court decision in a contract dispute involving Shell Oil that was closely related to an appeal in the Ninth Circuit that he worked on when he clerked for

the judge that wrote the decision in that case which involved a Superfund claim. Asked (b) (6) what court rules of the Ninth Circuit were relevant and he sent Rule 46-5. Sent him an email asking for information relating to a 502 determination but asked him to first check with the Ninth Circuit as to how they would apply this rule in this situation. (b) (6) checked and they opined that his participation would be prohibited by the rule. (b) (6) spoke to (b) (6) (b) (6) and he reassigned the case. The emails are in the file. (b) (6) February 1, 2010

85. (b) (6) OASG, OJP's request for approval. (b) (6) and (b) (6) in OASG asked me to confirm my analysis to approve (b) (6) passive attendance at "Big Sky Weekend". I confirmed my conclusion that her attendance is appropriate. (b) (6) January 29, 2010

86. (b) (6) (b) (6) WAG. I emailed the following to (b) (6) for approval: (b) (5)

(b) (5)

(b) (6)

(b) (6) approved. (b) (6) January 29, 2010

87. (b) (6) ENRD, WAG. (b) (6) was invited to the LatinaStyle Awards lunch by the Hispanic National Bar Association. Ms. (b) (6) is recused from communicating with HNBA because she was previously on their board. This event is a ½ day conference with a luncheon and she was invited to sit at HNBA's table. (b) (6) wanted to know if she could attend as a WAG. Emailed (b) (6) (b) (5)

Based on this, she could not attend the event in her official capacity. Emails in file. (b) (6) February 1, 2010.

88. (b) (6) PRAO, Pro Bono. (b) (6) has been receiving numerous inquiries about assisting Haitians with applying for TPS status and has been telling everyone that we are conflicted out of that pro bono opportunity. (b) (6) routinely tells their attorneys that immigration applications, unlike tax forms which involve a simple transfer of numbers, involve crafting appropriate responses which can be referred back to later when applying for permanent status or in challenging deportation. They therefore could be interpreted as advice and not just information. She asked if I knew of an exception here in light of the President's encouragement to assist Haitians and his pledge to grant TPS to them. I advised that it doesn't change the restrictions or the concerns associated with doing this work. (b) (6) February 2, 2010

89. (b) (6) OASG, WAG. (b) (6) received the following email for approval from (b) (6) in OVAW: (b) (5)

(b) (5), (b) (6)

not go on the trip). (b) (6) February 2, 2010

90. (b) (6) NSD, (b) (6) travel reimbursement for speaking engagement at University of Texas law school. (b) (6) emailed (b) (6) for approval and (b) (6) asked that I weigh in. I recommended approval. (b) (6) February 2, 2010

91. (b) (6) (OAG) called and followed up with a January 26, 2010 email requesting a conflicts analysis of 17 Exchange Traded Funds (ETF) that had been identified for possible investment by (b) (6). The list included the names of the funds and the proposed level of investment. I researched the funds and consulted with OGE on the applicability of the regulatory exemptions for diversified mutual funds and sector mutual funds. One of the funds which was a commodity based ETF was determined by OGE not to be eligible for any regulatory exemption because the commodities were within the jurisdiction of the CFTC, not the SEC. Two funds were sector funds. 14 funds were diversified funds. The January 29 email providing this analysis is in the log file. The complete exchange of emails and background information on the funds is in (b) (6) financial disclosure file. (b) (6) January 29, 2010

92. (b) (6) (CIVIL) called with a follow up question related to log entry 47 dated January 15, 2010. The attorney recused himself from 5-6 cases and then returned the phone call to respond to what he believed was an employment overture by a former colleague at a firm. It turned out that it was much less than that. The person merely wanted to "pick his brain" and explore a possible future practice group. The firm had no plans to start the practice group any time soon. The attorney made only that single phone call and did not leave open any possibility about future employment. In this case, it is not even clear that "seeking employment" was initiated as it turns out there was no employment overture. (b) (6) was now calling to find out what needed to be done so that he could resume working on the cases he had recused from.

Discussed with (b) (6). Called (b) (6) and said it was not necessary to have any formal, written determination that he could resume work on the case. He had already told his supervisor about the contact when he recused. Told (b) (6) the attorney should talk with his supervisor again and explain the nature of the call and that he had obtained advice from ethics officials who concluded on these facts that he could resume working on these cases. (b) (6) said he would pass that on to the attorney. (b) (6) February 2, 2010

93. (b) (6) HR/JMD: sunshine club. Wanted to sell snacks in the office to help fund the office's annual picnic and holiday party which are not well attended due to cost. She has personally purchased snacks like chips and stuff and would like to put them out in a common area for anyone to partake, with a money jar on the honor system for people to contribute. It would then be self-funding with profits to go toward the office party costs. Asked (b) (6) about it. Concerns: How exactly is this going to operate? How many people involved here? Is (b) (6) a supervisor, has the office supervisor given approval, After asking (b) (6) more about these concerns, (b) (6) advised she has decided not to do this after all. (b) (6) February 4, 2010

94. (b) (6) (NSD) sent an email with a fundraising question. An NSD employee wants to know if it is okay to use Department email to solicit contributions for the CIA Officer's Memorial Foundation. Told him that is prohibited fundraising in the workplace and that the employee could not use Department email. The email is in the log file. (b) (6) January 26, 2010

95. (b) (6) (JMD, Asset Forfeiture Management, (b) (6) called with a question about hiring a former contract employee as a regular employee in a GS-13, 2210 Information Systems position. The applicant who is a candidate for the job used to work for a contractor, FSA, and provided support to ATF. He left that job several months ago. In this position he would not work with FSA but rather with Unisys doing IT support. (b) (6) wanted to know if there were any restrictions or concerns about hiring him. Discussed with (b) (6). Called (b) (6) back and confirmed that he would have no dealings with FSA and would only work on Unisys projects. I told (b) (6) that he would need a 502 determination if in the future they would want him to work with FSA. (b) (6) said they were still in the hiring process. (b) (6) February 4, 2010

96. (b) (6) (Civil) had a follow up question to log entry #69 dated January 26, 2010 that involved a 502 determination for (b) (6). (b) (6) could not sign off on the memo because of his recusal obligation. In (b) (6) (b) (6) signed it. (b) (6) wanted to know if that was ok or if it should be bumped up to the (b) (6). Discussed with (b) (6) and left message with (b) (6) to call. When he called, he spoke with (b) (6) who advised him on the person within Civil who could sign. As it turned out (b) (6) was the appropriate person to sign off. The emails are in the log file. (b) (6) February 2, 2010

97. (b) (6) (b) (6), (b) (6) called with a post-employment question. He was the (b) (6) (b) (6) until March 31, 2008. On April 1, 2008 he was sworn in as (b) (6). He wants to meet tomorrow on a criminal case with an AUSA in the Connecticut USO and an FBI agent. The case was opened in the USO on April 1, 2008. That was the first contact with the USO on the case. It was a meeting and (b) (6) believes occurred even before anything would have been entered in a case tracking system. (b) (6) was confident that the case was not in the office prior to April 1, 2008. Based on those facts, he wanted to know if the matter was under his official responsibility. Discussed with (b) (6) and called (b) (6) back. Since it is a criminal case, we advised that the matter was not under his official responsibility. If it had been a civil case, then further inquiry would have been necessary to determine that it was not jointly litigated with a component under (b) (6) authority and that it did not come to (b) (6) for an approval such as the approval of a settlement. (b) (6) February 3, 2010

98. (b) (6) (OVW) awards. (b) (6) called regarding Comcast's desire to give (b) (6) (b) (6) as part of their "Unsung Heroes" award for work against domestic violence. We advised against it because of the investigation into the Comcast purchase of NBC. (b) (6) said they may still wish to invite (b) (6) and we told her to contact us with more details if/when that happened. (b) (6) February 3, 2010.

99. (b) (6) (OSG) had a 502 question relating to a case involving admission policy at the University of Texas. Her brother-in-law is a tenured professor of English there. (b) (6) confirmed that her brother never had and does not expect to have anything to do with admissions policy there. Based on that information I advised that it was not necessary to obtain a 502 authorization and she could work on the assignment. The emails are in the file. (b) (6) February 4, 2010

100. (b) (6) (Civil) called with a follow up question to log entry # 48 dated January 15, 2010 involving (b) (6) representation of his wife in an administrative proceeding. We had indicated that our position on the section 205 waiver was that it was legally permissible. When the memo got to (b) (6) he wanted the memo to say that DEO concurred. Discussed with (b) (6). Reviewed the revised memo and it did limit (b) (6) participation to the administrative proceeding. Told (b) (6) he could use the "concur" language. The emails and draft memo are in the log file. (b) (6) February 4, 2010

101. (b) (6) (ODAG) requested authorization under 502 to participate in (b) (6) (b) (6), a national security FOIA case. His former firm, (b) (6) at one time had represented a party in the case but had withdrawn. There was no issue under the Ethics Pledge because (b) (6) no longer represented a party. (b) (6) approved on February 4, 2010. The approval email and the background emails are in the log file. (b) (6) February 4, 2010

102. (b) (6) (JMD, (b) (6) called with a question as to where the Foreign Agent Registration Office was located. He subsequently found the information he needed. (b) (6) February 4, 2010

103. (b) (6) (b) (6), Recusal question. (b) (6) (b) (6) is a trustee of a testamentary trust created under her father's will, the beneficiary of which is her mother. The trust owns approximately (b) (6) of BP stock. (b) (6) is a beneficiary of her mother's will, along with her 4 brothers and sisters. Her contingent future interest in the BP stock, assuming it is held until her mother's death, is 1/5 of its value at that time. A criminal case involving employees of BP who used the company allegedly to commit crimes is in their office on the recommendation of the Criminal Division to appeal. In an abundance of caution, he contacted us to be sure these facts do not create a disqualifying conflict that precludes him from participation in work on this case. BP is not a party to the criminal action, although it is reportedly paying for the defense. He has no knowledge whether BP would have any financial interest in the outcome of the criminal case. I advised that given the amount of stock and her contingent interest, there is no financial interest that requires a waiver for this case. (b) (6) February 4, 2010

104. (b) (6) EOUSA, conflicts. (b) (6) emailed with a question regarding a possible conflict with an attorney, (b) (6), AUSA D.MD, working on a case with a party represented by her husband's firm. No determination had been made regarding 502/208 conflicts. We advised that a determination should be made and the husband should be shielded from any profits from the case. Notes in file. (b) (6) February 4, 2010.

105. (b) (6) Civil, speaker release. (b) (6) called regarding the ABA speaker release form and whether a DOJ employee should sign it. I explained to her our concerns with the ABA speaker release form - that it allows the unlimited use of the presentation, title and personal image of the individual by the ABA including promotion of things unrelated to the original event. I sent her the letter we have been using in lieu of the ABA release. Notes in file (b) (6) February 4, 2010.

106. (b) (6) (CRT) called with an outside employment question. An IT employee asked about doing outside work for an IT company. He works with contractors but has no procurement duties, does not select contractors but does make recommendations on IT products. He asked if he could work for a company and do work at other federal agencies. He doesn't have any specific job in mind at this time. I said he would need written approval because the work would relate to his duties as an IT employee. He would need to be careful about 205 restrictions on what he could do for a company that worked with other federal agencies. But he might be able to do something like work at a help desk. He also needed to be aware of 208. And if his duties would change so that he would have to recuse he may have to stop the outside employment. (b) (6) said she would pass that on and advise him to get back to her when his plans became more specific and discuss before he accepts an outside job. (b) (6) February 5, 2010

107. (b) (6) (CRT) called with a 208/502 question. There is a decision out of the Tax Court that allows the cost of a sex change operation to be deducted. The Tax Division could weigh in on this in terms of seeking authorization from the OSG to appeal. In such cases, other Divisions sometimes make recommendations as well. This is still at a very preliminary point and it is not clear that it would reach that stage. But a CRT employee has asked if she could participate on behalf of CRT if it reached that posture. (b) (6)

(b) (6)(b) (5)

I suggested to (b) (6) that if it reached that point they should discuss with OSG to obtain their view on such “factual” input. (b) (6) emphasized that this is all very preliminary and that the case may never reach that point. In the meantime, the employee is not participating in an official capacity in the matter. (b) (6) February 5, 2010

108. (b) (6) (CRT) called with a fundraising question. (b) (6) will be giving an official speech at a fundraising dinner of the Asia Pacific Bar Association later this month. (b) (6) wanted to know if the fundraising rules would prohibit him from sitting on the dais. Discussed with (b) (6). Told (b) (6) that he could sit on the dais or at a head table since he was a speaker but that he had to observe all of the other strictures on fundraising. Also he had to avoid any sort of special, individual, specific or unique recognition or acknowledgment of the work of the organization. Any acknowledgment of the organization’s work should be put in general terms and as part of a class of similar organizations. (b) (6) did not know if they were paying travel expenses. I said that would have to be analyzed and approved under section 1353. The emails are in the log file. (b) (6) February 12, 2010

109. (b) (6) (Civil) sent an email with a financial disclosure question. An attorney is in the process of separating from her husband. He wanted to know how she should handle her OGE Form 450 since the spouse is unlikely to cooperate. I discussed with (b) (6) and he indicated that she has separated and intends to divorce. I referred him to 2634.907(h)(5) and sent him a follow up email with the citations. If she meets the criteria of the regulation then she will not have to provide information about the spouse. Also mentioned to (b) (6) that she still is recused from financial interests of her husband that she knows of until the divorce is final. The emails are in the file. (b) (6) February 12, 2010

(b) (6), ODAG, conflicts. (b) (6) called with a question to determine whether a matter she was working on was on of general applicability or if she may have a conflict. She is working on an intellectual property matter, started by the White House, who asked private IT companies to submit ideas to improve IT law enforcement. The companies submitted their ideas to the White House. The WH then forward those ideas to the DOJ and other various agencies for their input into the law enforcement side of things. One of the companies who signed onto one idea is RIAA, her former employer. She wanted to know if she

may comment on the ideas and forward back to the White House. Since it was not a specific matter and it required no communication between her and her former employer, as well as RIAA being one of many who signed onto the letter, I told her that there seemed to be no conflict to commenting. If things were to progress beyond that, I told her to call us back. (b) (6) February 12, 2010.

111. (b) (6) OPA, WAG. (b) (6) emailed us regarding an invitation she received from the Brunswick Group, a communication consulting firm, to attend the Wahington Press Foundation gala. The event would be at the Mandarin Oriental Hotel with a reception and dinner. The cost of the ticket was \$350 and the Brunswick Group was not a sponsor of the event. We advised (b) (6) she could not attend because the cost of the ticket was over the \$335 gift limit for WAGs. Notes in file. (b) (6) February 12, 2010.

112. (b) (6) (ENRD, (b) (6) called with a financial disclosure question. She wanted to know if there were any blanket extensions for OGE Form 450 filers in light of the recent severe snowstorms. I told her there were none. Subsequently, discussed with (b) (6) and (b) (6) Called (b) (6) back and left voice mail message saying that we did not recommend simply issuing a blanket exemption for 450 filers in the Division unless they are being bombarded with numerous extension requests. (b) (6) February 12, 2010

113. (b) (6) (OSG) called to request an extension until February 19, 2010 to file her OGE Form 450 because of the snowstorm. Discussed with (b) (6) Sent email recommendation to (b) (6) and she approved the extension. Notified (b) (6). The emails are in the file. (b) (6) February 12, 2010

114. (b) (6) (NSD) called to follow up on an email asking whether a career senior attorney who is giving an official speech at the Washington Institute, a 501(c)(3) organization could accept the lunch served in connection with the speech. I said there was no problem in accepting the lunch. She advised him on use of nonpublic information and not allowing the use of his title or position to promote the program. An email is in the file. This is item 1 in the email. (b) (6) February 12, 2010

115. (b) (6) (NSD) also called to follow up on another item in her email dealing with an employee of the Office of Victims of Overseas Terrorism who had been invited by the University of Georgia to be a "guest of honor and keynote speaker" at a banquet for graduate students hosted by the Department of Public Administration and Policy. The University offered a \$500 honorarium. (b) (6) in the email asked about the honorarium and about acceptance of travel expenses. Subsequently, when she called it turned out that the employee would be going in an official capacity and giving an official speech. In that case, section 209 would clearly bar the acceptance of the honorarium. The Department could accept reimbursement of the travel expenses under 1353 provided that the conflict analysis permitted it and the procedures were followed. An email is in the file. This is item 3 in the email. (b) (6) February 12, 2010

116. (b) (6) OAG, (b) (6) photo usage in brochure for NCAJ event. (b) (6) sent me wording that will be used in a brochure for a convention where (b) (6) will be giving a presentation and asked if they could use (b) (6) photo. There will be no selling of tickets or fundraising, just a luncheon for those who are registered for the convention. I advised that the use of (b) (6) photo in the brochure was fine. (b) (6) February 16, 2010

117. (b) (6) former DOJ employee, post-employment question. (b) (6) inquired about his potential involvement in a False Claims Act case pending in the (b) (6) (b) (6) is a client of (b) (6). (b) (6) is more than two years past his departure from the Department, and so the only pertinent question is whether he was personally and substantially involved in the case while at the Department. He has no recollection of being involved, and no reason to think he was, but he wanted to check just to make sure and advised that (b) (6) would know. I advised after speaking with (b) (6) that the case was delegated to the U.S. Attorney and he had no involvement in it. He has no post-employment restrictions with respect to the case. (b) (6) February 16, 2010

118. (b) (6) FBI, outside activities. An AUSA has been on a long term detail to the FBI working as special counsel to the Director. He reports to FBI staff. He has been an active participant in outside activities and had received guidance from EOUSA regarding his involvement, prior to going on detail. He is now requesting that he be able to serve on the Maryland Trial Court Judicial Nomination Committee. It would be an appointment by the governor. (b) (6) wasn't sure which office should handle the request and asked if we saw any issues with it. We advised that his office should consider if there are any conflicts with his work and send their opinion to EOUSA to make the ultimate decision. Our office did not see any ethical reason to prevent him from doing this in his personal capacity. (b) (6) February 16, 2010.

119. (b) (6) ODAG (GTMO Task Force), speaking invitation. Ethics Advisor (b) (6) (b) (6), referred this question to me. (b) (6) has been invited to speak at a panel at Harvard Law School on Guantanamo issues next Monday, 2/22. They're compensating him for travel expenses. After I advised that I did not think he had much personal capacity on this topic due to his service on the task force, (b) (6) contacted again and advised that (b) (6) does not want (b) (6) to participate in the panel. (b) (6) February 17, 2010

120. (b) (6) future DOJ appointee, Encyclopedia Britannica entry. (b) (6) (b) (6) emailed both (b) (6) in OASG and myself with the following: "I wrote to you both during Snowpocalypse (or do we prefer Snowmageddon?) regarding this invitation and my desire to accept it notwithstanding my forthcoming appointment in DOJ. I now need to let the Britannica people know when I can give them a definite answer. (b) (5)

(b) (6)

(b) (5)

I advised that the ethics rules provide generally that outside activities may not conflict with our official positions, and specifically address compensation, use of title and disclaimers. In addition, he should consider his obligations under the rules of professional responsibility, assuming that he will be a Department official when the article is published, should he advocate positions that are contrary to those of his client. Is it accurate to say that the scope of the article is broad and intended to provide a comprehensive overview rather than an article that would advocate positions on unsettled areas? If this is not correct I asked that he please advise, in order to allow (b) (6) to advise on any concerns on behalf of OASG. There are specific limits on speaking and writing for compensation for all executive branch officials, and there are additional restrictions that apply to noncareer SES officials. However, since he has advised that he will decline the honorarium, we do not need to analyze receipt of payment for this article. I also advised that the standards are specific as to the use of title and disclaimers. In this case, he may not be identified as a DOJ official except as part of a biography that includes other relevant information and which does not give greater prominence to his DOJ affiliation. A disclaimer that states that the views are his personal views is also appropriate. We are happy to review disclaimer language and any reference to the Department that is proposed to be included or accompany the article. Finally, he will need to ensure that the publisher does not use his DOJ affiliation in any way to advertise or promote the article or the product. I looked briefly at the EB website and it does not appear that they promote individual authors, but it was only a quick look and only the free version. (b) (6) February 16, 2010

121. (b) (6) CRT, outside activities/205. An EEO specialist in Housing has worked with the Housing Institute in her official duties. The Housing Institute is applying for a HUD grant relating to the work they have done with the specialist and would like to list her on the application to HUD. I advised this would be a 205 violation of representing an outside entity to the gov't, (b) (6) agreed. (b) (6) February 17, 2010.

122. (b) (6) EEO. (b) (6) emailed regarding a financial advice seminar that she was trying to put together for DOJ staff. An outside speaker would be brought in to discuss investments and investment strategy as part of the federal directive to provide financial education to federal employees. We advised that we saw no issue with the event so long as when introducing the speaker, there needs to be an affirmative statement made making it clear that the government is not endorsing this entity. Below is a suggestion. " We are very happy to have this financial group here with us today, but it must be noted that the federal government does not endorse this or any other private financial group. We hope that you enjoy the information provided to you here today and encourage you to research this and other services available to you to best fit your financial needs." (b) (6) February 17, 2010.

123. (b) (6) OCIO/OSS lunch with contractors. She's a COTR for the Lockheed Martin contract associated with the A76 undertaking. A LM employee, a Program

Manager, is leaving and there is a lunch planned at a local restaurant during the regular lunch hour. Can she attend? She plans to pay own way and not accept a gift of lunch from LM. Yes, she can. Mentioned to (b) (6) to be mindful of lunching with LM employees frequently as it could be an appearance problem for her as the COTR, even if she is paying her own way. But, since this is commemorative of a one-time special occasion, she could attend the group lunch. If it lasts longer than the regular lunch hour it would be between her and her supervisor how to charge leave. No contractor employees can bill for the time spent at the lunch - as the COTR she should watch out for that. I did not discuss with (b) (6) the de minimis allowance for accepting gifts under \$20 because she is the COTR, and should not accept any gifts from LM. She intends to pay her own way which is best, and was just calling to see if she was flatly prohibited from attending, which she is not. (b) (6) February 18, 2010

124. (b) (6) OCIO/HCMA, T-shirts for their annual picnic. Can he collect employee's personal funds to purchase T-shirts for OCIO's annual picnic in Rockville? No appropriated funds would be used - but if shirts could be purchased collectively, the employees would benefit from bulk pricing and save on shipping costs, rather than employees' buying theirs individually. I recall we answered yes to this for OCIO previously - checked with (b) (6) who confirmed. Yes, (b) (6) can do this. Since he mentioned a website they would use to upload an image for the T-shirt design, reminded him not to use the DOJ seal or any other regulated image and not to excessively email about it - an email or two would be okay so people would know who to contact should they wish to participate, but excessive emailing would be misuse of resources for nongovernment purpose, and possibly coercive, though I'm not sure (b) (6) is a supervisor. (b) (6) February 18, 2010

125. (b) (6) ENRD, conflicts. (b) (6) emailed regarding a potential conflict for (b) (6) who previously worked with the Natural Resources Defense Council. He worked on the topic of carbon capture and has now seeking to attend a meeting to look at federal involvement in the same matter. We determined that he did not work on a particular matter with parties and he could attend this meeting. Notes in the file. (b) (6) February 19, 2010.

126. (b) (6) (b) (6), Post-employment advice. I emailed the following to (b) (6) as a follow up to our phone discussion: "I've reviewed the post-employment statute and am confirming our conclusion that you are not prohibited from accepting payment from the government of the UAE, for your travel expenses to participate as a panelist in a conference on cybercrime to be held in the UAE. The provision in the statute, 18 USC 207(f), prohibits you from representing, aiding or advising a "foreign entity" with the intent to influence certain U.S. government officials. Foreign entities include a government of a foreign country and foreign political parties. Your participation as a panelist, where you are not providing legal services to or appearing on behalf of a foreign entity, and your acceptance of travel expenses to participate in that capacity, does not violate the statute". (b) (6) February 18, 2010

127. (b) (6), FASS, post employment conflict. (b) (6) called regarding a former

employer who was an intern in the Facilities/Environment section. She is now working for a private firm and FASS is preparing the SOW for a contract. The former employee did not work on the SOW or have anything to do with the contract while she was there but she worked on a similar system for the Department. Would there be any conflict in selecting the company she works for now? Advised that if she had no inside knowledge of the SOW and would not be involved in the procurement process there would be no conflict. They may want to note that she works at the company in the file and that she was not involved in the process in case there is a protest. (b) (6) February 18, 2010.

128. (b) (6) EOUSA, WAG. (b) (6) emailed regarding an event that (b) (6)(b) (6) from (b) (6) was invited to attend. It was a celebration of Vietnamese New Year including a mass, with expected attendance of 2000 and then a dinner at the parish house for 30 people - mostly elected officials and Vietnamese dignitaries. The USA was invited by (b) (6). We advised that while it was EOUSA's determination, we would not disagree with a WAG determination because if the Congressman was paying with this from his government funds it was not a gift or if the Congressman was paying for it personally, the WAG exception would apply. Emails in file. (b) (6) February 18, 2010.

129. (b) (6) (b) (6), HCMA/OCIO. He is reviewing a NE 450. The employee had commented that he thought he may have or had conflicting interests as far as stock in a contractor company, but his 450 contains no reportable interests. Is it appropriate for (b) (6) to follow up with the employee? Yes - gave (b) (6) some guidance on how to discuss it with the employee in a nonaccusatory way which he was worried about. Thanked (b) (6) for being thorough and conscientious in his review. (b) (6) February 23, 2010

130. A person who identified himself as (b) (6) called to ask where he could file a complaint against some Members of the U.S. House of Representatives from the State of Hawaii. I referred him to the House Committee on Standards of Conduct. (b) (6) February 17, 2010

131. (b) (6) (OAG) called with a recusal question. He wanted to know if he could work on an investigation of a pharmaceutical company. The company had been represented by his former firm, Covington, but the firm is no longer representing the company and the company was never (b) (6) personal client. I told (b) (6) this did not implicate the Ethics Pledge but that he should get a 502 determination in order to work on the matter. I said I would need some additional information to draft a recommendation. (b) (6) said that he needed to resolve another question first and that he would get back to me if he wanted us to proceed with a recommendation to (b) (6). An email is in the file. (b) (6) February 17, 2010

132. (b) (6) (b) (6) will be leaving the Department to start his own firm with a friend (b) (6). February 18 is his last day. He wanted to know what kind of farewell email message he could send out on his last day. Discussed with (b) (6). Called (b) (6) and advised that he could use his DOJ email to send a farewell message


indicating that (1) he was leaving the Department (2) would be starting his own firm in private practice and (3) that people could reach him at his personal Gmail account. He should not include the name of his firm or a firm email or phone number. And he should not solicit business for his new firm. He could send the email to his DOJ friends and colleagues that he has worked with and to people that he has dealt with in his work with the Commission. But he should not simply send it out to everyone on his contact list or that he has ever come into contact with as that would be turning the email into a marketing opportunity. Once he had left DOJ he could send an email out to such a larger group. After he has left he needs to consider the post-employment restrictions, especially 207(c) with respect to any communications about or on behalf of his firm. He could send out announcements such as the kind that firms send out when a new partner joins the firm but he should not solicit business from DOJ officials. He said he did not plan to send any such announcements back to DOJ after he left. I had also sent him a summary of the rules relating to job searches and post-employment activity. The emails are in the file. (b) (6) February 17, 2010

133. (b) (6) NSD, travel question. NSD attorney traveling on approved official travel, believed the Department was paying for everything. Upon arriving in Saudi Arabia he was told that the Ministry of the Intelligence would be paying for his room and food. (b) (6) wanted to know what needed to be done. I told him to advise that the employee could not accept cash and we would do a retroactive 1353 approval when the attorney returned. (b) (6) February 19, 2010.

134. (b) (6) OAG, Travel question. (b) (6) asked that if he is to travel for business and gets bumped from a flight and the airline gives him a credit, what happens with that credit? I advised that it belongs to the gov't, so he may use it for future official travel. (b) (6) February 21, 2010

135. (b) (6) OSG, Fundraising question. Harvard Law School has an annual auction to raise money for public interest stipends for its students. In the past, they've auctioned off a dinner or something similar with (b) (6) and it's gone for over \$1,000. They've asked her to do the same thing this year. I advised that she would not be able to do that while here. (b) (6) February 22, 2010

136. (b) (6) ENRD, WAG. (b) (6) emailed the following (cc-ed me) to (b) (6) (b) (6) in which I concurred and ASG (b) (6) approved: (b) (5)



House websites provided by the DEO. We, therefore, analyze the offer under the general gift rules in the standards of conduct. The standards of conduct generally prohibit a government official from accepting a gift, including an invitation, from a prohibited source or that is based on official position. 5 C.F.R. 2635.202(a). One exception provided under the regulations, however, is for attendance at a WAG, which is a gathering attended by a large number of persons where persons with a diversity of views or interests will be present, such as persons from throughout an industry or profession, or those attending representing a range of persons interested in a given matter, and where the agency determines that it is in the agency's interest for the official to attend. The LULAC website indicates that this event is an annual awards gala. The gala is comprised of a cocktail reception, the awards ceremony and dinner. LULAC's website describes the event as "one of the premiere events for the Hispanic community in Washington" and lists its purpose as "highlight[ing] critical legislative issues affecting Hispanic Americans and recognize[ing] key leaders who have served the Latino community well." The individual ticket price is \$250 and the number of expected attendees is well over 100 people, including community leaders and activists, elected and appointed officials, and leaders from nonprofit organizations and large corporations. The event has a variety of corporate sponsors underwriting it. We believe it is in the Department's interest for (b) (6) to attend this event and interact with the other attendees, likely including Members of Congress and their staff who may work on issues related to ENRD, in the informal setting of the dinner. Please do not hesitate to contact me if you have any questions. (b) (6) is also familiar with this matter." ASG (b) (6) approved. (b) (6) February 21, 2010

137. (b) (6) CIV, Political participation question. DAAG (b) (6) would like to endorse someone in a non-partisan judicial race for superior court in California. She is not pressing to be able to do this, just wants to know if she can. (b) (6) answered a similar question for her in August about whether she could endorse a DA candidate and said she could in her personal capacity with no use of her title or official position. At that time (b) (6) cautioned that she could not fundraise from subordinates or people doing business with the department. (b) (6) also first confirmed that race did not address hot button issues for DOJ. She would like to know if the same advice would be good in this situation. I advised that I think the advice is the same. Also, I think she should have a very strong reason to want to endorse the individual (which I think was the case previously). (b) (6) February 22, 2010

138. (b) (6) former DOJ official. (b) (6) starts on March 1st as an equity partner at Vinson and Elkins. In terms of her compensation, she is making a set amount of money for the first two years. Because this amount is set, and not tied to the firm's profits, her understanding is that there are not any conflict issues if the firm made money in a case where the United States was on the other side. In other words, by having a set payment from the firm each year, her pay is more akin to a salary--as she understands the rules. I advised that she was correct, as long as there is no bonus that might include the same problematic fees. She stated that she is being paid a signing bonus--but it is not tied to profits or firm performance. I advised that was ok. (b) (6) February 23, 2010

139. (b) (6) & (b) (6) ODAG, Foreign gift question. I emailed the following to ASG (b) (6) for approval: “ (b) (6) (b) (5)

(b) (5)

(b) (6) approved. (b) (6) February 23, 2010

140. (b) (6) (JMD, OCIO, (b) (6)) called to ask about extensions to file 450's in light of the recent snow storms. Sent him an email describing procedures for granting extensions. The email is in the file. (b) (6) February 16, 2010

141. (b) (6) (b) (6) (b) (6) (b) (6) (b) (6) were responded to in a series of emails arising out of the Hate Crimes Protection Act reception on February 25, 2010 sponsored by ADL, the Leadership Conference, the Human Rights Campaign and AAUW. The emails advised on the application of the Ethics Pledge in various scenarios. This entry also contains responses to follow up questions by (b) (6) and (b) (6) (b) (6) The emails are in the file. (b) (6) February 18, 2010

142. (b) (6) (JMD, SEPS) called for his exit ethics briefing. He is a GS-11 information security employee in JMD. He is going to work in a JAG office of the Air Force as an attorney. He is a member of a bar and will be a Captain in the Air Force JAG. I told him that the criminal post employment statutes apply only after someone leaves the executive branch entirely. We discussed protection of information. He said he did not have access to proprietary information. He was going to get a debriefing on classified information. I told him he should keep in mind bar rules. He is going to do trial work for the Air Force. (b) (6) February 18, 2010

143. (b) (6) (b) (6) (b) (6) NSD, detail to GITMO Task Force) was asked to substitute at the last minute for (b) (6) on a panel on detainee issues at Harvard Law School on February 22, 2010. He called to discuss ethics issues. Harvard offered to pay expenses but (b) (6) was not

aware of any authorization having been made to accept under section 1353. (b) (6) provided the necessary information and we recommended to (b) (6) that the 1353 request be approved which it was on February 19, 2010. I sent (b) (6) an email on February 22, 2010 reminding him to provide our office with his travel expenses for the purpose of 1353 reporting. The emails are in the file. (b) (6) February 19, 2010

144. (b) (6) (b) (6) asked us to do a conflicts check regarding a case being prosecuted in the U.S. Attorney's Office (b) (6). (b) (6) asked whether the case was pending under his official responsibility during the time that he was the (b) (6) (b) (6) from May 2008 until January 20, 2009. He was hoping to get an answer before a scheduled meeting with the client on February 22, 2010 (b) (6) was charged criminally under the False Claims Act in connection with a food service contract for the Army. The indictment was announced on (b) (6). (b) (6) checked with attorneys in OIA and the Fraud Section and confirmed that the case was in the Division during the time that (b) (6) was (b) (6). I called (b) (6) and told him he was subject to 207(a)(2) with respect to this case. The emails are in the file. (b) (6) February 19, 2010

145. (b) (6) (b) (6) asked us to do a conflicts check regarding a case being prosecuted in the U.S. Attorneys Office in (b) (6). The case is against (b) (6). (b) (6) asked us to check to see if this case was pending in the Criminal Division when he was (b) (6). (b) (6) checked with attorneys in the Fraud Section and checked ACTS the Division-wide database and confirmed that this matter was never pending in the Criminal Division. Advised (b) (6) of this fact and that he was not subject to 207(a)(2) with respect to this case. The emails are in the file. (b) (6) February 23, 2010

146. (b) (6) (OASG) called with a gifts question. Her close personal friend whom she considers a "little brother" has invited her to stay with him and his wife at their home in France in August. Advised (b) (6) that the facts did meet the criteria for the gift based on a personal relationship and she could accept the invitation. In this case it was not clear that the gift prohibition even applied because there were no facts to indicate that the source was a registered lobbyist or a prohibited source or that the gift was given because of official position. The email is in the file. (b) (6) February 24, 2010

147. (b) (6) (OASG) called with a 502 question. A person that he knows is participating in the (b) (6) case. The facts did not indicate that he had a covered relationship with this person or that the catch-all provision would apply. I sent (b) (6) an email confirming that he could participate in the case and that a authorization was not required. The email is in the file. (b) (6) February 24, 2010

148. (b) (6) (ENRD) called to ask if the rule against soliciting a gift would bar an ENRD employee from asking the sponsor for an extra ticket in order to accompany the AAG to a dinner reception that she has been approved to attend under WAG. Told (b) (6) that it did bar such a

direct solicitation and would bar other less direct approaches as well. Said it was a bright line rule. No solicitation. An email is in the file. (b) (6) February 24, 2010

149. (b) (6) (NSD, 4-1454) called with an outside speaking question. A GS-15 career attorney in the Counterterrorism Section has been invited by the Inns of Court affiliated with Lehigh University in Allentown, Pennsylvania to give a speech in May on the subject of her recent experience when she was assigned to the GITMO Task Force. The only benefit would be the meal associated with the event. There would be no speaking fee or honorarium. (She still owns a house in Allentown). (b) (6) indicated she would advise her of requirements under 807 such as reference to her official title etc., and about the rules on use of nonpublic information. I told (b) (6) that I had discussed this with (b) (6) and the bigger question here is whether she can speak on this topic in her personal capacity. I told (b) (6) that in our view she did not have any personal capacity on this topic and therefore the only way she could speak on this topic would be if she was assigned to speak to this group in her official capacity. (b) (6) said that her supervisor on the Task Force had no objection to her doing this in her personal capacity. I said in our view she would need authorization from the Division to do this officially. (b) (6) said she would discuss this further within NSD. An email with (b) (6) Lani's question (item 2 in the email) is in the log file. (b) (6) February 25, 2010

150. (b) (6) sent a letter dated December 23, 2010 requesting further guidance on the application of the post-employment laws. We had previously responded to him by letter dated April 29, 2010. His specific question concerned the application of 18 U.S.C. § 207(d). Another attorney at O'Melveny & Myers, (b) (6) (b) (6) called on February 2, 2010 to ask about the status of the request. We sent a draft letter to (b) (6) on January 25, 2010 which he reviewed and commented on. We sent a revised draft letter to (b) (6) on February 4, 2010 which he also reviewed and commented on. The key issue concerned the question of attribution which we advised is a factual determination that requires a consideration of all the relevant facts as well as the circumstances surrounding the communication. The emails are in the log file. The letter is in the section 207 file. (b) (6) February 24, 2010

151. (b) (6) (Civil Rights) called with a question relating to training on the recent hate crimes legislation for federal, state and local officials around the country. The training is free and will be staffed by Civil Rights employees. The press will be invited to attend this training at least in part. They will be all day sessions. They would like to invite Congressman John Lewis of Georgia to speak at the training offered in that district and invite James Clyborn of South Carolina to speak at training in that district. These persons were identified as possible speakers because of their longtime commitment to civil rights. They would speak about that historical perspective and may put the legislation in that context. The Division would like to know whether this raises any ethics issues. I discussed with (b) (6) Told (b) (6) this would probably not raise any concerns in a non-election year. Since it is an election year we would advise against scheduling such training within 30 days of a primary or general election and that additional factual circumstances would need to be considered beyond simply a 30 day separation. In a highly contested election, even an event more than 30 days from an election might raise

concerns. They should consider all of the circumstances and avoid scheduling that would raise questions as to whether the training event was being used as a venue for a partisan political purpose. (b) (6) agreed with this and said he would so advise. I said he should also have the planners contact the Office of Legislative Affairs with regard to any Department protocol for inviting Members of Congress. (b) (6) said they may already have done so but he would pass that on to the planners. An email is in the log file. (b) (6) February 26, 2010

152. (b) (6) (Civil Rights) had asked earlier in the month about whether a 502 determination was necessary and appropriate. (b) (6) was the Director of the Washington office of the Center for Responsible Lending. CRL is a non-profit organization that assists in fair lending investigations. While at CRL (b) (6) assisted the Attorney General of Illinois in investigations of Wells Fargo and Countrywide. He has been hired to work on fair lending cases. (b) (6) confirmed that he is a career employee and is not subject to the Ethics Pledge. (b) (6) wanted to know if he could work on investigations of these two lenders at the Department. (b) (6) did advise Halprin to consult with PRAO as to any professional responsibility issues. (b) (6) recommended to the AAG that he determine under 502 that (b) (6) could participate in the investigations of these lenders cases and the AAG approved. An email is in the log file. (b) (6) February 26, 2010

153. (b) (6) (Civil Rights) had an awards question. (b) (6) was given an award by a national Asian Pacific bar association. He is a career line attorney. The only benefit is a \$125 dinner for himself. His wife will also attend so the total value is \$250. There is nothing else of value connected with this recognition. (b) (6) recommended approval and the AAG approved acceptance of the dinners. (b) (6) February 26, 2010

154. (b) (6) OSG, Recommendation letter question. (b) (6) is sending a recommendation letter for a Supreme Court clerkship on behalf of a former student. They were wondering whether she should use SG office stationery or Harvard stationery. I advised that the rules allow (b) (6) to use SG letterhead because she is making a recommendation for a federal position (a clerkship to a federal courts falls into this category), and with the understanding of course that the letter itself will reflect her individual personal recommendation based on her knowledge of the former student gained through her service at Harvard (or however gained). Since the SG appears before the Court, a more conservative approach may be that it would be better not to use SG letterhead, and instead to use personal stationery. I think this is the safest course of action, but I wanted to be clear that the regulation allows her to use SG letterhead. Either SG or personal stationery would be preferable to Harvard stationery. She is the SG, and this is well known, and she is not currently active on the faculty of Harvard. (b) (6) February 27, 2010

155. (b) (6) ATR, Contacting the First Lady. I advised (b) (6) and (b) (6) that I had checked on the question (b) (6) was asked, whether an employee who is active with a nonprofit may contact Michelle Obama on behalf of the organization or whether it could violate 205. In

the case in the 1990's over the group led by Hilary Clinton on health care, the court concluded that her participation was sufficiently like that of a federal official so that the Federal Advisory Committee statute did not apply to the group's activities (all other participants were federal employees and the statute does not apply to meetings/advice from federal employees). There doesn't seem to be any additional authority that deals with the issue, but given this decision and the fact that many of the First Lady's activities are being done with the assistance of or in conjunction with federal agencies, I think we should consider her to be a federal official. I think we have to advise the employee that someone else who is not a federal employee should make the contacts on behalf of the organization. (b) (6) February 28, 2010

156. (b) (6) (b) (6) ODAG) had called with a recusal question. (b) (6) is non-career and subject to the Ethics Pledge. He left his former firm WilmerHale on January 21, 2009. Wilmer is now representing Google in connection with the cyber attacks on Google that were widely reported in the press in January 2010. The Department is looking into this matter and (b) (6) wanted to know if he could participate in the investigation. Google was never his personal client. However, because Wilmer is representing Google it is necessary to determine whether Google would be considered a "party" to this matter within the meaning of the Pledge. If Google is considered a party, then a Pledge waiver would be necessary. (b) (6) said that in this case Google is a victim. Discussed with (b) (6) Called (b) (6) to discuss but the call was interrupted because he had to attend to another matter. We need to determine what the likelihood is that even if Google is not considered a party now it might later become a party. (b) (6) may not have this information. Sent (b) (6) an email asking for a person to contact to get more information. (b) (6) replied that upon further consideration and because of the potential conflict issue, they decided to have someone else work on this matter. The email exchange is in the log file. (b) (6) March 1, 2010

157. (b) (6) OASG, Meeting attendance question. ASG (b) (6) is speaking at NCAI's winter meeting this afternoon at 4:00. Although (b) (6) is (b) (6) principal staffer on the central issue for this panel presentation, (b) (6) would like to go with them, just to hear the Q&A session. He would be attending only the part of the meeting where (b) (6) is speaking. NCAI was a client of (b) (6) when he was at Jenner & Block. I advised that it's fine for him to go. I looked at the agenda and (b) (6) is just speaking - it's not a lunch, a reception or anything that we have to view as a "gift" (we don't view his presence at this one speech to be a gift of attendance at the meeting, for which there is a registration fee). So, the only consideration would be that he may not speak to NCAI officials about anything unless there are 5 distinct parties present for the discussion, and it can only be a subject of general applicability. (b) (6) March 1, 2010

158. (b) (6) OASG, Gifts question. I emailed the following to (b) (6) to clarify a previous discussion: This is to confirm our discussion concerning what rules would apply to gifts that you and ASG (b) (6) may be offered while you are on official travel to Puerto Rico this week engaged in activities for the task force that ASG (b) (6) co-chairs. You advised that the other task force members are all federal officials. The following is not an exhaustive discussion of all the gift rules, but I believe it covers the possible gifts you may be offered while in Puerto

Rico. The general gift rules are these: you may not accept a gift from a prohibited source (someone who has or seeks business or action by the Department, someone you can affect in the course of your duties, etc., and this can include a state or territorial government); a gift that is based on official position; and for political appointees there is the additional ban on accepting gifts from registered lobbyists or lobbying organizations. There are exceptions that allow an employee to accept a gift in some circumstances, notwithstanding the prohibitions. You advised that there is one major event, which the federal government is paying for, which you all will attend. Anything, including meals or refreshments, that is provided as part of what the Federal government paid for, is not a gift and you (and any federal attendees) may accept. Light refreshments, akin to coffee and donuts, or soft drinks and potato chips, are so minimal they are not considered a gift and may be accepted regardless of the source. Another possible exception that may apply would be for a gift valued at \$20 or less (the de minimis exception). However, this exception may not be used to accept a gift if it is offered by a registered lobbyist/lobbying organization unless the organization is also a 501(c)(3) charitable, educational, etc. organization (and as long as the individual extending the gift is not personally a registered lobbyist). Another exception, for widely attended gatherings (WAG), applies to large events at which a range of persons interested in a given subject will be in attendance; these require some analysis and approval, and may not be accepted from all sources. You indicated that there are no events along these lines that are scheduled during the trip. If that changes please just email me. My practical advice would be to make sure you know who the donor is for any gift accepted, so if it is necessary to return something that can be done.” (b) (6) March 1, 2010

159. (b) (6) (OASG) had a question about a request by the Institute for Korean American Studies (ICAS) to have about 20 young Korean Americans meet with her at the Department later this month. Discussed with (b) (6). Advised (b) (6) that meeting with them did not raise ethics concerns but she should vet any reporting on the meeting that they might do, such as reporting on their website, and she should not allow them to list her name and official position on their website in the section on contributors/discussants. The emails are in the log file. (b) (6) March 1, 2010

160. (b) (6) (Civil Rights) submitted a recommendation for approval of outside teaching by (b) (6) non-career DAAG. He has taught at AU and GW law schools. He needed approval from DAEO (b) (6) because he is non-career and has to meet the criteria of Part 2636. We sent a memo to (b) (6) recommending approval of this paid outside teaching. Lee approved. An email to (b) (6) is in the log file. (b) (6) March 1, 2010

161. (b) (6) (Civil Rights) had a question about serving on an advisory board. (b) (6) who is a non-career senior counselor to the AAG was invited to serve on an advisory board of MPAC-DC, a 501(c)(4) organization that seeks to influence government policy in the same area that (b) (6) has official responsibility for. Advised (b) (6) that (b) (6) could not do this in either his personal or official capacity. The emails are in the log file. (b) (6) March 1, 2010

162. (b) (6) (Civil Rights) had a WAG question. (b) (6) is non-career and subject to the Ethics Pledge. He has been invited to attend a reception on March 4, 2010 sponsored by the HRC Foundation which is a 501(c)(3) organization. (b) (6) did not know how distinct the Foundation was from its (c)(4) affiliated organization. He was also not sure whether the (c)(4) was also a sponsor. I said the WAG exception would be available provided that: (1) the Foundation is a (c)(3); (2) the Foundation is the only sponsor; (3) the affiliated (c)(4) is sufficiently distinct from the (c)(3) and is not a sponsor; and (4) the individual who extended the invitation is not a registered lobbyist. The emails are in the log file. (b) (6) March 2, 2010

163. (b) (6) (PRAO) called to find out what the reporting period was for a new entrant 450 filer. I gave her the citation to 5 C.F.R. 2634.908(b). (b) (6) March 2, 2010

164. (b) (6) (b) (6) called to ask about some writing projects that he is completing. (b) (6) will be a Schedule C, GS-9 speech writer in the AG's office starting March 8, 2010. (b) (6) had suggested he call our office to discuss the work he needs to do to complete these projects. He had done some work for Ned Lamont who is running for Governor in Connecticut. He finished the work for the candidate himself but is still working on a stump speech for Lamont's wife that she would use in the campaign. I advised that he could not do any work on this speech once he becomes a Department employee. He is further restricted and needs to become politically inactive once he gets here. He understood that and said that he will complete this project by this weekend. He will do no more work on this political speech project after he is here. The second project he is working on is some work for a former professor of his at Yale. This concerns a "journalism on line" project to "rebuild" journalism. He is being paid for his work on a project basis and has already been paid. He estimates that he only has a few more hours of work to do (about 3) to complete this and it is mostly going to be email communications to the professor. The project has nothing to do with political campaigns and has nothing to do with the Department. I told him he could finish this project up after he got here. But he should keep it completely separate from his work for the Department. He should not work on it on official time and he should not use DOJ email account or phone to communicate with the professor. (b) (6) said he would observe those requirements. (b) (6) March 2, 2010

165. (b) (6) PRAO, Prohibition on fundraising. PRAO is planning a Pro Bono fair and one of the providers has asked whether they can use their standard brochure as materials which they will hand out even though the brochure contains information about how to make a charitable donation to the organization. She would like to know if that runs against the no fundraising rule or if the fundraising would have to be more overt. I advised that if the gist of the brochure is not the solicitation it is fine. (b) (6) March 2, 2010

166. (b) (6) CIV, AAG speech. (b) (6) has been asked to deliver the keynote address at Harvard Law School's Black Law Students Association Spring Conference in Cambridge, MA on Saturday, March 6. BLSA intends to pay for Tony's flight and hotel. In addition, BLSA would like to include a photo of Tony in the event program. (b) (6) will advise the Chief of Staff

that they need to know if it is a fundraiser. Otherwise, (b) (6) is assuming that he is going in his official capacity and that he did not solicit the travel reimbursement. If that is the case, we can do the usual forms for the Department to accept reimbursement for his travel and then he'd need to do his usual travel authorization and the Department will pay him and then seek reimbursement from BLSA. Also, if it is an official speech and not a fundraiser (b) (6) did not see any ethics issues created by putting his photo in the brochure. I advised (b) (6) to find out if Tony (b) (6) daughter is in a leadership position with the student association and if she extended the invitation to him; I don't see this as changing the basic decision to recommend approval, but I think it is information that the ASG as the approving official should have. (b) (6) March 2, 2010

167. (b) (6) (Civil Rights) sent a question about a WAG on March 5. The HRC Foundation is sponsoring a dinner on Friday, March 5, that follows up on the reception they are holding on March 4. AAG (b) (6) is giving an official speech at the dinner. (b) (6) thought that 100 to 200 people would be in attendance. We discussed the importance of the AAG avoiding anything that would support fundraising. (b) (6) would like to attend the dinner as a person whose attendance at the event is deemed essential. (b) (6) said that (b) (6) had worked on the Hill. He did not know if (b) (6) worked on the hate crimes legislation but he said (b) (6) had expertise in the area of hate crimes and was a subject matter expert on issues relating to the LGBT community. I said that the approval to have (b) (6) attend should discuss his expertise and the role he would play at the event. The emails are in the file. (b) (6) March 2, 2010

168. (b) (6) (ATR, (b) (6)) called with a 1353 question. An employee is traveling to London to attend an event where he will be a speaker and the Department's travel costs to send him will be reimbursed. He had always planned to travel from March 4-10, 2010 but his travel authorization mistakenly listed March 5-10 and the 1353 authorization was based on this mistake. So it included one less day of expenses. (b) (6) wanted to know if the 1353 authorization should be amended to correct this mistake. The employee is in the process of correcting his travel authorization. I said he should send a correction to AAG (b) (6) that corrects the 1353 request and approval. So both the travel authorization and the 1353 reimbursement will be in sync. (b) (6) March 2, 2010

169. (b) (6) (ATR) called with a WAG question. An economist has been invited by Competition Policy International to attend a dinner at the Cosmos Club for about 30-35 people that will be made up of judges, academics, prosecutors and others. The topic of the evening will be "Market Definition". There will be dinner, some kickoff speakers and then a general discussion. CPI publishes an economic newsletter and follows antitrust developments. Told (b) (6) that although it was at the low end of the range in terms of numbers, it was diversified in terms of interests, the sponsor, while a prohibited source, was not involved in litigation with the Division and not likely to be, and the event would be beneficial to the Department. I asked (b) (6) to check on how the arrangements were made at the Cosmos Club and confirm that CPI was paying. He said he would discuss with (b) (6) when she returned next week. The event is several weeks away. (b) (6) March 2, 2010

170. (b) (6) OASG, WAG approval. CRT sent a request to ASG (b) (6) for approval of AAG (b) (6) to attend the National Council of La Raza's annual awards dinner. This is the same event that (b) (6) was approved to attend. Marissa asked that I weigh in. I advised that I would recommend approval. In (b) (6) (b) (6) absence (b) (6) PDAG, approved the request. Emails are in log file. (b) (6) March 3, 2010

171. (b) (6) ENRD, WAG. (b) (6) emailed the following to ASG (b) (6) for approval:
(b) (5)

(b) (5)

(b) (5)

(b) (5)

(b) (6) approved. (b) (6) March 3, 2010

172. A request was made by the Solicitor General's Office for a 502 determination that would allow (b) (6) to participate in the Rio Tinto case. She is on leave from Harvard and one of the Harvard clinics filed an amicus brief in the case. Our draft recommendation was sent to (b) (6) in OSG and was also reviewed by (b) (6). We recommended approval and (b) (6) approved on March 3, 2010. The emails are in the log file. (b) (6) March 3, 2010

173. (b) (6) OASG, Participation by political appointee at partisan event. (b) (6) wanted to confirm that I had reviewed the request for OJP official (b) (6) passive participation at a political event in Helena, Montana, on March 13, 2010, and that it is allowable under DOJ's Ethics Policy and under the Hatch Act rules, and that acceptance of a plane ride from Glacier PAC should not violate the ethics pledge, since Glacier PAC is not a specific registered lobbyist on the Senate or House side. I advised that I did review this with OJP and concur that her participation as described and her acceptance of the airfare from the Glacier PAC is within the Department's policy allowing passive participation at a partisan event, the statute and the Pledge restrictions, and I would recommend that the ASG approve. (b) (6) March 3, 2010

174. (b) (6) ODAG, Recusal question (b) (6). (b) (6) emailed to follow-up and confirm her understanding of the recusal rules we discussed this morning. "Pursuant to DOJ ethics rules/ethics pledge, anytime (b) (6) prior firm, King & Spalding LLP ("K&S"), represents an individual or entity (whether the entity was represented by (b) (6) or K&S prior to his joining the Department), we should review the matter for potential conflicts. The rules provide that for a period of 2 years from the start of his time at the Department: If the individual or entity represented by K&S is a witness or victim in a matter, then the DOJ will internally review the matter to assess whether there is a conflict that should result in his recusal. If the individual or entity represented by K&S is the subject or target of an investigation or case, then the individual or entity is considered a "party." In those situations, (b) (6) can either recuse himself or the matter can be referred to the WH for review of the potential conflict and the granting of a waiver (if a waiver is deemed appropriate). In our discussion this morning, we discussed (b) (6). (b) (5) (b) (6) was represented by K&S at a recent Congressional hearing. It is possible (and foreseeable) that the topics about which (b) (6) representatives testified could overlap (b) (5). For these reasons, (b) (6) is considered a party (b) (5) and K&S's representation represents a potential conflict for (b) (6). In light of the forgoing, (b) (6) plans to recuse himself from the matter". I advised that she was correct. (b) (6) March 3, 2010

175. (b) (6) (Civil) sent an email to follow up on an earlier request for a review of a draft 502 determination that would allow (b) (6) to continue to Chair a DAG Working Group on Immigration Policy. His wife is the Executive Director of KIND a group that advocates for unaccompanied alien children. We had earlier advise (b) (6) that the approval should come from ODAG as this was an ODAG working group. The draft (b) (6) sent requested approval from (b) (6). We sent (b) (6) an email reaffirming our earlier advice that the approval should come from ODAG. The emails and the latest draft of the memo are in the log file. (b) (6) March

3, 2010

176. (b) (6) (EOIR) called with a question about attending a professional conference in a personal capacity. An attorney wants to attend a Federal Bar Association conference in Memphis. He is a member and in the past he has attended and been a speaker. This year some other EOIR employees are going to attend in an official capacity and are giving presentations. He will not be sent officially and so he would like to go in his personal capacity, i.e., take annual leave, pay his own expenses, not represent that he is there officially. He will not be giving a presentation or speaking. I said there was no prohibition on attending this event in his personal capacity on his own time strictly as an attendee with of course leave approval. (b) (6) March 4, 2010

177. (b) (6) (ENRD) called with a question about the Anti-Lobbying Act and whether it would apply in the following situation. The U.S. Sentencing Commission is considering changes to the sentencing guidelines. The Commission is an entity in the Judicial Branch. However, Congress does have an opportunity to review and reject any rules that it would issue. The (b) (6) is an ex officio member. There is a proposal to change the guidelines that would strengthen enforcement of environmental laws. It would mean that a company on probation would not only have to allow inspection but would also allow sampling. ENRD is supportive of this change. The front office has inquired whether there would be any restriction on ENRD reaching out to environmental groups and asking them to support this change in the guidelines. The environmental groups may not know that ENRD is interested in pushing for this change and they may not monitor the activities of the Sentencing Commission. The Department will formulate a Department position and will submit a Department comment on the proposed guidelines. (b) (6) (b) (5)

(b) (5) Discussed with (b) (6)

(b) (6) said that was helpful. An email is in the file. (b) (6) March 4, 2010

178. (b) (6) CIV, 502 waiver. (b) (6) realized that a former client from the past two years filed an amicus brief in a case where she needs to get a recommendation to the SG this week. (b) (6) asked that I look at an attached 502 waiver and if I concurred that the waiver should be granted. I advised that I concurred. (b) (6) March 4, 2010

179. (b) (6) Executive Officer, OSG, question on gifts between employees, collection efforts for gift and lunch for a departing OSG manager. Answered her questions that she cannot solicit from subordinates - a nonsupervisor must do the collection. (b) (6) March 4, 2010

180. (b) (6) (PRAO) called with an outside practice of law question. An attorneys parents in California are doing some major renovation on their home. They want their daughter to review the renovation contract. (b) (6) question is whether this is the outside practice of law. She was inclined to send a recommendation to the component head for approval under 3801.106. I said it was certainly approvable and should simply be approved as an outside activity without getting into the question of trying to determine whether under California bar rules this would be regarded as the "practice of law" as that is not our issue.

181. (b) (6) (PRAO) called to ask about a career GS-15 attorney who has been invited to speak on PR issues at an ABA conference. Initially (b) (6) did not know whether he would be doing this in his official or personal capacity. I discussed the rules that would apply in either case. Subsequently, (b) (6) learned that he was invited to be on this panel prior to joining the Department and PRAO. He only recently came on board. He is going to be on a panel of five and will be discussing Rule 8.3. He will do this in his personal capacity and follow all of the rules on use of resources, title etc. He will use annual leave, etc. He may accept travel expenses. I also advised (b) (6) that he should stick to his topic of Rule 8.3 and not stray into a discussion of Department matters such as (b) (5). The emails are in the file. (b) (6) March 5, 2010

182. (b) (6) (Information Technology Security Staff) had a couple of questions at the contractor gifts training on March 3, 2010. I sent her an email on March 5 indicating that if an office lunch was being held and everyone was paying their own way so there were no gifts involved that a federal employee could collect payments from the federal employees and a contractor employee could collect from the contract employees in the office. If there are concerns that arise out of the conduct of a contract employee one way of dealing with it would be to take up the matter with the contractor employee who is supervising the contract employees. The email is in the log file. (b) (6) March 5, 2010

183. (b) (6) (OPCL, ODAG, (b) (6)) is planning to attend a conference hosted by IAPP and take the IAPP exam for certification as a privacy professional. She knows a person (b) (6) who she worked with at the FBI when she was working in the Terrorist Screening Center. (b) (6) works for Mitre Corporation. Mitre does lots of business with the FBI and TSC. (b) (6) invited (b) (6) (and anyone else in her office who might be interested) to attend a privacy training session that Mitre will be offering for its own employees. It will be a 3 hour session and there may not be a stated fee for the session as Mitre is providing it for its own employees. (b) (6) said she needed to get back to them today. Discussed with (b) (6) Told (b) (6) she would

have to decline this offer because the gift prohibitions apply and there is no available exception.

(b) (6) March 5, 2010

184. (b) (6) (ATF) sent an email asking whether (b) (6) could work as an officer for the Aldine, Texas Independent School District. (b) (6) is an industry operations regulator. He previously had done this for Aldine ISD. He would be sworn in as a law enforcement officer and would carry a weapon and have arrest authority. He would handle security at school functions. Discussed with (b) (6) and told him that this outside activity would not be likely to be approved under the reg because of the prohibition in 3801.106. (b) (6) had not thought that it could be approved. Email in file. (b) (6) March 5, 2010

185. (b) (6) ODAG, Gifts question. (b) (6) got an invite from a friend (b) (6) received an invite from a friend at FCC to join him and his wife to a screening of the hubble imax at the Air and Space Museum. It's an event at the museum that likely includes food and wine, etc. She doesn't know anything about the event or who is putting it on. Her friend received the tickets to the event, through the FCC. He was not asked to pay for them. I advised that if he is permitted to accept them under the FCC rules and he is therefore permitted to invite whoever he wishes because the tickets are his to use as he wants, it becomes a personal gift from him to (b) (6) and she would be fine. If he accepted them with the expectation or condition that he would invite other federal officials and therefore the gift is really from the original donor to her and not from her friend to her, we need to analyze the donor which means who is it and how much the event costs. (b) (6) March 5, 2010

186. (b) (6) JMD/PSS, Gifts question. A vendor is offering a free CD on procurement ethics. It is valued at \$50 and (b) (6) would like to know if we may accept. I advised that we would not be able to accept unless we seek (b) (6) approval under his gift acceptance authority but I would not expect him to be inclined to accept it. We will not seek approval and she will let the program office know. (b) (6) March 8, 2010

187. (b) (6) (NSD, (b) (6) called with a gifts question. The father of an employee has been hospitalized. Can the team she works on send flowers. About 5 members of the team are regular federal employees and about 4 are contract employees. Told (b) (6) they would have to keep any gifts separate. The regular employees could use the exception for group gifts in the rules on gifts between employees. They could use email to make a request for a voluntary contribution for flowers and it should be sent by someone other than a supervisor. The contractor employees cannot participate in that gift. On their own they could send a gift provided it is \$20 or less and they would have to aggregate everything from the contract employees because they are considered one prohibited source. (b) (6) March 8, 2010

188. (b) (6) (NSD) called with a seeking employment question. An employee who works for the Deputy in OI was contacted by a friend who works for a company who said the company might be interested in hiring him. He is not looking for a job and is not interested in

leaving. There are no matters now in NSD that involve this company. (b) (6) wanted to know when seeking employment began and when he became recused. I said he has begun seeking employment when he responds in any manner other than a clear cut rejection of the overture. He cannot just postpone things. If he does talk to the company and then decides not to go further, he should be clear about that with the company and should tell NSD that he has rejected the possibility. While he is in discussions, he is recused from any matter involving the company. (b) (6) March 8, 2010

189. (b) (6) (NSD, (b) (6) called as a follow up to log entry 176. (b) (6) has been asked by Lockheed Martin to provide a letter or memo from an ethics official confirming that he has taken the necessary steps to seek ethics advice and recuse himself before engaging in a discussion of possible employment with Lockheed Martin. Discussed with (b) (6) Advised (b) (6) that he should send a letter himself to Lockheed confirming that he had taken the steps that they requested. The emails are in the log file. (b) (6) March 10, 2010

190. (b) (6) (Public Affairs) called. They received a request from Covington & Burling asking if they could send a photographer to Main Justice to take photographs of the paintings for the purpose of using them in a brochure promoting the firm's white collar defense practice. I said we should not give them permission to do this. It would not be a good policy to allow outside organizations to do this and in the case of a law firm to use photographs that presented an "inside" view of the Department. (b) (6) did not have specific details about how they might use them, how they might use the Department's name, etc. but it seems as a general matter this would be inappropriate. (b) (6) agreed that this should not be allowed. (b) (6) March 9, 2010

191. (b) (6) (Operations Services Staff, JMD) called to ask whether she could accept an on-line training course worth up to \$300 from BMC, a DOJ contractor. She had been selected in a random drawing at a BMC conference to receive the prize. None of the exceptions to the gift rules would allow her to accept this as a personal gift to her as the event was not open to the public. We worked on a recommendation to have this accepted as a gift to the Department. We needed some additional information on the benefit to the Department of accepting this gift especially if it was more in the nature of vendor promotional training. (b) (6) was busy working on a high priority project. On March 10 she decided not to pursue the request because she had 30 days from the date of the conference, i.e., February 4, to accept. She had first contacted DEO on February 18, 2010. The emails are in the log file. (b) (6) March 10, 2010

192. (b) (6) (Civil Rights Division) called with a recusal question. An employee in Civil Rights is engaged to a person who is a lobbyist for a non-profit organization that promotes legislation that would prohibit discrimination against gay persons who seek to adopt children. The Division may have an interest in such legislation. (b) (6) sought confirmation of her advice. She has advised the employee not to be involved in this issue, not to receive any information about this issue, and not to communicate any information gained as a result of her employment with the Department, even if accidentally, to her fiancée. However, she may engage in a personal

discussion of this issue with her fiancée, subject to the limitation of not discussing Department information. And her fiancée may, completely on her own, work with people in the Division on this issue. The employee may not assist her fiancée in arranging contacts with the Division. I said we concurred in this advice. The email is in the file. (b) (6) March 10, 2010

193. (b) (6) OAG, (b) (6) question. (b) (6) has been asked to give the keynote speech at the Sixth Circuit Judicial Conference in Columbus, Ohio on May 5th. I advised that this is a Federal gov't to Federal gov't reimbursement so no additional ethics approval is needed. (b) (6) March 10, 2010

194. (b) (6) OAG, (b) (6). (b) (6) asked me to review a scheduling for a tribute dinner hosted at the Holocaust Museum on April 14th. The museum also asked if they could give a tour on a separate date. I advised that the dinner is fine - it is a fund raiser so the usual limitations apply to their use of (b) (6) participation to promote the event. The tour would likely be a gift (except if it was part of the dinner event but that doesn't seem to be the case), and would have to fit within the gift rules - e.g., if general admission to the museum is valued at \$20 or less it would be fine. As a follow up to this event, (b) (6) provided a draft event program. I advised that this draft was ok with some limits on how the event was promoted. Email docs are in log file. (b) (6) March 10, 2010

195. (b) (6) (JMD, HR (b) (6)) called with an awards question. He wanted to know if there were any ethics concerns that would be raised by the annual "Police Officer of the Year" award made jointly by the International Association of Chiefs of Police (IACP) and Parade Magazine. The winner is featured in a story in Parade Magazine. (b) (6) said that his office sends out requests to all the components for nominations for various awards. He wanted to know if there were any ethics concerns with this award because it will be so widely publicized in Parade. Told him that he could go ahead and ask for nominations but that we should review the nominations before they are submitted to Parade to see if there would be a problem under the gifts rules for a specific employee accepting the award. IACP is a big grantee and would be a prohibited source for Department employees in certain components. Moreover, if the source is the so-called "bad prohibited source" the exception is not available. (b) (6) said they also vet prospective nominees with OPR and the OIG to make sure there is nothing in a nominee's background that would be embarrassing. (b) (6) expects to have proposed nominees sometime in the third week of May and will get back to us then. (b) (6) has worked on many other awards such as the American Correctional Association "Warden of the Year" award, the Service to America award and the Washington Council of Lawyer's Pro Bono award. This is the first time he is working on the IACP/Parade Magazine award. An email is in the file. (b) (6) March 11, 2010.

196. (b) (6) (EOIR) had a follow up question concerning the FBA immigration seminar in Memphis. See log entry #164 of March 6, 2010. (b) (6), an Immigration Judge in Arlington, wants to give three presentations on topics that are related to the work of EOIR. He is

not being assigned to speak on these topics in his official capacity so he wants to go in his personal capacity. (b) (6) told him that she could not give him an ethics clearance to do this especially since several EOIR employees attending would be speaking in their official capacity. He asked if there was written guidance of the degree of personal and official capacity that an employee might have. Told (b) (6) there is nothing in writing. I said we agreed with her conclusion that it was not advisable for him to give these presentations. Said he ought to avoid making a presentation that would be deeply informed by his work as an IJ even though he would observe the various rules applicable to a personal activity. The emails are in the file. (b) (6) March 11, 2010

197. (b) (6) (OJP) called with an outside activity question. (b) (6), a statistician from BJS, has been on detail for several years in the OIG of GSA. He now wants to work on a Census related panel of the National Academy of Science. (b) (6) wanted to know who would make the decision on this outside activity. Discussed with (b) (6). Told (b) (6) that under the regulation, the Supplemental Regulation of the agency the employee is detailed to is the one that is applicable. But OJP should be consulted and he should not undertake this activity if OJP has an objection to it. The emails are in the file. (b) (6) March 11, 2010

198. (b) (6) (PRAO) sent an email with a fundraising question asking for confirmation of her advice to an attorney who wanted to continue to do fundraising for his law school. Send (b) (6) an email saying that in addition to prohibited sources, he could not solicit from subordinates. The email is in the file. (b) (6) March 11, 2010

199. (b) (6) (Civil) had a recusal question from (b) (6) who is an EEO specialist for the Housing and Civil Enforcement Section. She has worked on a matter that involved a possible investigation of religious discrimination by a credit union. At the same time she discovered the existence of the Freedom from Religion Foundation which advocates for the separation of church and state under the First Amendment. The employee is interested in joining this group but wondered if that would create a conflict with the case she is working on. Discussed with (b) (6) that mere membership in an organization does not create a covered relationship under 502. If she took an active role in FFRE then she would have a covered relationship and would be recused unless authorized to participate in a specific party matter in which FFRE was or represented a party. Discussed with (b) (6). Talked further with (b) (6) about the question of whether the employee might have such strongly held views that she might not be unbiased on a matter. That is a different question and one that it is up to the employee to assess for herself, much like a potential juror has to assess whether they can be fair in a case despite some circumstance that might raise a question of bias. The employee would not be required to discuss this with her supervisor but if she felt the need for such as discussion she could have that conversation. The email is in the file. (b) (6) March 11, 2010

200. (b) (6) (EOUST, (b) (6)) had a question regarding employment by another federal agency. EOUST has an unpaid intern who is going to law school who works about 12 hours a

week for EOUST. She wants to also work part-time for ICE in a paid position. (b) (6) did not know how many hours she would work for ICE. ICE has already “approved” her working for both ICE and EOUST. Her supervisor at EOUST has no objection to her also working at ICE. (b) (6) says there is no overlap between the two jobs. She would be working on criminal investigations for ICE and (b) (6) wanted to know if that required approval under the DOJ supplemental. Told (b) (6) she was not barred from doing this by the Dual Compensation Law as only one of the positions is paid. It is also likely that the total number of hours she works does not exceed 40 per week. Discussed with (b) (6). It is not clear that at the time of the drafting of 5 C.F.R. 3801.106 that employment at another federal agency was contemplated. The definition of “outside employment” refers to employment other than in performance of official duties.” She would be performing “official duties” for both EOUST and ICE. Advised (b) (6) that under these specific facts, we did not believe that prior approval of her work at ICE was required. An email is in the file. (b) (6) March 12, 2010

201. (b) (6), ODAG (GTMO), Guest speaking. A friend of (b) (6) runs a law school externship program in DC and asked him to come speak to her students on Monday about career paths and his experience at DOJ. There is no travel or cost involved. I advised that if he is doing it in his personal capacity then he just has to let his supervisor know that he will be on leave. (b) (6) March 12, 2010

202. (b) (6), ODAG, Foreign gifts question. (b) (6) had lunch with the Legal Advisor for the UK posted at the embassy here. It was mainly a social lunch but they spoke of work issues. The other party picked up the check, refusing to split it. Matt’s share was about \$20. I advised that the de minimis for a gift from a foreign government was \$335 so he was well within that. I also advised that since we normally seek approval for any foreign gift and he was unaware of the gift in advance, he should advise his supervisor that the UK official paid for lunch. (b) (6) March 12, 2010

203. (b) (6) (EOUST) called to find out if there were any ethics concerns related to the (b) (6), attending a meeting with the FTC’s Director of Consumer Protection to discuss a corporate defendant the EOUST has sued and the FTC is investigating. The matter is being handled by the Division of Financial Practices. (b) (6) (b) (6) works in the Division of Privacy and Identity Protection. Neither she nor her office has anything to do with the matter. There is no likelihood that she would become involved in the matter. I advised that there would be no ethical concern with him attending the meeting. We also discussed the daughter’s performance evaluations and other personnel matters. These are made in her Division and would not be likely to reach the level of the Director. The emails are in the file. (b) (6) March 12, 2010

204. (b) (6) (CRT) called with a seeking employment question. An attorney sent a resume to Mayer, Brown inquiring about employment. He was reviewing a case to see if the Department would have an interest in getting into the case when he discovered that Mayer, Brown had filed a

brief representing a respondent. (b) (6) thought he could not continue to participate in the case because he was seeking employment with Mayer, Brown. I said that was correct. He began to seek employment with the firm when he sent them a resume. So he has to stay out of this case. (b) (6) did not know how many firms he might intend to apply to. We discussed the fact that he cannot amass so many recusals that it is interfering with his work for the Department. (b) (6) March 15, 2010

205. (b) (6) called along with (b) (6) the contracting officer, to ask whether an FBI employee serving on a Technical Panel to review the proposals of three offerors on a \$80K - \$120K contract dealing with energy sustainability. One of the offerors is ERG. She worked for ERG until December 2007. The panel only met for the first time this morning and she immediately brought up her prior employment. (b) (6) wanted to know if she could stay on the panel. I said (b) (6) should first determine that she has no financial interest in ERG by way of pension, stock, deferred payments, spousal employment, involvement of a significant other, financial interests of a spouse or dependent children, etc. Assuming that she had no current financial interest in the company and that she had no other employment with them after December 2007, then she would be well beyond the one year recusal period under 502 and the additional year beyond that provided sufficient separation and distance from the firm that she would not have to be recused from participating in this panel. (b) (6) March 15, 2010

206. (b) (6) (ODAG (b) (6)) called with an Ethics Pledge question. (b) (6) worked for Verizon until July 2009 and so still has well over a year left on the Pledge restriction on communications with a former employer on official matters unless the matter is one of general applicability and at least 5 distinct interested parties are involved in the communication or meeting. Verizon called (b) (6) on March 15 because it wanted to meet with someone in Justice to discuss legislative proposals to amend the Electronic Communication and Privacy Act that are being developed by the Center for Democracy and Technology and which CDT is planning to roll out next week on March 22. The amendments would affect dozens of companies. DOJ (the Criminal Division) has met with ACLU, the Electronic Frontier, Google and Microsoft. They were interested in a one on one meeting and (b) (6) is barred from doing that. He asked if he could provide a contact in the Computer Crimes Section for them to contact. Discussed with (b) (6) Advised (b) (6) that he could call Verizon back and give them contact information as that might be something that he would generally do for interested callers. However, he should tell Verizon not to use his name when they call, i.e., don't say that he referred them. Also he should tell them that they should not make a regular practice of using him as a contact point in DOJ while he is still subject to the Pledge. He said this was the first time they had called him. (b) (6) March 15, 2010

207. (b) (6) NSD, (b) (6) foreign gifts question. (b) (6) sent the following email to (b) (6) for approval after my concurrence: (b) (5)

[REDACTED]

(b) (5)

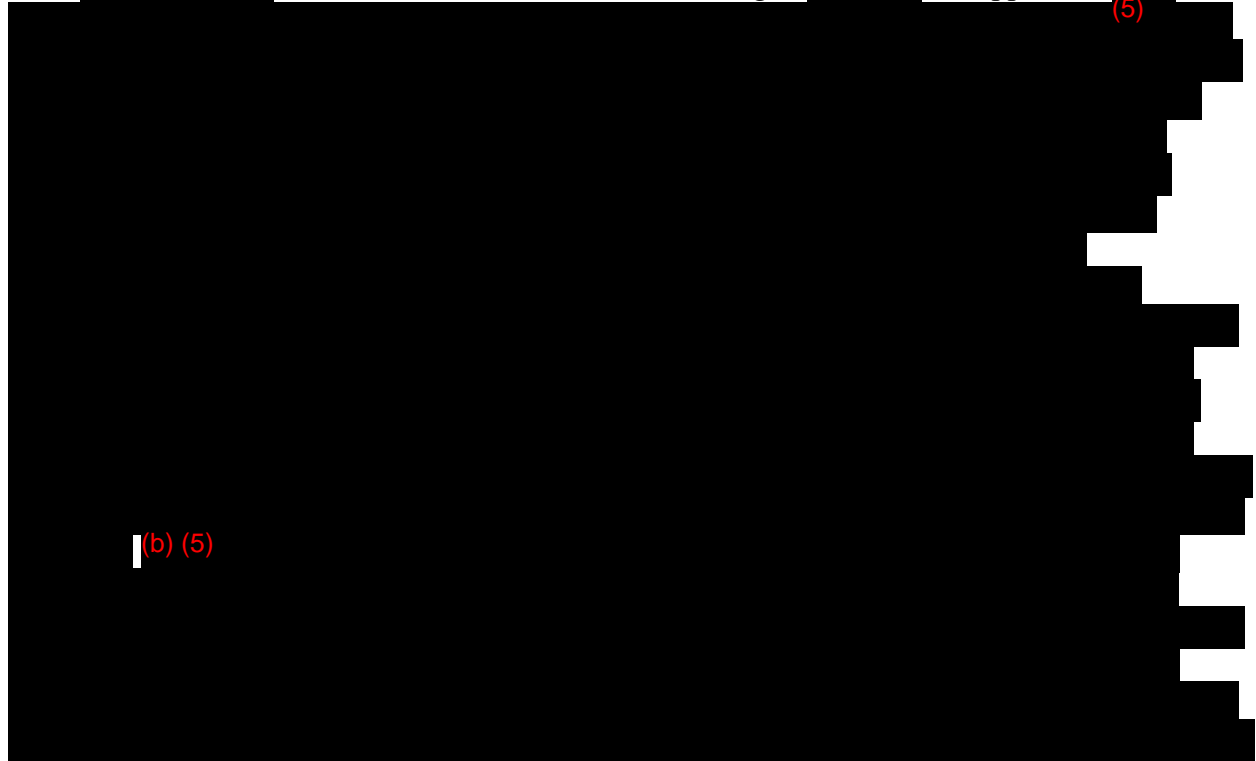


(b) (5)

” (b) (6)

approved. (b) (6) March 15, 2010

208. (b) (6) OAG, WAG. I emailed the following to (b) (6) for approval: (b) (5)



(b) (5)

(b) (5)

approved. (b) (6) March 15, 2010

209. (b) (6) (Civil) had sent us for review a revised memo requesting 502 approval for (b) (6) to continue as Chair of the DAG's Working Group on Immigration Policy. It was prepared for (b) (6) signature. We advised it should go to ODAG. (b) (6) revised but this time mistakenly prepared it to come from DEO. I called (b) (6) and said we had indicated that Civil should be the one to send it out with our concurrence but that we would go ahead and make the recommendation from our office to (b) (6). We sent (b) (6) a recommendation on March 10 and he approved on March 13. Sent copy to (b) (6) on March 16 to provide to (b) (6). The emails and a copy of the memo are in the log file. (b) (6) March 16, 2010

210. (b) (6) a former employee who left on January 20, 2009, called with a section 203 question. He wanted to know if the representations that were made while still an employee would include representations made at other federal agencies. I said that it would. The firm's year runs from February 2009 to February 2010. They have all gotten their regular draws and now are figuring out the distribution of firm profit in excess of the fixed draws. It is possible that fees were paid in February 2009 for services covered by 203 that were provided before January 20, 2009. (b) (6) is working with the accounting people in the firm to ensure that he does not share in any such fees. The firm's billing cycle is 30 days. (b) (6) March 16, 2010

211. (b) (6) Re: Use of DOJ seal. A litigating attorney wanted to print and frame at his own cost a visual he prepared on his computer celebrating a successful prosecution of BAE. He wanted to distribute it to the government team that assisted in the matter: FBI agents, attorneys, etc. All government employees. He wanted to include the DOJ seal and (b) (6) sent him to FASS for approval of seal use. (b) (6), who approves the seal now (he took over these duties from (b) (6)) said no because people may associate DOJ with BAE improperly. (b) (6) cannot believe it and wants to go to (b) (6) boss - he said he was pretty new at it so his boss should definitely weigh in - his boss is (b) (6). (b) (6) sent the visual slide to me and I agree with (b) (6). The commercial logo of BAE is prominently placed at the top of the visual, with photos of fighter jets (the subject matter of the fraud case), with the caption of the criminal matter and the DOJ seal much smaller and at bottom of the slide. Told (b) (6) I could see someone not familiar with the criminal case objecting to the use of the DOJ seal smaller and underneath the corporate logo of the guilty defendant. She said okay but she asked (b) (6) if the seal could be used if the corporate logo of BAE was removed, and (b) (6) still said no. I think it probably could, and told (b) (6) there is likely a compromise here. She'll let us know. (b) (6) March 17, 2010

212. (b) (6) (OASG) called with a follow up question about her upcoming meeting with some students sponsored by ICAS. They want to add her name to a 24 page list of names on their website under a heading "ICAS Speakers, Discussants, & Contributors." The persons on the list are from government, private sector, etc. The list includes some DOJ officials from previous administrations. Discussed with (b) (6). Called (b) (6) back and left message that inclusion on the list would not suggest an endorsement and we could not say that it violated ethics rules. However, she could suggest that the Department takes a conservative view on these issues and express her preference that her name not be included. (b) (6) March 17, 2010

213. (b) (6) (CRT) had a question from an employee who joined CRT in the last month or so and previously worked for the ACLU. She is a member of LGBT Task Force. Some years ago when she was at ACLU she was consulted by lawyers with regard to issues of strategy relating to the Defense of Marriage Act (DOMA). The Task Force might be looking at a case that involves DOMA. The employee's only involvement or relationship to this was the strategy discussion of DOMA some years ago. ACLU is not involved in the matters now before the Task Force. (b) (6) thought there was sufficient separation from the discussions years ago that it was not necessary to obtain an approval for her to work on these issues on the Task Force. I agreed. (b) (6) March 17, 2010

214. (b) (6) (Civil) called with a general question about 502 determinations. An Assistant Director in Federal Programs has a son who is an associate at Covington & Burling. The attorney understands that he must be recused from any Covington matters in which his son is involved. But he wondered going forward what his recusal obligations were with respect to other Covington cases in which his son was not involved. (b) (6) had suggested to (b) (6) that he call us. (b) (6) wondered if there was a way to treat them as a class. I said that he should seek a separate 502(d) determination for each case individually based on the specific facts of a particular situation. (b) (6) March 18, 2010

215. (b) (6) OAG, WAG. I emailed the following to (b) (6) for approval: "(b) (6) (b) (5)

(b) (6) approved. (b) (6) March 18, 2010

216. (b) (6) OSG, Conflicts question. (b) (6) wife has accepted a job at a federal agency, and things she works on will likely come through his office. He asked if there are any potential conflicts raised by that which he will need to clear through our office. I advised that under the standards and the conflict of interest statute, since her employer is also the U.S., the only conflict I see would be something that directly affects her/his financial interest. So he could

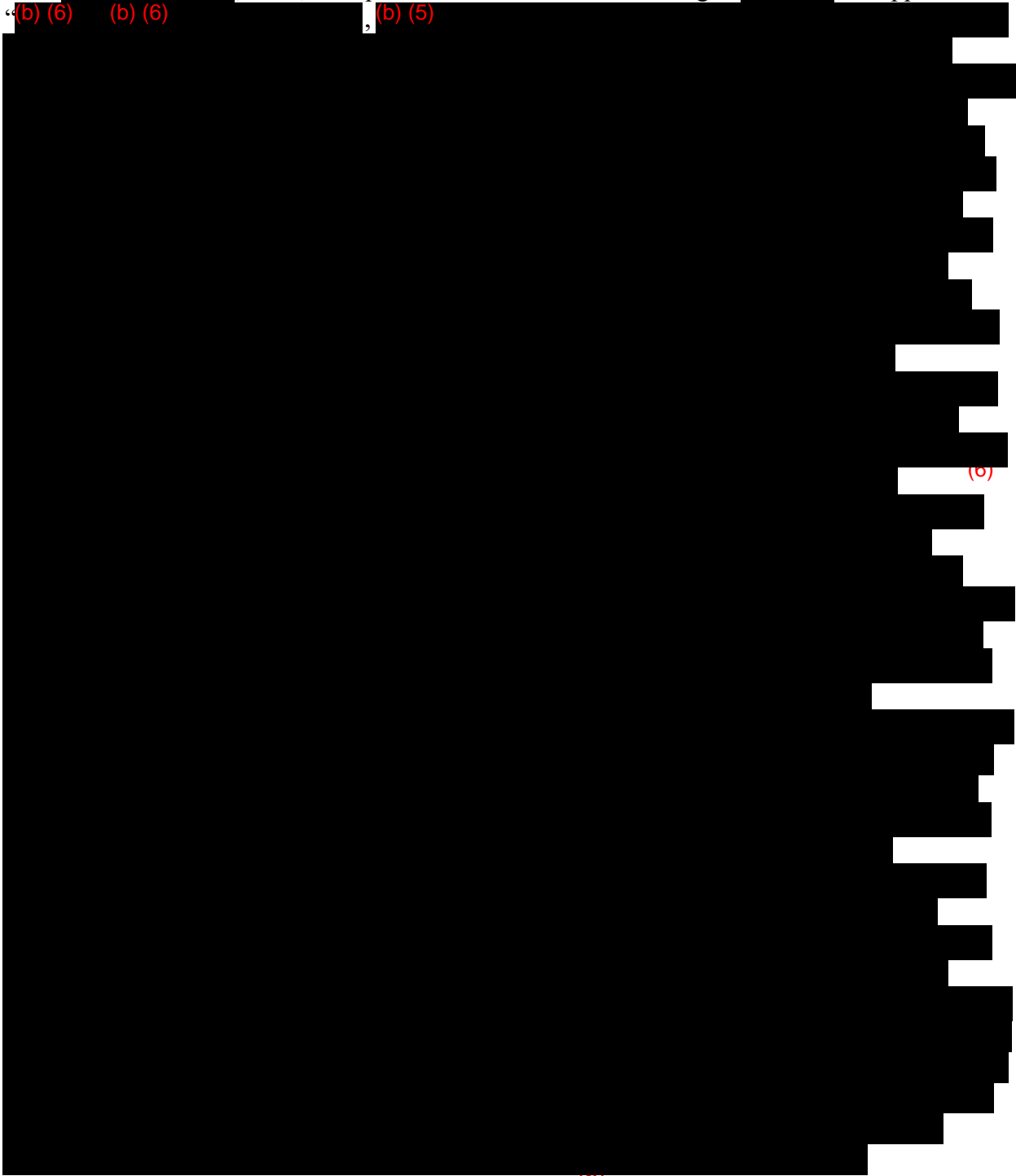
not, for example, recommend to her agency that she receive an award because of her stellar work on a particular case. However, there are appearance considerations, so at a minimum the SG and Deputy SG's should always be aware of which matters are those on which his wife is also working in the event they would rather assign the matter to someone else. Finally, I advised that he should consult with PRAO, because this may raise a personal conflict when he does the who-is-your-client analysis which may weigh in favor of actual consent by the SG. I advised that contacting PRAO on their general e-mail address is fine. (b) (6) March 18, 2010

217. (b) (6) (b) (6) (b) (6) OASG, WAG. I emailed the following to (b) (6) for approval: (b) (6) (b) (6) approved. (b) (6) March 18, 2010

218. (b) (6) OAG, AG Invitation. The Center for Health Care Services would like (b) (6) to do a 2 min video for a conference that he is not able to attend. After looking at the request, I advised (b) (6) that (b) (6) may do this if he wishes to, with the following considerations/limitations: Just as with an official speech, it is the Department's interest that is served, not the organization's (or what the organization wants from us). So, it's fine for (b) (6) to encourage attendees to do and get better at doing "X" activity, because that serves the Department's interests (as we define them). We cannot endorse the organization per se, but we can "endorse" and support the type of work the organizations and attendees do in their agencies and communities (again, tied to DOJ's interests). Finally, the video should not imply that (b) (6) is a "host" of the event (it's a hello and glad you're doing this because it's important), and it should only be shown at the conference. (b) (6) March 18, 2010

219. (b) (6) OJP, Attendance at political event/pledge question. (b) (6) has asked whether she may attend as (b) (6) ' guest at next Monday's dinner to be held by the American Israel Public Affairs Committee which is a registered lobbying organization. OJP doesn't believe that she may accept this gift of free attendance even as the Senator's guest and in their view for her to reimburse this group for the costs of the meal is not a workable option. After speaking with (b) (6) we agreed that this would be alright under the exception for a gift based on a personal relationship since AIPAC, while a registered lobbying organization, has no interests before OJP. An invitation, even if arguably permissible under the personal relationship exception, that was from a lobbying organization with interests before OJP, would not be alright. (b) (6) March 18, 2010

220. (b) (6) (b) (6), OPR, 502 question. I emailed the following to (b) (6) for approval:
“(b) (6) (b) (6), (b) (5)



(b) (6) OGE, Pledge question (b) (6). I advised OGE that I have confirmed that (b) (6), who is in the Office of Legal Counsel, did not lobby DOJ prior to being appointed in the administration, and that while serving in DOJ he has not participated and will not participate in the specific issue area in which he lobbied during the 2 years prior to joining the Department. He attended several meetings on one issue, which

concerned an amendment to the National Defense Authorization Act that would have changed provisions of the Foreign Sovereign Immunities Act affecting attachment of assets. I also have confirmed that (b) (6) who served in the Office of Legal Policy and then the Civil Division before her resignation on October 30, 2009, did not lobby DOJ prior to being appointed in the administration, and that while serving in DOJ she did not participate in the specific issue area on which she lobbied during the 2 years before she joined the Department. She had several meetings on behalf of one client seeking a HUD appropriation for housing provided by a non-profit, Mercy Housing. No waiver was, or is in the case of (b) (6), required under the Pledge for either appointee. See file (Prior Lobbying Activity) for specifics. (b) (6) March 19, 2010

222. (b) (6) (EOUSA) sent a draft recommendation to approve (b) (6) participation in his official capacity on the Sault Region Area Maritime Security Committee. We reviewed and suggested changes to remove the non-relevant discussion of authorities applicable to participation in an outside activity in a personal capacity. Subject to making the recommended changes they could represent that DEO concurred. (b) (6) agreed to make the changes. The email is in the file. (b) (6) March 22, 2010

223. (b) (6) (Office of the Pardon Attorney) is a part-time paid employee in OPA who will be graduating from law school in May. He wanted to know if he could invite 3 employees in OPA including two who are his official superior to his graduation celebration. I told him that the exception for infrequently occurring occasions of personal significance covered such an event and that he could invite them and an accompanying guest. The email is in the file. (b) (6) March 22, 2010

224. (b) (6) OSG, WAG. I sent the following email to (b) (6) for approval: (b) (5)

(b) (5)

(b) (5) [REDACTED] approved.
(b) (6) March 22, 2010

225. (b) (6) OASG, Speaking question. (b) (6) (b) (6) has been invited to be a keynote speaker at the International Bar Association (IBA) Washington Conference. I advised (b) (6) that it was fine. I have not checked whether (b) (6) or his firm are registered lobbyists, but even if they are, (b) (6)(b) (6) may accept a speaking invitation from the IBA Committee even if extended by (b) (6) /his firm. The event is not a fundraiser so it does not raise those additional issues. However, if any staff plan to accompany him to the dinner, I asked for them to contact me. We will need to make a determination under the Pledge whether the lobbying gift ban applies and if so whether they may accept the invitation. (b) (6) March 22, 2010

226. (b) (6) OAG, Speaking event. (b) (6) sent a scheduling approval for the RAUH Lecture at UDC on June 17th. I advised that This is fine. It is just the lecture, preceded by a free reception open to all, so (b) (6) may attend that if he wishes as part of the speaking invitation. It is not a fundraiser so those additional issues are not present. If staff plan to attend the reception there will not be a problem but they should contact me so I can seek approval. (b) (6) March 22, 2010

227. (b) (6) Conflicts question. She is a prospective Schedule C employee, in the Antitrust Division at the GS-14 level. She was just offered the chair of a Young Lawyers Division committee (Individual Rights and Responsibilities) with the ABA, with a response deadline of April 1, and wanted to know what the limitations would be in terms of her involvement while working at DOJ. I advised against pursuing this for the following reasons, and she agreed: First, she may only serve in a personal capacity, so on a practical level that means no use of DOJ staff or work time of anything other than de minimis use of DOJ email, etc. Second, the position would require component head approval based on a conflicts analysis, and we would need to know more specifically what issues are being addressed by the committee and evaluate the potential for conflict with DOJ positions and also there is the potential for confusion over what positions she actually is taking, because as a general matter activities of noncareer appointees are interpreted as representing the department's views to a greater extent than those of career employees. (b) (6) March 22, 2010

228. (b) (6) NSD, Support letter. An FBI SSA with whom an NSD employee has worked closely with over the past year is embroiled in an EEO/OPR matter. He is looking for a letter from the employee describing what they think of his professionalism. Their professional relationship has been outstanding and the employee is inclined to provide a letter and would like to know if there are any restrictions on what he can say and how he can say. I advised (b) (6) that the NSD employee could write the letter. It should be based on his specific and personal

interaction with the FBI employee and can offer an opinion based on this personal knowledge. He should not offer an opinion on the ultimate issue in the case, i.e., whether the FBI employee acted unprofessionally in this particular matter, because he has no information about it. Also, he may not disclose non-public information. (b) (6) March 23, 2010

229. (b) (6) EOUSA, Official capacity question. (b) (6) was seeking my opinion on whether or not (b) (6) should sit on the Board of Criminal Law Section of the Virginia State Bar in his official capacity. I advised that I agree that the position does not include fiduciary responsibilities to the Section. I also agree that he should refrain from voting on fiscal matters as they would fall within the "internal management" of the section, participation which is generally restricted by the 2000 Holder memo. I concur it serves the Department's interests for him to serve in his official capacity and I would recommend ODAG approval. Further email documentation is in log file. (b) (6) March 23, 2010

230. (b) (6) (b) (6) PSS. She is a Contacting Officer and is amassing a team for source selection for DOJ's litigation case management system contract which is expiring after 5 years. She is new to DOJ and wanted to know about conflicts checks and ethics training and Procurement Integrity training for team members. So far the team is herself, and (b) (6) and (b) (6) (both from OCIO). All are 450 filers and all are current in their filing and ethics training requirements. Team members will come from different DOJ components. (b) (6) indicates that PSS prefers the Certification to No conflict, which can become part of the contract file while the 450 cannot - all team members should at least file the Certification especially if they do not file the full 450. She will contact us as team members are picked to see about their 450 filing status and ethics training. She can review team members' 450 reports, but they cannot become part of the contract file. If she has a feeling that ethics training is needed for her team, contact us and we can meet with them. She will stay in touch. (b) (6) March 24, 2010

231. (b) (6) in (b) (6) office had a call from a woman who is a physician (and not an employee of the Department) who was seeking help because her mother has received a subpoena to testify against her. The subpoena would require travel which is difficult for her mother. (b) (6) was not sure but thought that the Department might be involved in the matter. I told her to tell the woman that we would not be able to provide assistance to her in this matter. (b) (6) March 22, 2010

232. (b) (6) (ODAG, (b) (6)) called with a recusal question. Last Friday, there was a meeting to discuss (b) (5) (b) (5) The meeting was attended by the White House, the FCC and other high level officials. No non-government parties were at the meeting. (b) (5)

(b) (5)

Told (b) (6) that he could participate in today's meeting as it appeared that this was still a matter of general applicability at this point. Said we believed that going forward there should be something in writing regarding his future participation. (b) (6) came from Verizon in July 2009. (b) (6) owns a small amount of stock in the communications sector (b) (6). So there is not a 208 issue here. Also it does not yet involve specific parties, so he does not need a 502 determination to attend today's meeting. However, going forward there should be a 502 analysis. (b) (6) said he did not believe that a decision had been made (b) (5)

He will get back to us about documenting his further participation. (b) (6) March 22, 2010

233. (b) (6) (Civil, (b) (6)) called with a 205 question. An attorney has a disabled sister who is receiving SSI payments. She is the representative payee for her sister. There was an overpayment of the SSI and now there will be an administrative proceeding before SSA to correct it. The attorney would like to represent her sister in this matter. She does not do any work involving SSA. (b) (6) asked whether this relationship would qualify as a fiduciary relationship within the meaning of 18 U.S.C. § 205(e) and who is the approving official. Discussed with (b) (6) Told (b) (6) that 205(e) can be used in this circumstance and that the AAG was the approving official. Pointed him toward the earlier 205(e) matter that we had advised Civil on in connection with (b) (6) representation of his wife. (b) (6) March 23, 2010

234. (b) (6) (EOUST, (b) (6)) had called on March 15, 2010 to discuss the recusals she has in place with respect to cases that involve attorneys who have provided support for her candidacy for the position of U.S. Trustee in that region. The position has been open for some time and she wanted to know if the need for the recusals could be re-evaluated. She was asking us because (b) (6) is overwhelmed with work. Discussed with (b) (6) Sent (b) (6) an email on March 24, 2010, suggesting that she send an email to us with a copy to (b) (6) asking for further advice with respect to her recusals in light of the changed circumstances, i.e., the delay in filling the Trustee position. Suggested some specific points to address in her request. The email is in the log file. (b) (6) March 24, 2010

235. (b) (6) (CRT) called with a question about an attorney who wants to participate as a member (but not chair or officer) of the Civil Rights Committee for the D.C. Bar in her personal capacity. (b) (6) asked whether there would be an appearance problem if a D.C. firm offered the use of its space for the committee. This was a hypothetical question and I said we would need

the specific facts of an actual situation to determine whether there would be an appearance problem but that the attorney should not be making requests of a firm that was involved in litigation. We discussed her need to avoid acting in an official capacity on some request from the committee and also avoid 205 problems by not representing the committee in requests to the federal government. Offered to review any draft recommendation that she prepared. (b) (6) March 24, 2010

236. (b) (6) a former DOJ employee with (b) (6) and the (b) (6) who is now an environmental attorney with the (b) (6) and who also has ethics duties, called with a question that related to herself. She wanted to know if she can accept a waiver of a \$1,000 fee for an ABA course that was offered to her when the ABA staff person learned that she had been Vice Chair of an ABA committee in the past. She also wanted to know if she could ask for such a waiver from the ABA. I told her we do not advise employees of other federal agencies. I discussed with her the gift exceptions and also the possible use of agency gift authority. I told her she needed to contact the (b) (6) or (b) (6) ethics officials for advice. She understood we cannot provide ethics advice for her and said she would follow up with DHS ethics officials. (b) (6) March 24, 2010

237. (b) (6) (OARM) called to ask us about a question they had received from EOIR. EOIR wants to know if there are any restrictions on hiring an attorney on a contract basis. (b) (6) did not know what the duties of the position would be. He had contacted PRAO who told him to contact us. I said we would need to know what the person would be doing. I referred him to OMB Policy Letter 92-1 (September 23, 1992) which deals with the question of when something is an "inherently governmental function." There is a list of examples in that letter of things considered inherently governmental. (b) (6) said he would look at that, get facts about the position, and he planned also to contact OLC. (b) (6) March 25, 2010

238. (b) (6) (PRAO officer at ENRD) called because he had a question from an attorney who wanted to know if it was okay to assist a family member in a property matter. The assistance would be behind the scenes and her role would be to assist the family member's retained counsel. I gave him the reference to the DOJ supplemental regulation and said he should work with the ENRD ethics officials on making a request to approve this. I gave him (b) (6) and (b) (6) s contact information and he said he would follow up with them. (b) (6) March 25, 2010

239. (b) (6) (PRAO) had a question regarding a compensated outside activity. An attorney is assisting her pastor in compiling a collection of his sermons. Her name will not go on the book but she might receive some compensation for her work. (b) (6) wanted to know if this required approval. I said compensated outside writing was government by 807 as long as it did not also involve some other activity that would require approval under the supplemental. In this case, the writing did not relate to her official duties and so compensation was not prohibited and she did not need any particular approval. (b) (6) would advise her on all the rules about keeping this

personal activity separate from her work. An email is in the file. (b) (6) March 25, 2010

240. (b) (6) PRAO, Pro Bono Question. A DOJ attorney thinks he has stumbled upon fraudulent tax returns in the course of discovery in his pro bono case. The possible fraudulent returns were filed by the opposing party, not his client. He is wondering about his duty to report what he has found. (b) (6) advised the attorney that he does not have a duty to report anything but that he needs to withdraw from the case since a conflict has emerged. (b) (6) confirmed that our attorney is withdrawing from this case; the case became more and more complex and this is the latest of several issues that have raised questions about whether he should continue to represent the client. I suggested that our attorney advise the attorney who takes over the case of his suspicions about fraudulent tax returns, and let the next attorney take the appropriate action including reporting. She agreed. (b) (6) March 25, 2010

241. (b) (6) OASG, Outside position in official capacity issue. (b) (6) was asked to serve as a special advisor to the ABA's amicus committee if it is permissible. I advised that he would not be able to serve in a personal capacity, but he may be able to serve in an official capacity if approved by ODAG. Under the Department's policy, a Department official may be approved by ODAG to serve in positions with outside organizations in an official capacity, but the expectation is that it would be relatively infrequent and would be based on a compelling Department interest to be served. I advised that I don't know what appropriate role the Department would play in advising an ABA committee, or what the compelling interest is for the Department, but I would be happy to discuss and then pursue it internally with him. A little background - during the Clinton administration under AG Reno, Drew Days and Loretta Argrett, who both had been active with the ABA prior to joining the Department, did continue to serve in some roles in the ABA. Many hours were spent considering whether and what form their continued participation should take before they were approved to do so. And, the general policy was tightened for officials who followed, and all outside positions held by noncareer appointees were and are carefully considered. (b) (6) will not take part for the reasons I advised and because it's not really germane to the Access to Justice initiative. (b) (6) March 25, 2010

242. (b) (6) ODAG, Pro Bono question. An attorney participating in the Department's pro bono program submitted an inquiry to (b) (6) Suggestion box regarding attorney's fees in pro bono cases. The attorney makes the point that waiving attorney's fees is often an important negotiating tool, yet the Department's policy prevents charging attorney's fees, and therefore Department lawyers providing pro bono services lack this important tool. The questioner proposes possible remittance of attorney's fees to the Treasury, but (b) (6) thinks that would make the service not "pro bono" and also might put the Department in representational relationship with the pro bono client. He gets that is a non-starter. However, if the sponsoring pro bono entity--in the question below the D.C. Bar Pro Bono Program--can negotiate attorney's fees consistent with its mission (and he doesn't know if they can), would it be a violation of the Department's reg for a Department attorney to seek an award of attorney's fees in favor of the Pro Bono Program or to negotiate a waiver of such fees? I advised that I will go back through the Pro Bono Program files to be more precise, but my recollection is the following: "An earlier

version of 28 CFR Part 45 contained DOJ's long-standing regulation on outside practice of law. The regulation defined "compensated practice" to include any practice where attorneys fees were recovered, regardless of who received them. DOJ's subsequent supplemental standard of conduct, now at 5 CFR 3801.106, does not contain that explicit definition, but it was not abandoned. When the Pro Bono policy was being developed, the intent was to incorporate that limitation on DOJ attorneys doing pro bono work, so that ODAG would have to waive the general prohibition on compensated practice in order for DOJ attorneys doing pro bono work to pursue an award of attorneys fees. At least some of the thinking during the development of the Department's pro bono policy was that this limitation would be simpler to administer and keep the program less open to criticism. Specifically it would allow us to remain, as we wanted to be, content neutral as to the types of pro bono matters in which DOJ attorneys chose to participate because we would make judgments based on the conflicts statutes and standards of conduct on outside activity as we would for other personal outside activity. Also, the no-compensation rule would make questions about use of Department resources simpler as well, specifically, DOJ managers could make decisions about whether to accommodate an attorney's work schedule (through, for instance, informal comp time or adjustment of schedules to allow for court dates during the work day), and whether a particular activity could be considered a professional development activity and therefore possibly qualify for administrative time, based on management considerations and not based on the type of pro bono work that an attorney was undertaking, and specifically whether an outside party other than the individual client was benefitting from the representation through an award of attorneys fees. Also, activity in support of an award was more removed from the actual representation of the client and benefitted the organization, which we did not generally want to do because it may create an implied endorsement (DOJ attorneys are approved to take cases for the Legal Services for the Elderly and seek attorneys fees for the organization so that must mean they organization is credible, reliable etc.). (b) (5)

(b) (5) said understood and not to pursue a change at this time. (b) (6) March 25, 2010

243. (b) (6) (UST) sent an email following up on her recusal question. She found out that (b) (6) had advised her supervisor on the recusals that were necessary. So (b) (6) no longer was seeking advice on the duration and scope of her recusals. Her email is in the file. This is a follow up to log entry # 222. (b) (6) March 29, 2010

244. (b) (6) ENRD, WAG approval. (b) (6) sent the following email to ASG (b) (6) for approval: (b) (5)

(b) (5)

(b) (5)

(b) (6) approved. (b) (6) March

28, 2010

245. (b) (6) (Civil) called with question relating to an ABA conference on health care fraud in Miami. An attorney will be speaking on a panel. The ABA has offered to waive the fee for the conference which is \$350 for three days. The ABA is not providing any travel related expenses. (b) (6) said the attorney will be on official travel for all three days. He was thinking in terms of approving the acceptance of the conference fee under the WAG exception. I said that was used when someone was accepting a gift personally and here it sounds like she is going in an official capacity. (b) (6) was going to get more facts to see if it would be approved under WAG or 1353. (b) (6) March 29, 2010

246. (b) (6) (Bristow Fellow, OSG) called with a recusal question. He is working on a memo on whether to recommend an appeal in a criminal case. His wife works for America's

Most Wanted and edited an update on the case for posting on their website. AMW is not participating in the case. All she did was copy edit. She did not write the story. We concluded that under these facts, there was not an appearance issue and so no authorization was required by the component head. The email is in the file. (b) (6) March 29, 2010

247. (b) (6) (b) (6) sent an email to (b) (6) on March 23, 2010 in which she attached images of her business card for (b) (6) that provided contact information. In the message (b) (6) stated "I am pleased to announce the establishment of (b) (6) (b) (6) This company will offer services in the areas of diversity management, awareness and education. It also will offer career and professional development training, coaching, and mentoring services." (b) (6) received an ethics briefing and post-employment materials on January 27, 2010. She retired on February 28, 2010. She is subject to the one year restriction with respect to communications with JMD and is still well within that one year period. I called (b) (6) on March 23, 2010 and left a message to call me. She called later that evening and left a message saying that she had sent emails to (b) (6) and (b) (6) because she had used them as references. Her message said she was aware of the post-employment restrictions and had the material we had provided to her. She said she would not accept any work at DOJ. She said she had our telephone number. She said she had shared contact information with other friends at the Department. She said she would be out for the rest of the week because of some out patient surgery she was having. I called (b) (6) on March 30, 2010 and spoke with her. I said we had become aware of the contacts with JMD about the services her company provides. I said she had to be very careful about any communications with JMD during the one year cooling off period and especially a communication that seeks new business. She could provide contact information but she should not begin to describe the services she provides as that can be considered marketing her company. I reiterated that she had to be especially careful about any communication with JMD. I asked her if she had any questions about the rules and she said she didn't. I said that if she has any questions about the post-employment rules, she should contact our office. The email she sent to (b) (6) is in the file. (b) (6) March 30, 2010

248. (b) (6) had sent an email to (b) (6) asking if he could use language like the following in an announcement: "(b) (6) Former (b) (6) (b) (6) (b) (6)." (b) (6) advised that this language was permissible. I spoke with (b) (6) and said I concurred with that advice. I reminded him of his one year cooling off period with the entire Department and he said he was not planning to make any communications with the Department. He would use the language in a published firm announcement or in communications with potential clients. I said that was fine. He raised the question as to whether his partner, (b) (6) could use firm stationary bearing his name in a communication with the Commission. I said the would be problematic given the small size of the firm and the specialized nature of the practice. Discussed further with (b) (6) Sent (b) (6) an email on March 30 confirming the advice and providing references to the regulatory definition of communication and the example that deals with attribution. The emails are in the file. (b) (6) March 30, 2010

249. (b) (6) (JMD) called to ask about the use of her picture on a poster. The

University of Maryland (where she teaches on the adjunct faculty) is hosting the Maryland Women in Technology Conference on April 29, 2010. They would like to use her picture and presumably her name on a poster. I said that as long as there was no indication of her DOJ position or employment with the Department, that she could let them use her picture. She said that they would not. I said she should ask them to see what they were putting on the poster to make sure it did not include anything about the Department. It could include her teaching affiliation with the University of Maryland. She said she would make sure that they followed those guidelines. (b) (6) March 31, 2010

250. (b) (6) (b) (6) had a question about how you determine whether a foreign entity is a foreign governmental entity within the meaning of 207(f). (b) (6) had looked at OGE 03 x 1 which Lauren had found in her research. His situation was similar to the facts in that opinion but (b) (6) understood he would need more information about the entity. He was simply trying to get an initial read. We also discussed an event he may be involved in at Georgetown Law School. More details on these two questions are in an email in the log file. (b) (6) March 31, 2010

251. (b) (6) OAG, (b) (6) invitation. (b) (6) will be giving remarks at the groundbreaking ceremony for the Damon J. Keith Center for Civil Rights at Wayne State University in Detroit. (b) (6) was seeking my advise on the final copy of the invitation. I advised that this looked fine. Invitation and emails in log file. (b) (6) March 30, 2010

252. (b) (6) OAG, (b) (6). (b) (6) has been invited to attend the Washington Bar Association's Law Day program on May 8, 2010 and present the Medallion of Merit to the next recipient per tradition. I advised that he may attend, but we need to finesse the "presentation." I understand that it is the organization's tradition for the previous year's recipient to give the award to this years' selectee, but asked that she make sure that (b) (6) is just "handing off" the medallion to the next recipient, and that it does not appear that (b) (6) participated in the selection of the recipient. Since the event is not a fundraiser, his remarks do not have to be fulsome enough to qualify as an official speech, so it's fine for him to make brief remarks. (b) (6) March 30, 2010

253. (b) (6) ODAG, Reference question. (b) (6) received a request to serve as a reference from a career DOJ employee for another career position in DOJ. She asked if it was appropriate for her to serve as a reference. I advised that there is no rule prohibited a political from serving as a reference for a career position, but 1) she should be comfortable that she knows enough about the individual's work to provide a reference (if she wishes to), and 2) that as a political, since this is for a career position, she should not be proactive, e.g., calling someone in the hiring office, to offer a reference. Rather, let them contact her in the normal course of the hiring/interviewing process. (b) (6) had already told the individual that she would be happy to say that the individual did a good job on the one project they worked on together, but didn't feel

she could give a more general reference, which I think was a good response. Also, (b) (6) said that her husband was applying for the position, and wanted to know if that changed anything. I suggested that she let the individual applying know that (b) (6) knows others applying for the job, in the interests of full disclosure. She was comfortable with that. (b) (6) March 31, 2010

254. (b) (6) (ENRD, (b) (6) called on March 12, 2010 to discuss an outside employment question. An attorney who works in the environmental crimes section is interested in setting up an internet based website and database that would provide information on the federal sentencing guidelines as they would apply in the area of environmental crimes. He would like to form some legal entity with a friend who is an antitrust attorney at Howrey and Simon and together they would launch this enterprise. The data they would use is all publicly available data put out by the Sentencing Commission. They would probably hire someone to develop a computer program that would make this data more useful for interested persons. It might, for example, enable the user to get information for a particular district, provide information on downward departures for environmental crimes, etc. It is envisioned as being used both by government prosecutors and private law firms. Private firms would be charged a subscription fee. At this time, they were not thinking of advertising. Other features could be added to the website in the future. There might be a comment board to discuss issues. (b) (6) was concerned if his name would be on the website. But she seemed to think it would be permissible if his name did not appear, he stayed completely in the background, and his name would not be used on anything, e.g., emails. His contribution would be his experience and knowledge as a federal prosecutor in this area. I said this proposed enterprise would raise a number of issues. First, by having a general partner, he would be recused from the financial interests of the partner that he had knowledge of. He would be recused from cases involving Howrey, perhaps from cases involving his partner's clients, etc. Second, he would not be able to enter into contracts with the government because of the restrictions under FAR on government employees contracting with the government. (Rule 3.6, possibly rule 9.5). Third, he may have bar rule issues since this service would benefit persons who might be opposing his client and thus might have a material effect on his client's interest. Rule 1.7(b)(4) deals with a lawyer's judgment being affected by his financial interest. He might be seen as providing assistance to opposing council. Fourth, it raises issues of misuse of position or appearance of misuse of position since his contribution would be his knowledge and experience gained from his position as a federal prosecutor. There would be a potential for misuse of nonpublic information. There could be awkward situations if he were in litigation with someone who was a subscriber and they cited his own website back to him. So it would create a problematic relationship with the defense bar. Discussed with (b) (6) Called (b) (6) back on March 15, 2010 and reiterated these concerns and said it was doubtful this could be approved as outside employment. (b) (6) was going to discuss further with the attorney. (b) (6) March 31, 2010

DEO Counsel Log, Second Quarter, 2010 (April 1 - June 30, 2010)

1. (b) (6), Use of photo. (b) (6) contacted (b) (6) who forwarded the message to me. (b) (6) started at WilmerHale Monday. The firm would like to put out an announcement this week and needs a picture for it. They could use an old one, but it would be better to use one that shows his gray hair. He was asking if there would be any problem with their using a photo he had attached to the email, which (b) (6) took in January. He has cropped it to remove anything that looks official. I advised that I thought it was fine but also asked (b) (6) to weigh in. (b) (6) also stated that it was fine for (b) (6) to use the photo. (b) (6) April 1, 2010
2. (b) (6) (CRT) called with a recusal question. An attorney is seeking employment with Mayer Brown and Hogan and Hartson. He is working on a case involving an appeal from a district court decision denying attorneys fees. These two firms filed amicus briefs in an earlier stage of this litigation more than 10 years ago. The substantive issue that they addressed was decided more than a year ago and is not being appealed. The firms have no interest in this appeal. The attorney had no involvement in the earlier phase of the case and only took it over recently to handle the attorneys fees issue. (b) (6) did not think a formal determination was necessary. Sent email saying we concurred but that she should document the facts and provide the conclusion that a reasonable person would not question his impartiality in working on this case. The email is in the file. (b) (6) April 1, 2010
3. (b) (6), OSG, use of government resources. A long time member of the OSG staff was leaving the office and they were holding a farewell happy hour/reception at a local restaurant. (b) (6) wanted to know if they could use the government contractor to drive employees to and from the restaurant in the OSG van. I told him it would be an improper use of both the van and the contract employee. (b) (6) April 1, 2010.
4. (b) (6) ENRD, use of official position. (b) (6) called to discuss what limits there were on a political appointee forwarding on job postings to people they knew. I told her I saw no problem with her sending things out in her personal capacity, so long as other restrictions (Pledge no contact with old firm/clients) were followed. I did not think she should do it in her official capacity or from her official email and that there should be no other involvement after sending out the posting. (b) (6) April 1, 2010.
5. (b) (6) (OGC, JMD) called to discuss serving as an uncompensated Trustee for FOCUS, a non-profit Christian fellowship group. They have no interaction with the federal government. We discussed 208, 205 and the applicable standards of conduct. Told her she did not need prior approval to serve in this outside position as it was uncompensated, she would not be acting as an attorney, and the position has no relationship to her work or the work of the component.. The emails are in the log file. (b) (6) April 1, 2010
6. (b) (6) (ATF) called with a gift acceptance question. ATF is running an undercover operation (b) (5)

(b) (5)

[REDACTED] has looked into the fiscal law issues but was asking whether this would be permissible under the "Guidance for Acceptance of Assistance and Gifts from Private Parties for Use in Connection with Investigations and Litigation" dated May 26, 2006. He was also consulting PRAO. I reviewed the policy and told (b) (6) I didn't think it could be approved under the ethics guidelines of the memo. It should be regarded as a gift rather than assistance because it is not from a victim but from a third party and the services are not unique and can be obtained by hiring a firm. There is a concern because the services were solicited and that requires approval in advance. The guidelines suggest that rarely would solicitation be authorized. As a gift, it would require approval by the component head if it was within the terms of the delegation of authority. (b) (5)

[REDACTED] If they need additional representation in court, they will hire another firm (not the spouse's) and pay for the services. (b) (6) April 5, 2010

7. (b) (6) (PRAO) had a question about an employee who was a former clerk of a judge some 10 years ago who was approached by the judge's wife to collect funds and arrange a party for the occasion of the elevation of the judge to the 4th Circuit. This was only one of a number of events to honor the judge. The attorney has a case in the 4th Circuit but under court rules will not know until the day of argument who the panel will be. The attorney declined to solicit for the judge and the judge's wife found someone else to do it. (b) (6) asked how the ethics rules would apply to making a contribution and attending such events. I said that it would depend on circumstances but generally former clerks could contribute and attend. She asked if the lavishness of the event would be a factor and I said it would. (b) (6) was struggling with a rule that says a judge cannot solicit a gift and that an attorney cannot assist a judge in breaking a rule. (b) (6) ended up advising the attorney that she would need to get consent from her office to continue in the case and that she and her supervisor would need to figure out what to do if on the day of argument the judge should be on the panel. (b) (6) also advised her that she should not attend the party because of the pending case. (b) (6) April 5, 2010

8. (b) (6) r (OAG, (b) (6) a speech writer for (b) (6) sent emails asking two questions. The National Child Advocacy Center wanted to know if it could post on its website a five minute video message that (b) (6) had taped for use at their annual conference. Discussed with (b) (6) I said that they could not make further use of the video in this fashion. It would be a misuse of position and an endorsement of the organization. The Holocaust Museum wanted to know if it could post on its website, a pledge card that (b) (6) had filled out when he visited the museum on April 2, 2010. This would also involve signing a release that would allow the Museum to make any use it wanted of the pledge card. I said that they could not make such use of the pledge card on their website and that we do not allow Department employees to sign such

releases. The emails and other background are in the log file. (b) (6) April 6, 2010

9. (b) (6) PAO, WAG. I sent the following email to (b) (6) for approval: (b) (6)
(b) (5)

(b) (5)

(b) (6) approved. I advised (b) (6) that he had been approved to attend but please know that because of the \$335 cap, he would have to pay for a second ticket if he was going to bring a guest. (b) (6) April 6, 2010

10. (b) (6) OAG, WAG - White House Correspondents Association Dinner. I sent the following email to (b) (6) for approval: (b) (5)

(b) (5)

(b) (6) approved.

(b) (6) April 6, 2010

11. (b) (6) and (b) (6) in the Civil Fraud section of the Civil Division called to ask what were the ethics obligations of a former HHS employee who executed a factual affidavit that related to his work at HHS. He was apparently paid for it. Glaxo, Smith Kline retained the consulting company that he worked for. The Department is now involved in litigation with Wyeth. I said the ethics statutes that would apply to him were the post-employment statutes. I gave him the names of the ethics officials in Civil. (b) (6) and (b) (6) had been referred to us by PRAO. (b) (6) April 7, 2010

12. (b) (6) Civil, political activities. (b) (6) called regarding (b) (6) attendance at a political event. I told her a memo would need to be sent to the OASG for approval. She wasn't sure what we meant by "passive attendance" so I sent her a sample memo to look at and to review passive attendance. (b) (6) April 7, 2010.

13. (b) (6) & (b) (6) (OJP) had an Ethics Pledge question about (b) (6) who just started as (b) (6) Special Assistant on April 6, 2010. She previously worked for OJP but for the past ten years she has worked for the Urban Institute (UI), a non-profit, non-partisan research institute. She is an expert on the issue of prisoner re-entry. Before she left UI she worked on the planning of a two day meeting at UI which will take place on April 12 and 13. UI is the largest grantee of NIJ. BJA gave a (b) (6) grant to the Council of State Governments and the meeting is being held under that grant. Two BJA people will be going. (b) (6) was listed on the grant application and her expertise was used to justify a sole source award. The meeting also involves the National Re-entry Research Center (or it may be called the National Resource Center of Offender Re-entry). About 11 "partners" of the Council will be in attendance. They are apparently also involved in the grant. UI got about (b) (6) out of the grant. Some of the grant money funded at least part of her salary at UI. Some other federal agencies will be in attendance. About 50 people are expected to attend. They will be talking about implementation issues related to the grant. We discussed the Ethics Pledge restriction. UI is her former employer and they will be talking about matters that relate to her official duties, so she is barred from attending the meeting, unless it concerns only matters of general applicability and it is open to all interested persons (i.e., five distinct interested person are in attendance). Based on the information that they have at this time, she cannot attend these meetings. (b) (6) and (b) (6) will get an agenda and list of participants. However, implementation issues would not be matter of general applicability. Moreover, OJP is not controlling the meeting and so could not ensure that matters other than those of general applicability were not discussed. Also if all of the

“partners” have a shared interest in the grant, there may not be 5 distinct interested parties. (b) (6) and (b) (6) did not believe she should attend these meetings and they were going to so advise. I said they should also provide her new employee ethics briefing as soon as possible to ensure that she does not make any prohibited communications with her former employer. We also discussed her obligations under 502 to refrain from participating in a specific party matter in which UI is a party or represents a party. The email is in the file. (b) (6) April 7, 2010

14. (b) (6) & (b) (6) asked DEO to review a draft letter to (b) (6) advising him of his post-employment obligations as he is planning to leave the Department soon. They had asked if the draft letter could be sent by us. Discussed with (b) (6) Sent an email to (b) (6) with comments/suggestions on the draft letter and said the letter should be sent by ATF. Also discussed it with (b) (6) She asked if we could send her an email saying we agreed that he had a conflict under 207(c) with respect to contacting ATF on behalf of the company that he is seeking employment with. The emails are in the file. (b) (6) April 7, 2010

15. (b) (6) (b) (6) called to ask if he could send a letter to the U.S. (b) (6) in support of an applicant who is seeking employment there as an AUSA. The one year cooling off period has expired. This is a new matter that he never participated in at DOJ and was never under his official responsibility. Told him the post-employment laws did not bar him from sending the letter of recommendation. (b) (6) April 7, 2010

(b) (6) (Parole Commission) called to ask about a request/invitation by a professor at the University of the District of Columbia to (b) (6), to come to university, meet with classes, talk with faculty and administrators and assess the criminal justice program, and make recommendations to improve the program. He would receive a \$500 honorarium. Sharon knew he could not accept the honorarium. I said he also should not be in the role of an expert consultant making recommendations for the program. If there is an official purpose for him to go and speak to students, faculty, administrators, and answer questions, that would be fine. But he can't be compensated and he should not be in the role of a consultant even if there is no compensation. Sharon agreed. (b) (6) April 8, 2010

17. (b) (6) Civil, releases. (b) (6) sent me an ABA release for someone who had contributed to an ABA book. I reviewed the ABA release and found that it included the same objectionable language found in the ABA speakers release. I sent (b) (6) the substitute release we had developed based on the White House's letter. (b) (6) April 8, 2010.

18. (b) (6) CRT, use of government resources. (b) (6) called regarding contract employees who work as investigators for CRT. Their position and employment by CRT is often questioned when they question people. CRT would like to order business cards for them which identifies them as contractors for CRT. I told him if a reasonable person may look at the cards and see that they are contractors, not DOJ employees it would be ok. (b) (6) recommended they talk to the security people as well. (b) (6) April 8, 2010.

(b) (6) (sp??) at WilmerHale (b) (6) called to ask whether she could send a letter describing (b) (6) compliance with the screening requirements in Rule 1.11 to (b) (6). Conferred with (b) (6). Told (b) (6) she could send to (b) (6) (b) (6) April 8, 2010

20. (b) (6) (PRAO) had a letter of recommendation question. A lawyer who clerked for a federal judge years ago has been asked by the University of Southern California where both he and the judge went to law school to provide a letter in support of a professionalism award by the Inns of Court. Told (b) (6) he could use official letterhead and sign with his title since he knew the judge in the course of federal employment and we would regard the character reference purpose as encompassing a professionalism award. He had offered to use personal stationery and not sign with his title. (b) (6) said she would pass on our advice although she thought a letter supporting an award was different from a character reference. The emails are in the file. (b) (6) April 8, 2010

21. (b) (6) (COPS) called with a post-employment question. The former Director who left in January 2009 had signed off on grants. A statute requires the Director to be the one signing off on certain grants. He may not have done much more than sign off on the grant. (b) (6) wanted to know if this could be regarded as "ministerial" rather than "personal and substantial" which would trigger the permanent bar. I said the exercise of such statutory authority was personal and substantial. She asked me to confirm with (b) (6). I did and so advised her. (b) (6) then had a follow up question about behind the scenes assistance, etc. Sent her an email confirming her understanding of what was permitted behind the scenes and what was regarded as not constituting intent to influence. The emails are in the file. (b) (6) April 9, 2010

22. (b) (6) OASG (Access to Justice), Speaking invitation. (b) (6) has been invited to give the keynote speech at the dedication of the statue of Justice Brennan. I advised (b) (6) that this seems an entirely appropriate event for (b) (6) to give an official speech about the Access to Justice initiative. The only additional requirements are for (b) (6)(b) (6) to approve the speech and the offer to reimburse the Department for travel expenses. For the latter, I attached the format memo for her office to complete and route back through us, and I will forward to (b) (6) for approval. This is the same one we are using for the UM commencement address (and for any other offer to pay for travel). (b) (6) April 8, 2010

23. (b) (6) GCO EOUSA, (b) (6) (b) (6) (b) (6) has asked the General Counsel's Office (GCO) to reconsider whether he may attend the Cole County Democratic Party's Annual Dinner on April 16, 2010, and accept the Blair Award. On the March 15, 2010, GCO advised (b) (6) (b) (6) that per Attorney General Janet Reno's Memorandum for All Department of Justice Non-Career Employees, dated August 8, 2008, he may not attend this political event and accept the Blair Award. On March 11, 2010, I concurred with GCO's position on this issue. Yesterday, (b) (6) spoke with (b) (6) and learned that the agenda consists of a social gathering between 6:00 and 7:00 p.m. Thereafter, the dinner program starts at 7:00 p.m. The program includes: Welcome and Greetings by the Chair of the Cole County Democratic Central Committee (Committee); Introduction of Special Guests; Recognition of Committee Members; Introduction of Previous Blair Award Recipients; Keynote

Address by The Honorable Patricia S. Joyce, Presiding Judge Cole County 19th Judicial Circuit; Introduction of The Honorable (b) (6); Presentation of the Award; Remarks by Honoree; and Closing Remarks. (b) (6) pointed out that under Missouri law, judges are not permitted to participate in what would be considered partisan activities. (b) (6) also learned that (b) (6) will not be attending the event. Based on these new facts and the facts discussed in the e-mails below, GCO does not believe that this event will be a rah-rah event. It is still GCO's opinion that (b) (6) should be able to attend this event and that it is not likely that someone outside the Department would question his impartiality. (b) (6) is being recognized for his 31 years of public service in Cole County, a county that is not located in the (b) (6). Further, (b) (6) has expressed a strong desire to attend this event and accept the award, and has ensured GCO that he would not appear with any candidates for public office. He also ensured that he would not sit with any elected officials. I advised that if this additional information about the dinner is included in the recommendation to (b) (6) we would have no objection. (b) (6) April 8, 2010

24. (b) (6) OASG, Ethics pledge question. (b) (6) attended a White House legal briefing where (b) (6) was one of the speakers, and he was hoping to follow up with a brief meeting with a small group of his colleagues from Chicago. They are going to be out in Washington on the afternoon of April 20th and would like to talk about some of the access to justice issues they are working on right now. As the charitable arm of The Chicago Bar Association, their work at The Chicago Bar Foundation (CBF) exclusively focuses on improving access to justice. (b) (6), one of (b) (6) former colleagues at Jenner & Block and the President-elect of The Chicago Bar Association, is going to be part of their group along with (b) (6), their Director of Advocacy here at the CBF, and perhaps one or two lawyers from Chicago. I advised (b) (6) that we've done some further consultation, and the Pledge would not bar (b) (6) from meeting with a J&B attorney who is attending the meeting in a separate capacity than as an attorney for the firm and is not representing the firm at the meeting. I believe that is the case here, so it's fine for (b) (6) to accept the invitation to meet to include attendance by the Chicago Bar Association President-elect (who also is a J&B partner). The only thing that causes me any concern is that Mr. (b) (6) mentions that "(b) (6) also is very knowledgeable on the various access to justice issues on the criminal side and can talk about some of the good work happening here in Illinois on those issues." If any of these are matters in which J&B represents a client, there should not be any discussion about those matters, or more generally any discussion in which (b) (6) is speaking on behalf of the firm. (b) (6) April 9, 2010

25. (b) (6) CIV, Award to (b) (6) (b) (6) is being presented with the CABL award. Morrison & Foerster, (b) (6) former law firm, is interested in publicly acknowledging (b) (6) and congratulating him on receiving this award from CABL. The firm is considering putting something in the event brochure, in the local legal newspaper, etc. The text would say something like this: "Morrison & Foerster congratulates our former partner, (b) (6) on receiving CABL's Lawyer of the Year Award." (b) (6) plans to advise the Ethics rules do not govern what Morrison & Foerster can do (but rather what (b) (6) can do) so they are not going to prohibit the firm from doing this if it decides to. However, (b) (6) also planned to advise that an overall concern of the Ethics Pledge is that it not appear that (b) (6) or other political appointees are still with their former employers and only sort of on loan to the

government. At this point, (b) (6) plans to discuss this with (b) (6) and at least tell the person from Morrison & Foerster who called that the ethics rules do not prohibit this but that any ad that is run should be very clear that (b) (6) is their former partner, not current. (b) (6) April 11, 2010

26. (b) (6) ODAG, Gift acceptance. I emailed the following to (b) (6) for approval: "(b) (6) (b) (6) has been invited by (b) (6) a partner at Patton Boggs, to dinner at the Mendocino Grill on April 19, to meet Mr. (b) (6) wife. (b) (6) is an old friend of (b) (6) (b) (6) served as (b) (6) Counsel in OCRS. (b) (6) advised that he does not recall having any business with him since Mr. (b) (6) has been in private practice. However, Mr. (b) (6) does represent one of the DOJ attorneys under investigation by the Court and OPR in the (b) (6) matter so it is possible that (b) (6) could become involved with him at some point depending on how OPR comes out as to Mr. (b) (6) client. Mr. (b) (6) is a prohibited source; however, the nature of this event is personal, meeting Mr. (b) (6) wife, and (b) (6) is being invited based on their long-standing personal friendship. Mrs. (b) (6) was also invited, although she is not attending. This falls within the exception for gifts based on a personal relationship. I do not believe that the possibility that he may make a decision with respect to Mr. (b) (6) client is a basis for disapproving the gift, and I do not believe that a reasonable person would question (b) (6) in the (b) (6) -related matter due to his acceptance of this gift. I recommend that you approve." (b) (6) approved. (b) (6) April 12, 2010

27. (b) (6) ODAG, Gift acceptance. I emailed the following to (b) (6) for approval: "(b) (6) (b) (6) has been invited by (b) (6), a partner at Vinson and Elkins, to attend a Nationals game on April 23. It is Mr. (b) (6) personal box. (b) (6) and Mr. (b) (6) have attended several games in previous years, the last time (b) (6) accepted Mr. (b) (6) invitation was in 2008. (b) (6) and Mr. (b) (6) are old friends. (b) (6) hired him into OCRS in the late '70's. Also invited to the game are the two other OCRS chiefs Mr. (b) (6) served (both now retired). (b) (6) advises that he is not currently working on anything involving Mr. (b) (6) or the firm, has not for some time, and does not expect to in the foreseeable future. Mr. (b) (6) may have matters elsewhere in the Department and may be a prohibited source; however, the nature of this event is personal and (b) (6) is being invited based on their long-standing personal friendship, which is demonstrated by the other invitees, also long-time DOJ (now retired) friends/colleagues. This falls within the exception for gifts based on a personal relationship. I recommend that you approve." She approved. (b) (6) April 12, 2010

28. (b) (6) OLP, Summer intern question. (b) (6) inquiry relates to a summer intern (unpaid) who will be working in OLP this summer. The intern has a current job in NYC involving some federal affairs work including meetings with Congress and contacts with HUD and Treasury. (b) (6) doesn't yet know and needs to find out if he has registered as a lobbyist, or if he is making any personal contacts on behalf of his employer as opposed to behind-the-scenes work advising other folks who are doing the actual lobbying. Under 18 U.S.C. 205, regular federal employees would be barred from making such contacts with any federal agency on behalf of their private employer. However, (b) (6) does not believe that for summer interns that

restriction applies with respect to matters unrelated to any work they are doing at the Justice Dept. This intern obviously would be recused from working on any matter relating to his private employer. Since this intern would not be paid, he would not be able to take "annual leave" to work on any matters. (b) (6) would like to know if there is some recommended way to provide for this intern to take, say, an afternoon off from the Department in order to handle a matter for his private employer. I advised (b) (6) that he's correct, the statute and the standards of conduct do not apply to an unpaid intern, but since he is a law student and would be working under the supervision of DOJ attorneys, the bar rules might. (b) (6) said they would not assign him anything that is related to housing or Treasury or HUD; and (b) (6) felt if he agreed not to have any direct contact with the Hill, but rather to limit his work to advising those who would contact the Hill, it might be permissible. I thought so, and feel that these limitations are appropriate to protect the Department's interest. The bottom line with the interns is if that if we would rather they not engage in another activity and they will not agree to end it during their internship, we can simply not accept them for the internship. (b) (6) will discuss it with others in OLP to get their read on it. (b) (6) April 12, 2010

29. (b) (6) called with an Ethics Pledge/WAG question. (b) (6) has been invited by ADL, a 501(c)(3) organization, to be a guest at their table at the Washington Awards Gala being held on April 20 by MALDEF, a registered lobbying organization. There will be upwards of 500-600 people in attendance from a wide range of interests. A ticket costs \$200. Discussed with (b) (6). Told (b) (6) that the source of the gift is ADL and so she is not barred by the Pledge from seeking WAG approval. (b) (6) believes that all of the WAG requirements are met here. Also mentioned to (b) (6) that she could only accept one ticket. If a second ticket were offered to her to bring a guest, she would have to pay for the full price of the second ticket. (b) (6) April 9, 2010

30. (b) (6) (Civil) sent a draft 502 determination for our review. The determination is for (b) (6) to allow him to continue to work on litigation defending against challenges to the recent health care reform legislation. (b) (6) wife, (b) (6) is the Treasurer of the State of Maryland and Maryland may file an amicus brief in support of the defense of the legislation. (b) (6) is recused from any of these cases. (b) (6) will not have any direct communications with representatives of Maryland in connection with these cases. Discussed with (b) (6). Told (b) (6) the memo was fine. The emails and draft memo are in the log file. (b) (6) April 12, 2010

31. (b) (6), called with an appropriations law question and a misuse of position/ethics question. They are planning a 40th anniversary event on May 13, 2012. There will be honorees. It will be held during working hours at Ft. McNair. It will be mostly government employees but there could be a few non-government people in attendance. INTERPOL is a separate component that reports to the DAG. They plan to rent space at Ft. McNair. They are planning to have food and they want to hire a band. An INTERPOL employee is a member of a band and they would do a 3 hour event for \$500. The employee would take annual leave and would forego his share of the fee. Told him he would

need to clear the appropriations law question with (b) (6) in General Counsel. Gave him references to GAO website on permitted uses of appropriated funds. It would have to be an authorized use and there would have to be funds available in a special fund for official receptions and representation. He said they have such a rep fund. If it is permissible to spend appropriated funds on the band, (b) (6) will get back to us on the ethics issues. I did advise him that the employee could not submit the bid on behalf of the band and could not play any role in the selection of the band. (b) (6) April 12, 2010

32. (b) (6) JMD/EEO Labor Law. An ATR attorney will be representing another ATR employee in an EEO claim. This would be allowed as it is an administrative proceeding. Does there have to be ethics approval for this to happen? (b) (6) will be representing the agency on the opposing side, and wants the claimant and their representing attorney to be compliant with the rules. Discussed with (b) (6) - all out side practice of law, including under the exception which allows representation in administrative proceedings requires CH approval. Referred (b) (6) to (b) (6) who would be the ethics official to recommend CH approval within ATR. (b) (6) April 14, 2010

33. (b) (6) OSG - she received in the mail a number of 50% off discount tickets to Six Flags, an amusement park in Largo, MD. These discount coupons are widely available to members of the public. Can she place them out in the common nonwork areas of OSG for use by anyone? I told her she could put them out for others to pick up and use. Could she send an email telling folks they are there? No, she shouldn't because it may appear she is promoting a commercial enterprise, or expecting some sort of recognition. She agreed. She is going to just place the discount coupons in the lunchroom where the attorneys gather, and since nonattorneys do not generally use the lunchroom, she is going to also put some where the nonattorneys sign in and out of work each day. I told her that sounded fine. (b) (6) April 14, 2010

34. (b) (6) CRM, WAG. (b) (6) emailed the following to (b) (6) for approval: (b) (5)

[REDACTED]

(b) (5)

[REDACTED]

(b) (6) approved. (b) (6) April 14, 2010

35. (b) (6) PAO, (b) (6) participation question. Before (b) (6) even figures out if it is something they'd want to do, she wanted to check and see if (b) (6) was ethically able to do an intro to a book on racial profiling for The New Press, a non-profit organization whose revenues support only its publications. I advised that the standards do not permit (b) (6) to do this. (b) (6) April 15, 2010

36. (b) (6) (CRT) had a question about a presentation that (b) (6) is planning to give at the Association of American Geographer's meeting on April 16, 2010. She plans to discuss the difficulties of defining a majority voting district for Hispanic voters in light of recent demographic changes. (b) (5)

[REDACTED]. (b) (6) said it could trigger recusal obligations. She is the only professional geographer in that area. I agreed with (b) (6) that 2625.802(b) would apply here. (b) (6) advised management that the activity would raise concerns as a conflicting activity under 802(b). The emails are in the file. (b) (6) April 13, 2010

37. (b) (6), a White House Fellow in the DAG's office (b) (6) who started last September on a one year fellowship, asked if he could attend a March of Dimes Gala to be held on April 14, 2010. Discussed with (b) (6) and (b) (6). He had previously asked about this event and our office (b) (6) had responded to him weeks ago with a request for the information needed to evaluate whether he could attend this event but he had not responded. (b) (6), a former White House Fellow, had obtained his name from the White House and invited him to be a guest at his table. Individual tickets are \$1,000. (b) (6) said he does not know (b) (6) personally. (b) (6) I works on criminal matters relating to the southwest border and to crime in Indian country. Told him there was a \$335 limit when the person providing the gift was someone other than the sponsor. Told him we would need information about the source of the gift and what the Department's interest would be in his attendance. In this case approval does not seem likely because the gift appears to be from someone other than the sponsor and the price of a ticket exceeds the limit. (b) (6) said he would not be able to provide the information in time to assess whether approval was possible and get the clearance. So he asked if he could simply go to the

event and be at a pre-dinner cocktail hour and pay for his own drinks. Discussed with (b) (6). The invitation made no mention of a pre-dinner social hour and he did not know that in fact there was one. Sent him an email saying that our advice was that he should not attend any part of the event. (b) (6) called and we discussed further. Told him that based on the information we have available, his attendance at the Gala could not be approved. He has been invited because of his official position. To attend would require a determination that the Department had some interest in his going. We have no indication of that here. So he should not attend just part of the event. Moreover, he was not invited to just a part of the event and we do not even know if there is some pre-dinner activity. Paying for drinks (assuming that could even be done) does not remove the concern. He asked how is it that Fellows from other agencies are able to attend. I said we cannot say as we don't know the circumstances of their attendance and do not know whether they sought and obtained approval. (b) (6) had told him to contact our office to see if he could attend. (b) (6) will not attend. The emails are in the file. (b) (6) April 14, 2010

38. (b) (6) (CRT) asked if (b) (6) (b) (6) could go to the Constitution Champions Awards Dinner on April 15, 2010 at which (b) (6) will speak. He would pay for his ticket. Discussed with (b) (6). Advised (b) (6) that he could go provided it was open to the public (which it appears it is) and he pays for the ticket at the price that would be charged for any government attendee. The emails are in the file. (b) (6) April 15, 2010

39. (b) (6) (NSD, (b) (6)) sent an email with a recusal question. They want to hire a soon to graduate from law school person to work for one year. The person has an arrangement for deferred employment with Mayer, Brown. He will not be paid by Mayer, Brown. He will work with (b) (6) in Victim Services, working on individual victim matters and perhaps with some foreign countries. Advised he can do this only if he is not receiving compensation from the firm while he is working for us. He is recused from anything involving the firm, but not all clients of the firm if the firm is not representing them. There needs to be an appropriate screening arrangement. Email is in the file. (b) (6) April 16, 2010

40. (b) (6) (CRT) called to ask if (b) (6) whose disability is blindness can contribute a personal story for an ABA book dealing with lawyers with disabilities. Discussed with (b) (6). Said he could do this as long as any description of his position and work at DOJ was included in the narrative and not given special prominence. They should review the draft. They should check to see that his title is not featured and use some generic title like federal official or federal attorney or government attorney. They should not use his position to promote the book. Given that it will be clear that it is a personal statement, a disclaimer is not necessary. The email is in the file. (b) (6) April 16, 2010

41. (b) (6) (b) (6) NSD, 502 determination. (b) (6) requested a waiver under 502 for (b) (6) RE: Google & Adobe Systems, Inc. This waiver was not approved. Copy of waiver is in log, 502, & (b) (6) file. (b) (6) April 16, 2010

42. (b) (6), PAO, Networking group brown bag. (b) (6) received an email from a contact in the Department of Veterans Affairs. She is not quite sure what the goal of the conference call is, but wanted to make sure that she would be able to participate, if her schedule allowed. I advised that I think it's fine for her to participate if she would like. It appears to be all government employees except for Diversity Inc. She would have a better idea of the purpose after the call. I asked her to touch base afterwards and we can see if there is any ethics issues that would be good to chat about. (b) (6) April 15, 2010

43. (b) (6) PRAO, Pro Bono conflicts question. (b) (6) advised that a particular case described in her email is a conflict for a DOJ attorney, but would like my opinion on if I thought it would be a problem for attorneys at other agencies which don't have our supplemental reg against matters related to criminal cases or if a live criminal case would be a problem for any fed attorney in DC. I advised that I don't think it would be a problem as long as: the attorney does not have any communication with any DOJ official (e.g., USAO DC); and DOJ has no direct and substantial interest in the matter. If the DC Attorney General's office handles these, then I don't see an issue for other federal attorneys; if it is handled by USAO/DC but he is not contesting it, it seems unlikely that we would have a direct and substantial interest. (b) (6) April 16, 2010

44. (b) (6) PAO, WAG. I sent the following email to (b) (6) for approval: (b) (5)



(b) (5)

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(b) (6)

approved. (b) (6) April 19, 2010

45. (b) (6) OLA, Political fundraising question. (b) (6), new confidential assistant to (b) (6) would like to promote a candidate running for state Attorney General. The three ways he would like to do this are: In his free time with his personal email, send out a flyer that advertizes a fundraising event, in his free time, invite people to come to a fundraising event, and make a donation to the campaign using his personal funds. I advised (b) (6) that (b) (6) will be contacting him, if she hasn't already, to set up a briefing at the end of this week and I will go through the rules, but please tell him generally that he cannot be politically active while serving in the Department - like all politicals, no matter the grade level, he is "further restricted." The short answers are: Yes to contributions, absolutely no to anything to do with a fundraiser (and he needs prior approval from (b) (6) just to passively attend one - or any partisan event - (b) (6) cannot approve that). (b) (6) April 19, 2010

46. (b) (6) (OSG) sought approval under 1353 for the Department to accept reimbursement of his travel expenses in connection with his participation in a panel at the North American South Asian Bar Association meetings in Boston in June. Approval was recommended on April 16, 2010. The emails are in the file. (b) (6) April 16, 2010

47. (b) (6) (CRT) called to ask if a career supervisor (b) (6) would be prohibited from running as a candidate for the Board of Governors of the District of Columbia Bar Association. Discussed with (b) (6). Told (b) (6) that it is not prohibited but needs to be approved as with any other outside activity. Would be approved by the AAG. He should understand that he cannot solicit support from subordinates. If someone voluntarily supports

him, their DOJ affiliation should not be used. He also should not solicit support from persons who are representing anyone in cases in the Division. And all the other ethics restrictions on an outside activity would apply. (b) (6) April 19, 2010

48. (b) (6) (CRT) called to ask what would be the recusal obligations of an attorney coming from Paul, Weiss with regard to a disability case (b) (6) in which she had represented the plaintiffs. The case is now on appeal to the 2nd Circuit. The section chief wants to know if she could work on that case. The person is coming on board in a few months in a career position. PRAO has advised that she should never work on that same case. I said that under 502 she would have a covered relationship with her former firm and so could not work on that case for a year. However, even beyond that, under the general appearance standard, she should not switch sides and work on that same case, even though the position of the plaintiff and the government were to some degree aligned. This case is of a type known as an Olmstead Enforcement Action. (b) (6) asked if she would be precluded from working on other Olmstead cases. I said if the case was completely distinct from the (b) (6) case and she had not worked on it before, that she would not be precluded from working on a new Olmstead case. (b) (6) April 19, 2010

49. (b) (6) (OSG) called with a recusal question. He has a (b) (6) corporate note with Bank of America. He has been assigned a matter which concerns a recommendation on whether or not to file an amicus brief as requested by the Labor Department in an ERISA case involving a plaintiff who sued Metlife for denying payment on a claim under the group life insurance policy of a Bank of America employee. Metlife won a summary judgment motion. BoA is not a party in the case and has no potential liability or gain from the outcome. Sent (b) (6) an email saying neither 208 nor 502 required his disqualification from working on the recommendation on the amicus brief. The email is in the file. (b) (6) April 19, 2010

50. (b) (6) (EOIR) called with a follow up question relating to a determination that IJ (b) (6) could not give a particular presentation at a bar association meeting. (b) (6) question was whether EOIR's determination can be appealed within the Department. Discussed with (b) (6) Sent (b) (6) emails indicating that there is no procedure for an "ethics" appeal but that our office was not offering an opinion as to whether the decision would be "grieveable" under employee grievance procedures. The emails are in the file. (b) (6) April 19, 2010

51. (b) (6) is assisting (b) (6) in preparing for an interview tomorrow. She asked for some suggestions as to how (b) (6) might answer a question about her recusal from matters involving her former employer, GE, including Superfund cases. Provided (b) (6) with a suggested way to describe the recusal. The emails are in the file. (b) (6) April 19, 2010

52. (b) (6) CRT, WAG. (b) (6) had called regarding an event that the political appointees subject to the pledge wished to attend. It was a MALDEF event. MALDEF is a registered

lobbyist and at first appeared to not be a 501(c)(3). However after some research we determined it was a 501(c)(3) and the regular WAG process could be used. (b) (6) April 19, 2010.

53. Sent an email to (b) (6) (OJP) to follow up on his question regarding (b) (6) attendance at some political fundraisers for (b) (6) next weekend. Told (b) (6) to go ahead and process his recommendation as he had in earlier matters. (b) (6) sent his recommendation to (b) (6) in the Associate's office on April 20. The emails are in the file. (b) (6) April 20, 2010 Update: Associate's office decided on April 23, 2010 not to authorize attendance.

54. (b) (6) ASG, WAG. I sent the following email to (b) (6) for approval: (b) (5)

(b) (5)

(b) (5)

(b) (5)

approved. Documentation in log file. (b) (6) April 20, 2010

55. (b) (6) ATF, conflicts. (b) (6) is considering applying for a deputy director position at ATF. If he received this job he would be the second line supervisor for his wife. He wanted to know if based on the ATF fraternization policy and the nepotism statute this would be a problem. I read the ATF policy and told him that if he was open with his relationship and potential conflict throughout the process and made everyone aware that he would need to be recused from any personnel matters for his wife, I did not think it would be a conflict or a violation of the policy. (b) (6) April 20, 2010.

56. (b) (6) Crim, outside activities. A fraud attorney has been asked to co-chair a committee with private banking industry members to develop a law enforcement tool kit to prevent and prosecute bank fraud. He has been asked to do this in his official capacity and the Crim Div wants him to participate. I told (b) (6) he could not be the co-chair but he could participate and recommended DAG approval. Email in file. (b) (6) April 21, 2010.

57. (b) (6) ENRD, potential conflict. (b) (6) emailed regarding an attorney working on a matter with San Diego Gas and Electric, who is a wholly owned subsidiary of Sempra. While doing taxes he discovered that his adult son has (b) (6) in Sempra stock. His son is graduating from school this May and will be returning to live at the attorney's home for a period of time. (b) (6) wanted to know if a 502 determination was needed. I conferred with (b) (6) and because the amount is so low, we did not see any potential conflict and no need for a 502 determination. (b) (6) April 21, 2010.

58. (b) (6), BOP, contract. BOP would like to solicit weight loss vendors (Weight Watchers, Nutrisystem, etc) to run a program at BOP headquarters as part of the federal wellness initiative. BOP would pay for the service, staff would "self nominate" to the program and the participants would be chosen through an "objective process". (b) (6) was concerned she may be missing an ethics issue. Conferred with (b) (6) and we could not come up with any ethics issues, procurement had previously cleared the fiscal issues. I advised that whoever was awarded the contract, they cannot use their relationship to BOP or the Department to advertise or promote themselves. (b) (6) April 22, 2010.

59. (b) (6), OCIO, post employment. (b) (6) emailed regarding a former employee who had left the Department in October 2008. He wanted to know what restrictions may be placed on the former employee if he were working for a contractor who was a vendor for the Department. I reviewed the facts with him and the former employee had no ties to the current contract that (b) (6) was concerned about - it will be competed in Sept. 2010. I told him that for that contract there were no constraints and to call back if he had further questions. Emails in file. (b) (6) April 23, 2010.

60. (b) (6) EOUST, gifts. An attorney in a field office is on the Ninth Circuit Judicial Conference in her personal capacity. The Conference has offered to pay travel expenses for attorneys who cannot afford the travel to the annual meeting in Hawaii. (b) (6) wasn't sure if they Conference and the judges who have the discretion to give the reimbursements were prohibited sources. I told (b) (6) they would have to examine the relationship of the attorney and the judges to make a determination. I told (b) (6) "You will have to look at what this attorney's involvement with the judges is. Is she a line attorney who has little involvement with any of the judges involved and therefore little issue of a conflict? Does she appear regularly in front of the judges and gift may therefore at the very least have the appearance of impropriety? If you feel that the relationship between the judges and the attorney is far enough removed that the gift does not create a conflict, then I think she may accept it. You also mentioned that the district judges have discretion as to how to use the fund - do they have discretion to determine who receives these payments? If it is an objective standard (all government attorneys, public interest, etc) then I would not be concerned but if the judges have the ability to determine which attorneys receive the reimbursement, this should be another factor considered when making the prohibited source determination." (b) (6) April 23, 2010.

61. (b) (6) USTP, outside work. (b) (6) is an employee of USTP who works with contracts. He would like to begin working as a consultant to help vendors prepare their bids for government contracts. (b) (6) wanted to know what the restrictions would be. I reviewed the restrictions with (b) (6) - he could not work with any vendors who contract with USTP, are involved in law enforcement/prisons or may have involvement with USTP, he may not advise on any bid going to the DOJ, he may not make any representations to any federal agency on behalf of another entity and he may not allow his name to be used to gain access or favor by those he was working with. If the work was entirely behind the scenes and he received the proper approval for the outside employment, I told (b) (6) I did not see any problems. (b) (6) April 23, 2010.

62. (b) (6) (CRT, (b) (6)) called with two questions from (b) (6) (b) (6). On April 21, 2010, the Arab American Institute Foundation is holding a Kalil Gibran Awards Event. The organization is not a lobbyist. The event is not a fundraiser. The cost is \$100 per person. (b) (6) wife, who is a civil rights officer at DHS, was invited and she was given approval by DHS ethics officials. (b) (6) wants to know if he can attend the event. Told (b) (6) that if the DHS approval was for his spouse and a person accompanying her, then he would not need WAG

approval as the gift would be to his wife and not to him and it would be covered by the DHS approval for his wife to accept. (b) (5) was going to check the DHS approval to ensure that. She said CRT has approved a career Counsel (b) (6), to attend under the WAG exception. (b) (6) also had a question from (b) (6) as to whether he could provide lunch for three attorneys from the State of Georgia who will be here for a negotiation. He wanted to have a working lunch in the DOJ offices. She asked if appropriated funds could be used for this. I said that was not our area but that I was fairly certain the answer was no. She asked if he could pay personally for it. I said the rules do not prohibit a gift from an employee to a prohibited source but that it created a bad appearance and that it was better to maintain an arms length professional relationship especially in a negotiation where the interests are not shared. I said our advice would be not to pay personally for the lunches and let everyone pay for their own. The emails are in the file. (b) (6) April 21, 2010

63. (b) (6) (CRT) called to ask if (b) (6), a recently hired attorney who previously worked for the NAACP Legal Defense Fund (LDF) could assist the AAG in preparing for testimony on the Black Panther case involving alleged intimidation at Philadelphia polling places in the 2008 election. After January 20, 2009, the case was dismissed against a number of defendants. LDF never participated in the case. At one point after the decision to dismiss had been made, LDF asked for and received a copy of the complaint which was a public document. The question was whether (b) (6) would be disqualified because LDF, her former employer, had requested a copy of the complaint. Discussed with (b) (6). Told (b) (6) we did not believe that under these circumstances, a formal 502 determination was necessary but that she should document here advice in an email to (b) (6) and remind her of her recusal obligations with respect to her former employer if LDF would later become involved in the matter. The email is in the file. (b) (6) April 21, 2010

64. (b) (6) (PRAO) had a gift question. (b) (6) was offered a book for her son by an attorney with a non-profit organization that she is working with on the development of the San Francisco pro bono program. Confirmed (b) (6) view that the gift prohibitions apply and that the personal relationship exception is not available here but that (b) (6) could accept the gift if its value was \$20 or less. The emails are in the file. (b) (6) April 21, 2010

65. (b) (6) ENRD, WAG approval for AAG. (b) (6) emailed the following to (b) (6) (b) (6) for approval: (b) (5)



(b) (5)



(b) (6) approved. (b) (6) April 27, 2010

66. (b) (6) (CIV) had a question as to whether their training person, (b) (6) could attend an e-discovery summit sponsored by Clearwell, a vendor of software that facilitates e-discovery. The event would have some substantive sessions in the morning and in the afternoon the sessions were heavily oriented toward promoting Clearwell products, i.e., it appeared to be vendor promotional training. There was a lunch and an end of day reception. Told (b) (6) it would have to qualify as a WAG and be approved as a WAG. (b) (6) had contacted the sponsors of the event and he did not believe it met the requirement of diverse interests as only government employees were invited although others would not be turned away. So he advised (b) (6) that she should not attend. (b) (6) of EOUSA had advised people that they could attend because it was free. Sent (b) (6) an email saying we believed it required approval as a WAG and asked him to call if he had questions. The emails are in the file. (b) (6) April 21, 2010

67. (b) (6) (CIV) had a question about whether (b) (6), a career attorney, could assist his fiance's father in editing and updating a treatise on "Problem Loan Workouts" published by Thompson West. I told (b) (6) it would depend on whether the outside writing related to his official duties within the meaning of 807. We discussed the definition. (b) (6) will obtain additional information and will analyze to see if this outside writing can be approved. (b) (6) April 21, 2010

68. (b) (6) (OLA) sent an email about (b) (6) proposed participation in a Rule of Law conference in Salzburg. We sent (b) (6) an analysis on April 21, 2010. Because (b) (6) is a noncareer employee the definition of relation to official duties is broader and he is prohibited from accepting travel expenses for speaking as an outside activity. We researched the Department's involvement in Rule of Law, particularly in OPDAT and ICITAP, and discussed

with (b) (6) who works on Rule of Law and is supervised by (b) (6). Based on the information we had at that point, we advised that we could not say that this activity would not relate to his official duties. (b) (6) forwarded our analysis to (b) (6) who decided not to participate in the conference. The emails are in the file. (b) (6) April 21, 2010

69. (b) (6) (b) (6), (b) (6) called on April 15, 2010 requesting post-employment advice regarding a tax investigation. He wanted to know if an investigation of (b) (6), (b) (6) and (b) (6)

(b) (6), was pending in the ODAG during (b) (6). He did not recall ever seeing the matter when (b) (6). He had worked with (b) (6) in Tax on the UBS negotiations but does not recall ever having discussed (b) (6) with (b) (6). He suggested talking with (b) (6) (b) (6) and (b) (6). He was fairly certain there was never anything that needed to be approved by ODAG during that time and probably there was no paper related to it. He recalled maybe 3 general briefings from the Tax Division. Also every Friday the AAG's provide a highlights briefing. He said that possibly in a briefing (b) (6)'s name may have come up and been mentioned as one of some other banks beside (b) (6) that were being looked at. I discussed the matter with (b) (6) who has the Tax Division in her portfolio. She searched her records and found only a draft memo on (b) (6) to (b) (6) (b) (6). She attended some meetings of the ASAG and the draft memo and the discussions stayed at the Associate's level. I asked her if this matter had ever risen to the ODAG. (b) (6) had no recollection of any action being taken in the ODAG with respect to (b) (6) during the time (b) (6) was DAG. I discussed the matter with (b) (6) (b) (6) searched his records and phone only some press stories. He did not find any emails dealing with the matter and did not recall having any discussions of the matter. (b) (6) was involved in the (b) (6) matter. He said its possible that it might have been mentioned in a weekly highlights briefing but he had no recollection. Discussed with (b) (6) ExecSec. She checked the database and did not find anything on this matter that went to the ODAG. Discussed with (b) (6) in Tax. While he did work with (b) (6) on UBS, he did not recall having any discussions of (b) (6) with (b) (6). He also checked with the person who handles criminal tax matters and got a negative response. The bottom line was that this inquiry did not disclose any information which would indicate that this matter was in the ODAG or that (b) (6) or anyone else in ODAG "participated" (as opposed to possibly being briefed), i.e., took an action within the meaning of "participate" in 5 C.F.R. § 2641.201(i)(1). Consequently, the permanent ban in 207(a)(1) did not apply to (b) (6) in this matter. Discussed with (b) (6) on April 26, 2010 and sent him a follow up email on April 27, 2010 outlining the restrictions he is subject to with respect to this matter under 207(a)(2), 207(c), and the Ethics Pledge. Advised that he should take steps to ensure that his name is not associated with this matter in any communications or appearances by others in his firm with any employee of the United States. The emails are in the file. (b) (6) April 27, 2010

70. (b) (6) (Civil) called with a 205 question. He has had two inquiries from employees who want to represent relatives in Social Security matters. The relatives are included in those specified in 18 U.S.C. § 205(e). (b) (6) wanted to know what the standard for approval was. I said it is the standard specified in (e)(1) (something the employee worked on) and (e)(2)

(something under the employee's official responsibility). So he would need to inquire whether the agency involved, such as SSA, was a "client" agency of the attorney, had any matters with that agency, etc. (b) (6) asked whether the approval could be limited to proceedings at the administrative level. I said it could and there might be other limitations or conditions built into the approval depending on circumstances. (b) (6) April 27, 2010

71. (b) (6) (OCIO, JMD) received a request from Allstate Insurance for personal information about an employee who had been involved in an accident on March 24, 2009. Allstate wanted information about dates of employment, days absent, availability of workman's comp benefits, a job description, etc. The employee had signed a release. (b) (6) wanted to know if he could provide this information. I said that was a question for JMD General Counsel's Office and gave him (b) (6) name. (b) (6) April 27, 2010

72. (b) (6) (NSD) sent an email with a misuse of position question. An NSD lawyer has a friend who is a retired FBI agent who has a consulting company and works with a vendor of blackberries with a locator beacon. The retired agent says there is a requirement that the government use this technology for employees working overseas. The lawyer does not think that DOJ is using this technology. He wanted to set up a meeting with NSD procurement with his friend to discuss this issue. (b) (6) believed this raised misuse of position concerns. Called her and said we agreed and that the NSD lawyer should not set up this meeting with his friend. He could bring this question to appropriate people in NSD and find out what the directive says, whether it is being followed, and if not, whether there is a reason, etc. (b) (6) agreed. Her email is in the file. (b) (6) April 28, 2010

73. (b) (6) CRT, pro bono. An attorney in CRT asked for pro bono approval to assist a friend who was the victim of rape. The attorney would not be representing her but answering her questions and helping through the process. I told (b) (6) they could approach it one of two ways. If the attorney will really only be acting as a friend, answering some questions on the process and not advising the victim or contacting the prosecutor, etc, then I don't think he needs approval. However, if he is going to attend meetings with the prosecutor or be more active than just a "friend" would be, then he will need DAG approval. The memo requesting the waiver for participation in a criminal matter should note that he will not be representing her, just guiding her through the process, etc. (b) (6) April 28, 2010.

74. (b) (6) (ATF) had a question under the supplemental regulation, 3801.104, regarding the purchase of seized property by an employee. The property was seized by the Marshal's Service. She is an ATF employee. She is not an agent, does not work in the asset forfeiture branch, and had nothing to do with the seizure of this house. She thought it was owned by a bank. When she got close to settlement and there was some paperwork to exchange, the realtor provided a form and she discovered that it was seized property. The purchase was an arm's length transaction and she had no confidential information. Told (b) (6) he could write up a recommendation for approval and should discuss how this transaction meets the standard for

approval in 3801.104. Asked him to confirm that ATF did not seize the property. He said the Counsel's office, (the Counsel or Deputy Counsel) has been delegated the authority to approve. Told him we would take care of the requirement of providing a written copy to the DAG. (b) (6) said he would provide that approval to us. The email is in the file. (b) (6) April 28, 2010

75. (b) (6) and (b) (6) (EOUSA) called to ask about an invitation received by (b) (6) to be part of a four person panel at a Latina Summit sponsored by ALPFA, a Latino professionals group. Goldman Sachs is paying for costs of the event. (b) (6) does not have any recusals with respect to ALPFA. There are no matters in the Boston office now involving Goldman Sachs. They were seeking confirmation that Goldman would not be considered the sponsor of the event. Confirmed that we have been advised that an entity that underwrites the costs of an event is not treated as the sponsor of the event. As to the Pledge, confirmed that she could attend and participate fully in the event because she was an official speaker. Also because ALPFA is not a former employer and not a former client, she can be a speaker at the event. ALPFA is a non-profit networking organization. (b) (6) did not know if they were a registered lobbyist or a 501(c)(3). In this case, that information would not have changed the conclusion that she can attend. Sent (b) (6) a follow up email explaining why it is a good practice to obtain this information in connection with speaking invitations to non-career employees. The emails are in the file. (b) (6) April 30, 2010

76. (b) (6) (OJP, (b) (6) called with distinct questions relating to 3 employees. (b) (6) is a non-career employee who previously worked for the Urban Institute as a senior researcher. Her expertise is in prisoner re-entry research. The Council of State Governments (CSG) received a (b) (6) grant from OJP to develop a national re-entry resource center (RRC). CSG, in turn, had a (b) (6) contract with Urban Institute to guide the work of the RRC, to conduct training sessions on reentry research, and to provide presentations in the field using webinars. The deliverables were a what works compendium, self-assessment tools, and resource center management. CSG made a sole source award to UI citing the expertise of (b) (6) and (b) (6). In its budget for the RRC, UI listed (b) (6) and (b) (6) and four other staff members. (b) (6) would like to attend a meeting next week that involves CSG, HUD, and DOJ. (b) (6) will be attending from OJP. CSG wants to work with OJP on crime prevention strategies in urban neighborhoods. UI will not be attending this meeting. (b) (6) question is whether CSG would be considered a former employer or former client within the meaning of the Ethics Pledge. UI is her former employer. I agreed with (b) (6) that the fact that UI had a contract with CSG would not make CSG (b) (6) former employer. Also based on a review of the sole source justification memo, it did not appear that CSG was (b) (6) former client. Essentially, she provided her expertise in re-entry research as a senior research associate to provide the deliverables under the contract. She was not an officer of UI. CSG was not her former client. Consequently, the Pledge restrictions did not apply to the HUD meeting. However, it would be necessary to make a written determination under 502 in order for her to attend the meeting because of the past work she did for CSG under the contract it had with UI. (b) (6) asked about 502 determinations. I said OJP would need to be able to determine that the need for her participation in a matter involving CSG outweighed the appearance concern. (b) (6) did not believe they could prepare such a determination prior to the meeting. So he

intended to advise her not to attend this meeting.

(b) (6) second question was whether (b) (6) could attend and give an official speech at a May 19 conference being hosted by CNA at its headquarters in Alexandria, Virginia. CNA is a public policy research organization that does projects for OJP. (b) (6) was on the Board of Directors of CNA. Consequently, CNA is a former employer of (b) (6) within the meaning of the Ethics Pledge. Thus she will have to follow Pledge restrictions and her appearance giving an official speech must conform to the Ethics Pledge. The conference will be the "Inaugural Smart Policing National Meeting." It is being held in conjunction with BJA. BJA gave CNA a grant to put on the conference. So the conference is an event that BJA paid CNA to set up for the Department. Approximately 60-70 people will attend. Ten police departments were selected by BJA to demonstrate smart policing initiatives (SPI). Each police department has a university as a research partner. For example, the Boston Police Department is partnered with Harvard. I referred (b) (6) to the OGE memo that deals with the Ethics Pledge and official speeches. I agreed with (b) (6) that (b) (6) could give an official speech at this meeting.

(b) (6) third question involved attendance at an event in September by (b) (6) the (b) (6) non-career employee. She was the Executive Director of the National Center for Victims of Crime (Center). The Office of Victims of Crime is putting on a joint conference with the Center in September. (b) (6) wanted to know if (b) (6) could give an official speech. I said this would involve an analysis similar to (b) (6) question. (b) (6) said he would review the guidance on the Ethics Pledge and official speeches. He said these issues will be recurring for OJP as a number of non-career employees may wish to give official speeches to organizations that are a former employer or former client under the Pledge. An email and background information relating to these questions is in the file. (b) (6) April 30, 2010

77. (b) (6) (ODAG (b) (6)) had a question regarding DOJ employees who have been invited by the University of South Carolina to attend a five day workshop (May 10-14, 2010) in Columbia, South Carolina on the subject of Rule of Law in fragile States. There is no conference fee and the university offered to pay travel expenses. About 65 persons from a range of interests will be attending. At first, (b) (6) was seeking approval under 1353 to accept reimbursement of travel expenses. Then it was decided that the Department would pay travel expenses and it was only a question of accepting free attendance at the workshop. Told (b) (6) our office could write the recommendation for the three persons who are on detail to the Rule of Law Office attached to the ODAG, but that those attending from other components, CRM and USAO, should obtain approval from their component. Sent recommendation for WAG approval for the three persons working in ODAG to (b) (6) on May 3, and he approved that day. The background emails and the approval email are in the log file. (b) (6) May 3, 2010

78. (b) (6) PAO, WAG. (b) (6) emailed asking if she could attend a reception honoring her former boss at POGO. (b) (6) emailed (b) (6) requesting approval: (b) (6)

(b) (5)

(b) (5)

(b) (5)

)

approved. (b) (6)

May 3, 2010.

79. (b) (6) (ENRD) sent an email asking whether an attorney needed AAG approval in order to invest in a friend's tittle business. The attorney would not be involved in running the company. Sent (b) (6) an email saying I agreed that approval was not required but that attorney should be aware of recusal obligations under both 502 (covered relationship) and 208 (if a general partner). (b) (6) said she has advised the attorney on recusal obligations. The email exchange is in the file. (b) (6) May 4, 2010

80. (b) (6) (CIV) sent a draft memo recommending WAG approval for an attorney to attend a two day conference benzene causing illness. This subject matter relates to a case she is working on. The sponsor HarrisMartin Publishing will waive the \$950 conference fee. The Department will pay the travel related expenses. She is not working on anything that affects or involves Harris. Suggested three changes to the draft memo which (b) (6) agreed to make. The email and draft memo are in the file. (b) (6) May 4, 2010

81. (b) (6) ATR, about an offer of vendor training from HO. ATR purchased an HP server and HP is offering free 2 ½ day training for which the FMV is \$2,500, and asking ATR to sign a release that acceptance does not violate a rule or regulation. This is a gift, and would have to be accepted under DOJ's gift acceptance authority unless it is provided for in the contract. Without something more, such as a clear practice of offering a certain number of spots in the training to all customers or all customers over a certain amount, I do not think Lee would approve. (b) (6) May 4, 2010

82. (b) (6) (CRT) had a recusal question. (b) (6) worked for (b) (5) when (b) (6) was a (b) (6) (b) (6) and has known him for more than 10 years. They have kept up a personal relationship and (b) (5) was at (b) (5) wedding. (b) (6) is not an attorney but works now in the Madison, Wisconsin office of Foley & Lardner. (b) (6) worked on a fair housing case against a company that was represented by Foley's San Francisco office. (b) (6) got off the case when he was gone on a detail for a year but now is back in CRT and from time to time has worked on the case although he has not been formally assigned to it. (b) (6) would like to talk to (b) (6) about job opportunities in Wisconsin but not at Foley. He wanted to know if he could talk to (b) (6) and if so what that would mean in terms of working on the case. (b) (6) did not think it required a formal 502 determination to permit him to work on the case. I agreed that as long as he was not pursuing an employment prospect with Foley he would not need a formal 502. However, if (b) (6) would raise that possibility he would have to either reject it or recuse himself from the case if he left the prospect open. (b) (6) will send him an email documenting what he can and can't do. She is also going to advise him that if he is formally reassigned to this case that he should ask for a determination because of his personal relationship with (b) (6). The emails are in the file. (b) (6) May 6, 2010

83. (b) (6) (CRT) called to ask about a WAG. (b) (6) a non-career employee subject to the Pledge, has been invited by the Rights Working Group (RWG) to attend an open

house on May 10, 2010 in connection with their membership meetings. It will occur at their DC office from 6:30 to 8:30. The membership is meeting on the subject of racial profiling which is relevant to his work. (b) (6) went on the lobbying database and found RWG listed as a client of The Tides Center which is a registered lobbying organization. But The Tides Center is not extending this invitation and it is not its event. I said the WAG exception would be available if she could confirm that RWG was not a registered lobbyist or that it is a 501(c)(3) organization. She was going to ask (b) (6) to check that out. (b) (6) May 6, 2010

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DEO Counsel Log, Second Quarter, 2010 (July 1 - September 30, 2010)

1. (b) (6) USA/EDVA - post employment.. He is leaving next week; he accepted a job with a private sector healthcare company and they've asked him to sign a statement acknowledging his post-employment restrictions including the Procurement Integrity Act. He was not a procurement official for DOJ so I agreed with him that PIA seems inapplicable to him. I sent him the 2010 DEO Seeking and Post Employment Summary, the 2004 OGE Post Employment Summary, and PRAO's Post Employment memo. He should get a exit briefing but from whom, since he worked in ODAG, CIV and EDVA in the last few years? In the last year, he worked in CIV and in EDVA - he gave me the following chronology of his employing components:

-February 2010 thru Current: AUSA in EDVA working on narcotics prosecution matters.

-January 2009 thru February 2010: Detail to CIV, working on Qui Tam matters on a strike force in Miami involving stolen Medicare/Medicaid numbers and false claims

-October 2005 thru December 2008 - ODAG working with (b) (6) and then (b) (6) on budget matters, funding issues for DOJ initiatives, OCDETF issues. Says he wanted to work on individual cases and matters, but did not get the opportunity to - only resource and policy issues.

-2001 thru 2004: EDVA as a SAUSA and then a career AUSA

(b) (6) said he cannot think of any circumstances where his new employer had or would have matters in DOJ implicating 207 for him. (b) (6) instructed that he should get his exit briefing from EDVA or EOUSA, then contact relevant and appropriate component for 207 advice after he leaves if something comes up for him. Advised him this by email, and gave him contact phone numbers of those ethics officials to take with him. (b) (6) July 1, 2010.

2. (b) (6) ODAG, gift question. (b) (6) (b) (6) received a book from the (b) (6) (b) (6), "A Treatise on the State, by (b) (6)" which is valued less than the \$335 cap for gifts from Foreign Governments, and therefore acceptable. (b) (6) needed help getting a value for this gift. I researched it and found that this work was originally published in 1933 and that an original hardback copy inscribed by the author has a market value of \$235 (online). Since the embassy re-printed this work in 2008, adding its logo and other introductory info to it, the market value would be less than \$235.00. (b) (6) advised that (b) (6) donated the book to the ODAG library. (b) (6) July 1, 2010

3. (b) (6) Public Affairs, outside employment for compensation. She is a Schedule C, GS11 Press Assistant. Her brother is a screenwriter. She has an idea for a screenplay involving an African soccer team seeking asylum in another African country. Her brother wants to write it and share the credit and potential earnings with her. His manager is interested. This is based on a true story - there was a WaPo article about just these circumstances in December 2009. Verified with (b) (6) - (b) (6) can do this - no use of title, no use of government resources, no revealing nonpublic information. (b) (6) advised by phone. (b) (6) July 1, 2010.

4. (b) (6) - SF278 Question: (b) (6) has a complex SF278, She discovered on this current annual report that he inadvertently omitted two or three assets on his last report - there are sales reported currently, that were not on the previous years' Schedule A. They do not pose any conflicts, they are just reporting errors. Told (b) (6) that in like circumstances we make a notation

on the current report that the asset was inadvertently omitted from the prior report and make a note in the notes section that edits and annotations are per filer consultation. Initial and date all annotations/edits. He does not need to go back and file an amended report in this circumstance.

(b) (6) July 1, 2010

5. (b) (6), JMD Personnel Student/Intern; Hatch Act. He watched the Hatch Act slides for students/interns and wanted to confirm that he can volunteer for a congressional campaign this summer, as long as he does not solicit or accept contributions. Yes, JMD is not further restricted. Reminded him not to do anything at work, on duty, or using government technology or from those at work or doing business with DOJ. He confirmed understanding by email. (b) (6) July 2, 2010

6. (b) (6), OIPL, Personal Activity question and gift question. (b) (6) was out and they were not topic specific questions so I discussed her concerns with her generally. 1) Any ethics concerns if she attends charitable fundraisers in her personal capacity and donates and pays her own way - for example the American Heart Association dinner? Not as long as there is no use of her title, she is not featured as a prominent attendee or donor with identification of her DOJ position. This would not hold true to attend political fundraising events. She is further restricted and would need approval and ethics advice to attend anything political. She understands. 2) Her husband really likes to attend the timeshare marketing weekends (she does not). However, he has convinced her to attend one in Williamsburg, VA in the coming weeks. Are there gift concerns with accepting things like meals and lodging in connection with timeshare marketing? No - it is something offered to her resulting from an outside business relationship (Timeshare hopes it will result in that anyway) - and this would not be a gift offered to her because of her position or from a prohibited source. We cannot save her from this pain. Again, no use of DOJ title. (b) (6) July 2, 2010

7. (b) (6) Public Affairs, exit briefing. Her last day is 7/16 - although there may be some back and forth on when she will actually leave. She is going to MMS in Interior as a Schedule C. Sent her off with a copy of her annual SF278 and executed Ethics Pledge, and instructions to contact her ethics official there and get annual training in 2010. (b) (6) July 7, 2010

8. (b) (6) Public Affairs, exit briefing. He is Schedule C, Public Affairs Specialist and his last day is 7/9. He is going to law school. Gave him the post employment summaries for political appointees including the Pledge DAEOGram.. He has read them and understands. He will contact us if he is ever in a representational capacity back to DOJ on anything related to what he worked on while here. He will turn in his Termination SF278 on Friday, his last day. (b) (6) July 7, 2010

9. (b) (6) FBI, Gift acceptance. (b) (6) was seeking approval for (b) (6) to receive an award from the International Association of Chiefs of Police (IACP). (b) (6) approved. (b) (6) July 7, 2010

10. (b) (6) OAG, (b) (6) gift acceptance. I sent (b) (6) an email to confirm my advice concerning (b) (6) acceptance of gifts offered by the Nationals when (b) (6) throws out the

ceremonial pitch at tonight's game. I previously advised that (b) (6) could accept a gift valued at \$20 or less but would have to pay for gifts over that amount. The Nationals have offered, consistent with their practice for those invited to be a ceremonial pitchers, the following: to watch batting practice (no value), a suite to view the game with seats to accommodate 15-17 people (\$3000), and a jersey with his name on it (value \$120). The suite seating comes with "basic" refreshments of chips and water, etc. Any additional food and beverages are paid for separately. (b) (6) consulted with the security team which advised that the suite offered clear advantages in maintaining (b) (6) security: indoor space, ease of and controlled access to and egress from the stadium, restrooms, etc. We believe it is appropriate to use the suite seating rather than for (b) (6) to watch the game from general stadium seats, and the question is what is a reasonable cost for (b) (6) to reimburse the Nationals. We looked at the suite seat prices offered on the Nationals website and found individual seats for Saturday's game (with Strasburg pitching) for \$95. We think this is a reasonable price, and it is consistent with the pricing used for (b) (6) to reimburse the Department for airfare when he is on personal travel but traveling on the government aircraft (i.e., the lowest fare commercially available within 30 days of the trip). Since the suite includes minimal refreshments, I advise that (b) (6) reimburse the Nationals \$100 per person for those who attend with him. And, as we previously discussed, (b) (6) will need to reimburse them for the jersey. (b) (6) July 6, 2010

11. (b) (6) Access to Justice, (b) (6) Meeting. (b) (6) knows that (b) (6) can't attend meetings with (b) (6) in her capacity as Dean of Harvard except in certain circumstances, but wanted to know if that was at all changed if the meeting involves (b) (6) in her capacity as Vice Chair of the Legal Services Corporation. I advised that they should check and confirm that Harvard isn't involved, but if there is no Harvard involvement, (b) (6) may meet with Ms. Minow as long as it's limited to LSC matters. (b) (6) July 6, 2010

12. (b) (6) (b) (5) Post Employment question. I sent (b) (6) the following email to clarify our discussion: "This is to confirm our discussion concerning your participation on behalf of (b) (6) (s) in matters before the National Commission on the Deepwater Horizon Oil Spill. Since these representations do not concern particular matters with parties in which you participated or which were pending under your official responsibility while serving (b) (6), the post-employment restriction at issue is the one year ban in 18 usc 207(c), which is extended to 2 years by the Ethics Pledge. (We concluded that the Pledge's post-employment restriction on lobbying covered officials does not apply since this activity would not be lobbying under the LDA). This restriction bars you from communicating with or appearing before any DOJ official, on behalf of a client, for the purpose of influencing the Department's official action. With respect to the National Commission, DOJ has no representative on the Commission; under the provisions of the Executive Order, DOJ may be consulted by the Commission; and the Commission would seek enforcement by DOJ of subpoenas issued by the Commission. Since the relevant post-employment ban is the ban on your appearances before and communications with DOJ, you would not be restricted in participating "behind the scenes" in matters before the Commission. You also would not be restricted in appearing before or communicating with the Commission, as long as you do not communicate with or appear before a DOJ official(s). For example, in the case of a disputed subpoena, you could not communicate (or allow others to indirectly communicate for you) with DOJ officials; in addition, as we discussed, you should not

communicate with the Commission in connection with a disputed matter unless it is clear that DOJ's involvement has concluded. And, as we discussed, since the National Commission is a new entity, we do not know exactly how the Commission will perform its responsibilities, and in particular what form the consultations noted above may take, or whether the Department may have a greater role with respect to the Commission's operations. Therefore, it is possible that greater DOJ involvement will require that you restrict your participation before the Commission. You also mentioned that you may participate before the Outer Continental Shelf Safety Oversight Board established by the Secretary of the Interior. I have not looked specifically at the organization and composition of the board, however, the same general rules would apply to your participation: you would be prohibited from communications with or appearances before DOJ officials. Please let me know if more specific or additional questions arise." This advice changed per subsequent developments, specifically a DOJ official detailed to the Commission. (b) (6) July 6, 2010

13. (b) (6) OAG, (b) (6) photo and biography. (b) (6) from The University of Montana School of Law would like to request an electronic photograph and biography of (b) (6) for use on the school's web site and in the lecture brochure. The photograph would also be used in conjunction with a story on the Jones Lecture in the Montanan magazine. The story will mention that (b) (6) is the next speaker in the series. I advised that this looks fine. As usual, (b) (6) may accept meals, etc. that are offered as part of the event at which he is speaking. If there are other activities in which he will be participating, I asked them to let me know and I will seek the required approvals. I also advised to remind accompanying staff attending any events other than just the lecture to contact my office for possible approvals. (b) (6) July 7, 2010

14. (b) (6) OAG, (b) (6) IPAD. I discussed use of the IPAD with (b) (6) and advised that, if there were no security issues (apparently there are since DOJ can't be sure who had access to the ipad), I thought that it is a legitimate official use for (b) (6) to use it to access newspapers, websites, etc. It's easier to read when using a device with a larger screen than a Black Berry. But, the security issues should control. And, if (b) (6) can use it, then yes, it would simply remain DOJ property when he leaves. (b) (6) July 7, 2010

15. (b) (6) PRAO, Pro Bono. (b) (6) emailed again regarding the NY Federal Pro Bono Program and the possibility of FDIC's Support. (b) (6) of the NY Chairman's Diversity Advisory Council would like to ask FDIC to support the program by providing conference/meeting space and refreshments for training and other events. The FDIC has now decided not to use its diversity initiative but rather its community outreach program to support the pro bono program. Since it is agency funds, (b) (6) wanted to know if I saw any reason this would be a problem. They envision it being around \$100-200 for refreshments at events and the use of their office space (which presumably doesn't cost them anything). I advised (b) (6) that I thought this second option to assist the NY pro bono efforts was better than their initial proposal, and that it was fine. (b) (6) July 8, 2010

16. (b) (6), ODAG, gifts. Her husband is in sales and his job is paying for them to travel to the Bahamas for a conference. She's already submitted the notification of foreign

travel. Does she need approval from ethics? No, this is a gift not offered because of her position but resulting from her personal relationship. She is going as spouse - all spouses are invited. She will report it on her SF278. She will not invoke her DOJ position in any way during the travel or at the conference. (b) (6) July 9, 2010

17. (b) (6) EOIR, expert witness question. An IJ has been asked by the State of Missouri to serve as an expert witness in a case, resulting from his prior expertise as a MO state court judge. The case is in Federal Court but DOJ is not a party, although they or another agency may have an interest. Serving as an expert witness requires DAEO approval if DOJ or US has an interest.. (b) (6) asks who makes the determination of interest and how is DAEO approval sought/processed? (b) (6) worked on one of these in December 2009 - I reviewed his work, then discussed this with (b) (6). Emailed (b) (6) that agency interest in the case is determined by the potentially involved DOJ component or other agency: our office can help consult with them to assist. Our office would receive the memos seeking the authorization for our recommendation for (rarely granted, if there is an interest) approval by DAEO (b) (6). (b) (6) asks what is the case about? Is it involving MO state court procedures of some kind? (b) (6) emailed. (b) (6) July 9, 2010

Follow up: (b) (6) provided more details about the case. Per (b) (6) we don't really see a DOJ interest but (b) (6) should check with ODAG to be sure - (b) (6) suggests (b) (6) July 19, 2010

18. (b) (6) OJP, fundraising question. Some summer interns want to request administrative leave to go work for Habitat for Humanity, but be paid their salary by DOJ. No. Charitable work must be done in personal capacity, away from work, not using DOJ title, time, equipment or resources. Only exception is for the CFC. (b) (6) mentioned the tutoring program for elementary schools, but that is an initiative approved through Department management. There is no such approval for Habitat for Humanity work or work for charitable causes like that. (b) (6) July 12, 2010

19. (b) (6) (JMD) had an outside activity question which was log entry #137 dated June 4, 2010. We had advised against the activity in a personal capacity but indicated it could be undertaken in an official capacity if management could make the determination that the Department had a sufficient interest to have this assigned as an official duty. On July 8, (b) (6) sent an email indicating that management supported her participation. The email is in the log file. (b) (6) July 12, 2010

20. (b) (6) (CRM) called with a 207 question that had been raised at the last ethics lunch. It concerns the Foreign Corrupt Practices Act (FCPA) and the use of monitors. (b) (6) who used to head the FCPA section in Criminal has left to go to a law firm. He worked on a big FCPA case that involved (b) (6). (b) (6) wants to hire (b) (6) to help them with FCPA matters. He would not be a monitor. He would provide behind the scenes advice and it would be on other matters than the subject of the case he worked on. CRM has urged him to get a bar opinion on whether

his obligations to his former client, the Department, would preclude him from doing this. He was not SES and is subject only to the (a)(1) and (a)(2) restrictions. CRM does not want him to do this but 207(a)(1) and (a)(2) do not bar behind the scenes work. I said he does need to be aware of the attribution concern even when doing so-called behind the scenes work. (b) (6) asked whether it would be possible to deal with this issue by putting a restriction in the monitor contract that would bar hiring someone who had worked on the case. But the contract would be between the monitor and the Department although it may be that the company also signs off on it. (b) (6) said that if the Division wanted to pursue this further, they would likely be seeking an OLC opinion on the authority to impose such a restriction. (b) (6) may want to discuss this with us further but she said she did not need anything else from us at this time. (b) (6) July 12, 2010

21. (b) (6) and (b) (6) OASG, lobbyists interaction. (b) (6) is trying to determine whether all meetings with lobbyists must be tracked and published or reported somewhere. She believes the current administration does not want appointees having any meetings with lobbyists and if they do it must be reported or published. She's reviewing materials from our office on the Ethics Pledge but is not finding this information. Quickly checked with (b) (6) who asked me to relay to (b) (6) that if TARP funding is involved, there is such a reporting requirement, and she worked on it with (b) (6) who may be able to give (b) (6) more information about the reporting requirement. Our office works with the prohibition on gift acceptance from registered lobbyists under the Ethics Pledge. (b) (6) was confusing the two requirements as to lobbyist interactions, and thanks us for the clarification. She might check with (b) (6) (b) (6) July 13, 2010

22. (b) (6) OAG, (b) (6). (b) (6) emailed regarding (b) (6) attendance at the American Association of People with Disabilities (AAPD) annual American Disability Act (ADA) Anniversary Event July 21, 2010. I advised that this looked fine and no additional approvals needed - the event is not a fundraiser and (b) (6) not receiving an award. I asked her to ensure any recognition of big donors doesn't involve (b) (6) because the program sounds a little less formal than most events and we need to guard against (b) (6) participation being used to "endorse" those companies. (b) (6) July 14, 2010

23. (b) (6) CIV, Invitation to be Keynote Speaker. I sent the following email to (b) (6) for approval "(b) (5) (b) (6) (b) (5)

(b) (5)

(b) (5)

approved. (b) (6) July 14, 2010

24. (b) (6) CRT, DOMA conflicts question. Two of the CRT attorneys who the division would like to work on the district court case in Mass, which found parts of DOMA unconstitutional, are both married to same sex partners: one was married in Canada and lives in DC; the second was married in Mass and lives in MD. DO they have any conflict with the case? The court found (generally) that DOMA interferes with the state's decision on what constitutes marriage, and this is a judgement traditionally left to states. The attorneys' status as gay persons who are married does not create a conflict (same as my status as a woman would not be a conflict with me litigating sex discrimination cases). We need to look at whether their individual situations, and the potential personal or even financial interest of them or their spouses, creates a conflict. (b) (6) will get more precise understanding of what the Mass case involves and whether the case would impact a person married or residing other than Mass/First circuit; our initial sense is that if the state in which the attorney(s) resides is not at issue in the litigation, there would not be a direct and predictable effect on their individual interests. However, if the decisions DOJ makes in this case will directly affect another pending case in the 4th or DC circuits, that may rise to the level of a conflict that would require authorization in order to participate. (b) (6) July 15, 2010

25. (b) (6) (CRT) had a question about the Division's participation in an October 22, 2010 program being put on by the Jewish Community Center of San Francisco (JCC) that deals with hate crimes. Civil Rights is holding various programs around the country to promote awareness of the new legislation. JCC has inquired about identifying the Department as a "partner" in the program they are putting on and using the Department "logo", i.e., seal. Sent (b) (6) an email

saying that the Division could certainly participate by sending someone as a speaker and the Department could be identified in the program/agenda for that event. But the Department should not be identified as a partner and should not allow the use of the seal. This event does not meet the criteria for approval of use of the seal. DOJ is not a co-sponsor of the event. The emails are in the file. (b) (6) July 14, 2010

26. (b) (6) (Civil) had a recusal question. (b) (6) wishes to work on a possible appeal of a case in the Virgin Islands. The VI judge contacted (b) (6) at WilmerHale about Supremacy Clause immunity. (b) (6) husband works closely with Waxman but has not had any involvement in this matter. (b) (6) wanted to know whether this contact by the VI judge would be sufficient to warrant a formal approval to continue working on the case. Sent (b) (6) an email indicating that we agreed that a formal approval is not required provided that neither WilmerHale nor (b) (6) has any involvement in the case (other than the consultation by the VI judge). (b) (6) followed up with an email indicating that there is no such involvement. (b) (6) July 14, 2010

27. (b) (6) (CRT) had a question about the Division participating in an ABA activity. (b) (6) of the D.C. Circuit Court of Appeals is the chair of an ABA project on developing national standards for language access in State courts. She has asked the Division if it could participate in this project. (b) (6) envisions that the participation would involve technical assistance. The Division has responsibility for ensuring reasonable language access in connection with federal programs and activities. The Division does administrative investigations to ensure compliance. An investigation could involve a court system covered by the ABA standards. Advised (b) (6) that because of the closeness of the Division's responsibilities and the ABA project that any involvement should be in an official capacity rather than trying to get approval for some individual to do this as an outside activity. As far as the Division's participation in an official capacity, its role should be different from other participants and should be focused on technical advice. It would be better to avoid a role that would involve adopting the standards as that might affect subsequent enforcement/compliance activity. The emails are in the log file. (b) (6) July 14, 2010

28. (b) (6) (JMD contracting officer) called to discuss a post-employment question. (b) (6) is a GS-11 IT employee who came to work with the Department under the Cybercorps program. His last day is July 16, 2010. On August 2, 2010, he will start work for Van Dyke Technical Group. Van Dyke is a contractor. (b) (6) was asking whether post-employment laws would restrict him from doing this. He did not do procurement work at the Department and is not subject to the Procurement Integrity Act. So there is no restriction on him accepting employment with Van Dyke. (b) (6) had discussed this issue previously with (b) (6). Discussed with (b) (6) and obtained additional information regarding the work (b) (6) did for DOJ and what he would be doing for Van Dyke. He did not work under the Van Dyke contract. He worked on non-classified systems. For Van Dyke he would be working on classified systems. Also new contracts will soon be in place. Advised (b) (6) that based on the

description of the work he did for us and what he is expected to do for Van Dyke, that his future employment with Van Dyke does not raise ethics concerns. (b) (6) called on July 14 for his ethics briefing. I explained the post-employment restrictions that apply to him when he leaves and confirmed that he would not be representing Van Dyke on matters that he worked on at the Department. Told him that if he has any questions about his post-employment obligations he should call our office. The emails are in the file. (b) (6) July 14, 2010

29. (b) (6) (OAG) sent an email asking whether the official photograph of (b) (6) could be provided to a federal prisoner who made a FOIA request for it. After reviewing the request, sent (b) (6) an email saying it appeared to be basically a FOIA question as to whether the item is covered and whether there is any exemption that would permit withholding it. Suggested she contact the FOIA office or OGC/JMD. (b) (6) replied that she would forward my email to the FOIA office and let them work with OGC. The emails are in the file. (b) (6) July 15, 2010

30. (b) (6), SEPS, ethics debriefing. She is clerical admin support. Last day is 7/30. She has not accepted private sector employment and does not know whether she will. Discussed lifetime ban with her. She is not a supervisor. Told her to call us with any questions after she leaves. (b) (6) July 19, 2010

31. (b) (6) CRM, gift question. Administrative officer was invited to lunch at the members only University Club by an administrator of a degree program whose students are placed as interns with the Department. The meal is a gift from a prohibited source (the University) offered because of his official position and cannot be accepted unless it meets the criteria for an exception. It does not, so (b) (6) is going to tell him that he cannot accept the lunch unless he is going to pay for it. It is understandable that he would need to meet with this administrator about interns at DOJ, but not necessarily to accept a gift from him. (b) (6) does not like it and is going to tell him the gift rules will not allow it. (b) (6) July 19, 2010

32. (b) (6) FBI, 2 items. 1) Gift question: their SAIC in New York was offered a box seat at a sporting event by the co-chairman of Lowe's Corporation, and the co-owner of the NY Giants. The FBI has past held that sporting events do not qualify as WAGs - is that in compliance with our practice? Yes, that's correct - spectator events do not allow an exchange of ideas so typically they are not WAGs. 2) Service on outside Board: As Ethics Officer for the FBI, (b) (6) (and also some of his staff members) have joined 2 ethics-related organizations: Society of Corporate Compliance and Ethics, and the Ethics and Compliance Officers Association. The ECOA has contacted (b) (6) to see if he would be interested in a nomination to their Board. He believes he has been nominated - and has contacted us to see what he would need to do if he wanted to serve on this Board. (b) (6) says this is an organization of largely corporate compliance officers, although (b) (6) from OGE is a member as well and there is expanding outreach between the private and public sectors in the area of ethics and compliance. Told (b) (6) that such a Board position in his official capacity would need DAG approval. DOJ generally does not have its officials "running" outside organizations in their official capacity, and in such a position he would be prohibited from fundraising or soliciting funds, and likely limited in voting as a Board member. Some

organizations have amended their bylaws to allow a DOJ official to serve on their Board in such a limited role with DAG approval. (b) (6) asked what about in his personal capacity? I asked (b) (6) since he has been a member thus far in his official capacity, with FBI sponsoring his membership and him being identified in all membership activities as FBI's Ethics Officer, would it even be possible to be involved with ECOA in anything but official capacity at this point? (b) (6) does not think so. I asked: Is there an identifiable FBI interest in his serving on the Board of ECOA? Maybe, but one that is not served with mere membership? He's not sure. He is likely going to withdraw from Board nomination because he's not sure he really even wants to do it, but if he does wish to seek DAG approval, he'll be back in touch with us. (b) (6) July 20, 2010

33. (b) (6) CRT, 502 determination: is one necessary for a CRT attorney who clerked for a judge in the (b) (6) who has now been assigned a case before that judge? They've continued to be social friends. Researched the log, where (b) (6) worked on this question for an OSG attorney who clerked for a judge in the 9th Circuit. The 9th Circuit judicial rules barring the judge from hearing a case from his former clerk were dispositive; the OSG attorney could not work on the case. I checked with (b) (6) who said that a 502 determination may not be applicable here, depending on the applicable judicial rules and other facts like: how long ago did the CRT attorney clerk for the judge and how close is their social relationship. I advised (b) (6) of these thoughts. (b) (6) July 20, 2010

34. (b) (6) CRM, seeking/post employment question. (b) (6), counsel to (b) (6) (b) (6) is leaving to return to his former law firm. Can he talk to the press about this? (b) (6) does not like it, and wants us to tell her why. I told (b) (6) that while he is federal official, the firm cannot make announcements that he is coming, until he is no longer a federal official - it would be a misuse of his official position by the firm. He likewise cannot make announcements to the press that he is joining the firm, until he is no longer a government official. It would be, or could be perceived to be, an effort for the firm to rain-make, based on his (current) official position. (b) (6) July 21, 2010

35. (b) (6) in the Associate's office called with a recommendation question. (b) (6) was detailed from Antitrust to work on habeas cases. (b) (6) worked with him. He is now applying for a position in the Federal Programs Branch of Civil. This position was competed. (b) (6) wanted to know if he could recommend (b) (6) to the Programs Branch. It appears that the hiring process is well along and they are checking references. (b) (6) did not list (b) (6) as a reference. We discussed potential concerns of a non-career employee's involvement in the hiring process. However, because the process is now at the reference checking phase I agreed that (b) (6) could advise (b) (6) that it would be okay for him to provide (b) (6) name as a reference and (b) (6) would be available to provide a recommendation when and if they called him. (b) (6) July 16, 2010

36. (b) (6) (NSD) had a gifts between employees question. An NSD employee in the LEAP program was asked to contribute to a \$150 gift to the JMD person who coordinates the program to express appreciation. (b) (6) was uncomfortable with this idea. We discussed whether the rules apply, i.e., is the person an official superior. That might depend on what role she has. Does she have any role in evaluating performance in the program such as whether all of

the requirements of the program were met. Another question was whether solicitation was permissible. And a third question was whether an exception applied such as the end of the LEAP program terminating the official superior-subordinate relationship. (b) (6) went back to the NSD employee to get more factual information. However, he decided not to contribute and the question became moot. He did indicate that the JMD person collected information but did not evaluate it. Also it was decided to scale back the gift. An email is in the file. (b) (6) July 20, 2010

37. (b) (6) (b) (6) asked about whether (b) (6) (b) (6) of (b) (6) could be a member of the Penn Law American Inns of Court. I asked her to send the draft recommendation that they would make to (b) (6). I reviewed it and told (b) (6) that it looked okay. The emails are in the file. (b) (6) July 20, 2010

38. (b) (6) (OSG) had a question about attending two events at the end of this week. The first event was a conference being held by the Indian American Leadership Initiative (IALI) on July 24, 2010. (b) (6) was invited to be a speaker. The purpose of the conference is to promote the election of Indian American Democratic candidates in the fall elections. (b) (6) did not realize that it was a partisan political event. When I told him that he said he would decline the invitation and would not attend the conference. He then asked if he could attend a cocktail reception at the Kennedy Center on July 23, 2010 that is being hosted by IALI and sponsored by ABSi Corporation and Maximum India. It is not a political event. Obtained information from (b) (6) for a WAG determination. Sent to (b) (6) on July 20, 2010 and he approved. The emails are in the file. (b) (6) July 20, 2010

39. (b) (6) (Civil) called on July 19 to ask about (b) (6) attending a happy hour hosted by Morrison & Foerster and the American Constitution Society on July 21, 2010. It is not a fundraising event. Morrison is a registered lobbying organization. Last summer, (b) (6) was approved to give an official speech to a group of summer associates at Morrison. At that time, he was advised that he could not participate in such an event on a regular basis, i.e., to every group of summer associates. His attendance would not be advertised and he would have no formal role. He would be simply attending. I discussed with (b) (6). This event is different from last summer's speech at Morrison as he would not be speaking this time. Therefore, he is barred from accepting the gift of free attendance because Morrison is a registered lobbyist. The WAG exception and the \$20 de minimis exception are not available. Moreover, even if the WAG exception were available, it is not clear that this event would qualify as a WAG as it seems it would only be made up of Morrison and ACS. (b) (6) felt that the advice given last year on the speaking at Morrison also mitigated against his attendance. On July 20, (b) (6) and (b) (6) called to further discuss the question. (b) (6) asked for a "reconsideration" of the advice given and an explanation of the basis. (b) (6) asked what the "gift" was. I said it was the entirety of the event including refreshments and whatever else might be provided. (b) (6) did not raise but (I had earlier discussed with (b) (6) the question of attending an event and not partaking of the refreshments and said that we did not regard that as an acceptable way to resolve the gift issue.) I explained that the executive order severely restricts the exceptions that can be used to accept a

gift from a registered lobbyist and in this case there was no available exception. (b) (6) asked if there was some general guidance about what kinds of contact he could have with Morrison. I said it would be better to look at the facts on a case by case basis. (b) (6) said he appreciated the explanation. An email is in the log file. (b) (6) July 20, 2010

40. (b) (6) (ATJ) sent a memorandum requesting 1353 approval to accept hotel lodging (in kind) for an upcoming trip being made by (b) (6). I signed for (b) (6) and emailed the memo back to her as a pdf. The emails and a copy of the memo are in the log file. (b) (6) July 20, 2010

41. (b) (6) (JMD, (b) (6)) had a question about ethics training that relates to materials he was preparing for Senate appropriators. (b) (6) provided information on ethics training requirements. (b) (6) and I spoke with (b) (6) and provided some more explanation as to who has to be trained, how they are trained and what subject matter is covered. He also spoke with ethics officials in OJP as there is a specific focus on revolving door issues at NIJ (experts moving around) and the question of the use of private vs. federal labs to process DNA evidence to reduce the backlog. An email is in the file. (b) (6) & (b) (6) July 20, 2010

42. (b) (6) (JMD) had a question about a discount offered by the Washington Nationals on baseball tickets. The discount is being offered to all federal employees. I told (b) (6) that Department employees could accept the discount. He said that is what he thought. He said he would talk to (b) (6) about whether email could be used to tell Department employees about the discount. The emails are in the file. (b) (6) July 21, 2010

43. (b) (6) (CRT) called with a recusal question. A new attorney who just started a few days ago has been assigned a housing discrimination case that was referred by HUD for possible litigation by the Division. The case involves allegations of housing discrimination in mobile homes in the Gulf after Katrina in which the allegation is that black and inter-racial couples were discriminated against in housing in a mobile home park. Several years ago when the attorney worked for a law firm, she interviewed people involved in this matter. Ultimately, the firm decided not to represent the plaintiffs. But she had that special access to the facts of the case and the same facts are involved now in the HUD referral case. (b) (6) thought there were professional responsibility issues to resolve but did not think 502 applied because it has been more than a year since she was employed by that firm. We discussed and I said that because she was significantly involved in the underlying facts of the case that there was an appearance concern that needed to be addressed either under the catch-all provision of 502 or under the general appearance standard of the general principles. All things being equal since she was just assigned to the case (which is now at the summary judgement stage), it might be better to have someone else work on the matter. If she has to be the one that works on it, then they should do a 502 determination. The appearance problem arises not because of her former firm which is not involved in the case, but because of her own personal involvement in investigating the underlying facts. (b) (6) said he

would convey that. (b) (6) July 21, 2010

44. (b) (6) (CRM) called with a question about an attorney being interviewed. An attorney in the computer crimes section who is the Department representative on the Cyber Crime Convention was asked by (b) (6) a partner at Steptoe & Johnson to be interviewed for an article he is writing on the Cyber Crime Convention that will be attached to a report being prepared by the National Academy of Sciences. The Cyber Crimes group believes there is a benefit to her doing this. If she did it, it would be in her official capacity and the Department would be able to review the article before publication. (b) (6) did not have any other facts. (b) (6) said the Computer Crimes group did not explain what the specific benefit to the Department would be. I said they should provide more information as to the benefit to the Department. Why is this platform appropriate? What is the message? Who is the audience and what is the benefit to the Department of reaching that audience. Also they need to find out if there are any matters in the computer crimes area at the Department in which Steptoe is representing someone. They need to also consider that providing this interview to one requester means they have to consider not being discriminatory if others would request interviews. There should be a good reason and a clear benefit to the Department in doing this. (b) (6) July 21, 2010

(b) (6) had a question concerning a board position with the American Board of Internal Medicine Foundation (ABIMF). This is similar to the question she had with regard to a board position with StoryCorps that is written up in the log entry for June 21, 2010. The StoryCorps position is unpaid while the ABIMF position pays (b) (6) per year. She also receives travel reimbursements from ABIMF. I discussed with (b) (6) whether there is any potential overlap between her official duties and the activities involved in this outside position. She did not believe that there were. We specifically discussed the question of grant making. While ABIMF has a limited grant program, and itself receives grants, there has been no interaction with respect to the Department in the six years that (b) (6) has worked with the organization. (b) (6) said that the board is interested in the subject of reform in medical education and that topic will be discussed by the board at its upcoming meeting in the last week of July. (b) (6) said that ATJ may be looking at reforms in legal education. But while the discussion of reforming medical education may be useful in terms of thinking about reforms in professional education generally or legal education specifically, it is not close enough to create any conflict or appearance of conflict. I also discussed (b) (6) outside board position with (b) (6). She did not believe that it created any conflict with (b) (6) duties for the Department. On July 22, I sent (b) (6) an email confirming that we did not see a conflict in her service on the board and providing advice on applicable federal ethics laws and regulations. The emails are in the file. (b) (6) July 22, 2010

46. (b) (6) OASG, 1353 travel. In processing (b) (6) (approved) 1353 travel reimbursement, she received a W9 form from the nonfed source asking for his TIN or SS#. Does he need to fill this out? No, he does not because the check is to the US Dept of Justice, not to him personally. I checked with (b) (6) in Finance to see if there was a standard response that

was supposed to be given in this instance, but she indicated that it is correct that the form is inapplicable to DOJ, but there is no standard response. I advised (b) (6) to either call the nonfed source and explain that the W9 is not applicable, or, just write on the W9 that it is not applicable because the reimbursement check is to be made out to the US Dept of Justice, or, she could do both. (b) (6) July 23, 2010

47. (b) (6) ATF, seeking and post employment question. An SES employee is retiring in August. As part of his duties, he supervises the background investigation program. He has asked (b) (6) about his options for seeking a position as a background investigator after he retires. (b) (6) believes he will be limited not necessarily by 207(a)(1) - he does not participate personally and substantially in any individual background investigation, but by 207(a)(2) due to his supervisory role of that program, and asks if we agree. (b) (5)

Discussed with (b) (6) and (b) (6) - immediately important is that (b) (6) make sure this employee is not taking any action now that is in his own financial interest. He can not be taking any official action which could affect or appear to affect the possibility of his future employment or a contractual relationship with ATF. After he leaves, he may be able to work in a position as an investigator who gathers facts as part of investigations, but 207(c) might limit how he could present that info back to ATF. (b) (5)

to perform the described duties in the SOW would be barred by not only (likely) by 207(c), but in the case of this official, he would also be barred by 207(a)(2) because he supervises the background investigation program. (b) (6) says this official cannot be recused from supervising that program - it makes up a large percentage of his responsibilities. (b) (6) is going to counsel the employee that he cannot seek a background investigator job here for 2 years after he leaves, and he is not to talk to anyone, including his boss, about its possibility before he retires. The SOW is in the log file. (b) (6) will counsel the employee. (b) (6) July 23, 2010

48. (b) (6) (ATJ) had an outside activity question answered in log entry #45. As a follow up, I confirmed earlier oral advice that administrative leave cannot be used in order to conduct a paid outside activity. (b) (6) confirmed that she was using annual leave to attend the Foundation's board meeting. Email in file. (b) (6) July 26, 2010

49. (b) (6) (NSD) called with a letter or recommendation question. An NSD attorney wants to know if her name can be listed on a group letter supporting (b) (6) to lead the new Consumer Financial Protection Bureau. The letter would be put together by (b) (6). There would be no reference to the NSD attorney's DOJ position or affiliation with the Department. No use of Department letterhead. I told (b) (6) that the standards of conduct did not prohibit her from allowing her name to be included on the letter. (b) (6) July 27, 2010

50. (b) (6) (HR/JMD) asked our office to do a conflicts check for a new hire, (b) (6). I discussed his DOJ duties with (b) (6) and he confirmed that (b) (6) will have no interaction with Futron, the contractor he works for. I also talked to (b) (6) and he confirmed that he has no financial interest in Futron other than his employment and that he has no relative who works for Futron. Sent an email to (b) (6) indicating this and advising that he does have a one year recusal with respect to Futron but that because he will not be working on anything that involves Futron, this recusal will not affect his work and a formal 502 determination is not necessary. No 208 recusal because no financial interest in Futron once he terminates employment. The emails are in the file. (b) (6) July 27, 2010

51. (b) (6) (b) (6) (OJP) requested advice relating to the administration of the Department's ethics program. The Office of Audit, Assessment, and Management (OAAM) in OJP had asked (b) (6) for information on ethics training. OAAM is doing a grant administration report. (b) (6) asked whether it was permissible to provide OAAM with information on the training of a 10 person sample of OJP employees. (b) (6) asked if he could tell them whether the employee was required to be trained, whether they were trained, and the date they were trained. Discussed with (b) (6). Sent (b) (6) an email saying he could provide this information. The emails are in the file. (b) (6) July 27, 2010

52. (b) (6) EOUSA, Nepotism. The new (b) (6) (b) (6), has inquired whether he can hire his brother-in-law (wife's sister's husband) as FAUSA. (b) (6) has advised (b) (6) that the so-called anti-Nepotism statute, 5 U.S.C. § 3110, prohibits (b) (6) from hiring a relative, which includes a "brother-in-law." However, "brother-in-law" is not defined in the statute and (b) (6) has inquired whether his wife's sister's husband is his "brother-in-law" for purposes of the statute (or is the definition limited to his wife's brother). There is no case law on this issue (at least which (b) (6) could find). However, the Office of Special Counsel (OSC) has advised (b) (6) that while they have not dealt with this specific issue, that it is their view that a public official's wife's sister's husband is the public official's "brother-in-law" for purposes of the statute. Moreover, even assuming the statute does not apply, the appearance issues this raises are of equal concern. The relationship described above (wife's sister's husband) is commonly understood to be that of a "brother-in-law." Thus, regardless of (b) (6) motive for wanting to hire this individual, the fact that he is (b) (6) brother-in-law (as commonly used and understood) would create the appearance of bias and favoritism should he be hired. In addition, (b) (6) desire to hire this individual may constitute a pre-selection, which is also prohibited by DOJ policy and Merit Staffing principles. Before advising (b) (6) that GCO's would not support this hire, (b) (6) suggested (b) (6) also get our views. I concurred with (b) (6) and OSC. (b) (6) July 26, 2010

53. (b) (6) JMD/ESS, Washington Post Article Interview. (b) (6) fiancé is the Executive Director for the National Association of Free Clinics. Part of her work is to hold very large one day free clinics around the country. The next one is here in DC. (b) (6) works as the logistics lead during these events. The Washington Post is writing an article on the NAFC and the one day clinic. The writer would like to interview local people who have attended all of the clinics. (b) (6) would like to know if it is ok to speak with him about his volunteer work and not state who

his full-time employer is. I advised that he may certainly speak to the reporter about the clinic work and that he may identify his full time employer. (b) (6) July 26, 2010

54. (b) (6) EOUSA, Outside Activity. (b) (6) (b) (6) of the (b) (6), has been invited to be a member of the Sigma Pi Phi fraternity, a historically African American professional organization. They meet 8 times a year for dinner meetings and it is primarily a social organization. (b) (6) would participate in his personal capacity. His participation in this activity requires the approval of the ADAG; thus, they are seeking my concurrence with their recommendation that it be approved. This is mere membership, not a leadership position, and the group has over 5000 members total. I advised that I don't think that ODAG approval is required - this would be similar to ABA membership or another professional organization. It would be different if he sought to serve in a leadership role - first, it might require ODAG approval under DOJ's policy since these could be persons with whom he would be dealing as the USA, or if the group addressed issues that are of interest to DOJ; and it likely would require the White House to approve under the administration's policy that PAS officials may not hold any outside positions during the term of their PAS appointments. An outside position requires the WH's approval, which they have been clear will not be given except in rare and compelling circumstances (which this would not meet), so please do counsel him that he may not undertake a position (officer, committee member, etc.) during his tenure as USA. (b) (6) July 27, 2010

55. (b) (6) NSD, (b) (6) Invitation and Speech, sent the following analysis: (b) (6) (b) (6) has been invited to participate in an executive roundtable discussion on September 29, 2010, by the Homeland Security & Defense Business Council (see attached invitation). The suggested format is a luncheon to take place at a restaurant in Washington DC. The Council represents companies (see attached member list) that provide products and services related to homeland security. The roundtable discussion series is intended to bring together senior-level private and government executives to share views and to network. The suggested focus of the not-for-attribution discussion with (b) (6) is his assessment of the private sector's role in homeland security actions and policy going forward. The applicable standards of conduct beginning at 5 C.F.R. § 2635.201 generally prohibit an employee from accepting gifts, including entertainment, from an entity that does or seeks to do business with the Department or that may be substantially affected by performance or nonperformance of the employee's official duties, or given because of the employee's official position. In this case, since Mr. (b) (6) would be participating as a speaker, he may accept food and refreshments provided as part of the event (5 C.F.R. § 2635.204(g)(1) and (4)). A second restriction is the 'lobbyist gift ban' found in section 1, paragraph 1 of Executive Order 13490, "Ethics Commitments by Executive Branch Personnel." Under the Executive Order, Mr. (b) (6) generally cannot accept gifts from registered lobbyists or lobbying organizations for the duration of his service as Assistant Attorney General for National Security. The Council is a registered lobbyist for purposes of this restriction. However, the US Office of Government Ethics, which has authority to interpret the provisions of the Executive Order, has determined that an appointee may accept free attendance (including refreshments) on the day he participates as a speaker in an event sponsored by a lobbyist because free attendance is not considered a gift under the standards of conduct. See DAEOgram DO-09-007 at 4, n. 3 (Feb. 11, 2009). Participating in the roundtable discussion will further the interests of the National

Security Division's by promoting its work and role and expanding its support and contacts in the private sector. It is (b) (6) view that Mr. (b) (6) participation in the event outweighs the concern that acceptance of the gift of lunch may or may appear to improperly influence him in the performance of his official duties. (b) (5)

(b) (6) approved. (b) (6) July 26 & 27, 2010

56. (b) (6) JMD, contractor guidance. An OSS contractor and (b) (6) were discussing their golf games and thought it might be fun to play a round together one day. (b) (6) wanted to make sure it was not violating any rules. This would not be a sponsored event, just a simple round of golf. (b) (6) is not the COTR on the contract; however, he was the Program Manager on that contract while he was over at OSS. He is now over at HCMA on a detail, and will return to his role as Program Mgr once he gets back to OSS. He would be paying his own green/cart fees, buying his own lunch, etc. I spoke to (b) (6) and noted that if it was going to be a recurring thing it probably was not a good idea - in general it's better to avoid developing relationships with contractors with whom we will be working. (b) (6) said this was a one-time thing, he was going to be in Florida where this individual contractor is, but that wasn't likely to happen again. Based on that, I told him it sounded alright. (b) (6) July 30, 2010

57. (b) (6) OAG, is leaving in two weeks and will be joining Covington & Burling, which is his former firm (subject to the partners voting him in at their next meeting). OPA thought it would be a good idea, and (b) (6) agreed to do an interview with Legal Times to talk about his time at DOJ and the Department's accomplishments thus far in this administration. The reporter asked him where he was going and why he was leaving now, and (b) (6) told him he expected to join Covington (he did not say it was absolutely definite because it is not), and said nice things about the work the firm was doing. Afterward, he wondered if this was a problem, because even though he views it as a "puff piece," it is likely to run before he leaves. I appreciate his checking, and we do have concerns: we advise departing officials not to announce where they are going until they leave or at most a couple of days beforehand. We also do not allow the firm (or company, nonprofit, etc.) to announce that a DOJ official is joining them until after they leave - the new employer always wants to note that the official is coming from DOJ, but to do so while the official is still here is a misuse of the official's position. I suggested to (b) (6) two possible fixes: to ask the Legal Times not to publish it until his last few days here; or to delete the comments about Covington. (b) (6) got back and said that OPA has contacted the reporter, and the reporter agreed to find an outside source for the information that (b) (6) is joining Covington. I advised this was acceptable, as long as there were no confirmation/comment from (b) (6) or OPA if other inquiries were received about his leaving and joining the firm, after the piece runs. (b) (6) August 3, 2010

58. (b) (6) PRAO, 205 question. (b) (6) wanted to clarify that 18 usc 205 does not prohibit a federal attorney from handling any pro bono case involving a federal statute. She has an SBA attorney who wants to do a pro bono matter involving the ADA. The government is not a party. His ethics folks said they don't see a conflict, but he's unsure and asked for Laura's opinion. She

asked if the fact that a federal statute is at issue automatically mean the fed gov't has a direct or substantial interest? I advised that the fact that a federal statute is involved is not enough to trigger the prohibition. 205 prohibits any representations in a matter in which the US is a party or has a direct and substantial interest, so as long as no federal agency/official is involved, he's fine. (b) (6) August 2, 2010

59. (b) (6) OLA, (b) (6) attendance at fundraiser. (b) (6) emailed (b) (6) for approval for (b) (6) to attend a fundraiser on Aug. 5, 2010, for a former law firm colleague, (b) (6), who is running for State's Attorney for Baltimore City. The fundraiser is a wine and cheese event at the home of (b) (6); (b) (6) expects that about 100 individuals will attend. (b) (6) advised (b) (6) that, if he is authorized to attend, he should avoid any photos or other situations that would tie him publicly to this candidate and, of course, that he would be attending in his personal capacity. I also recommended approval. (b) (6) approved. (b) (6) August 2, 2010

60. (b) (6) OSG, emailed an invitation he received to attend a conference for Young Leaders in Genoa in October. Discussed it with him, and the topic is the ubiquity of information and communications, and they want him to discuss the sexting case which we recently won. Told him it sounded fine for an official presentation, and to have his staff send the 1353 memo with specific information. We're happy to look at a draft to make sure it is complete. (b) (6) August 2, 2010

61. (b) (6) OAG, had reviewed the post-employment materials we sent a few week ago, and had several questions. We went through each of the 207 and Pledge restrictions, especially 207c and which office she could contact and up to what point (the attribution issue), and what would be under his official responsibility as a staff member in OAG. I then sent the 1999 memo from (b) (6) to (b) (6) that explained our analysis of what is official responsibility of a non-principal in a senior office. Also sent the OLC memo on 207c and attribution of intent to communicate. (b) (6) August 2, 2010

62. (b) (6) JMD Finance, gift of facility question. ATF submitted a document to accept, for a "town hall" meeting in Boston which (b) (6) will attend, and which will only be attended by ATF employees, space in a Legends Private Sports Club. We can't see how this is anything but a gift - only exception would be if they are buying food and the space is simply the space to have the food. This doesn't seem likely since food purchases for all-employee gatherings are not permitted. Notation in the documents says they checked with (b) (6) and he said it was okay, but there are no details. (b) (6) August 3, 2010

63. (b) (6) Access to Justice, gift to Department question. (b) (6) asked about the possibility of a non-profit entity in New Orleans being solicited to do an assessment (b) (6) (5) (b) (6) of ht following:

What you describe sounds like it would be a gift to the Department. DOJ has statutory gift acceptance authority (which avoids an improper augmentation of appropriations), for gifts that aid or facilitate the work of DOJ (But

which do not substitute for work of DOJ, so that sometime is a difficult line to draw). The authority bans solicitation except when specifically authorized by the DAG (so, no one should ask BCM for their assistance at this time); and the authority for the Department to accept gifts is delegated to AAG (b) (6). While we can and will expedite consideration, accepting a gift is not a frequent occurrence, and is by no means automatic (I'd say it's 50-50 approval for requests to accept gifts), so I don't want to imply that it can be necessarily be done (especially if it takes some work to try to get to yes) in a day or two. (b) (6) then said that OJP/NIJ has technically assistance funds available to do the assessment, so no need to solicit or accept a gift. She has asked to meet to better understand the issue of gift acceptance as they move forward., which we are happy to do. Emails in file. (b) (6) August 3, 2010

64. (b) (6) OASG, gift to employee question, said that (b) (6) father died and she plans to send flowers. Other staff have said they'd like to contribute, so what can she do? She may ask her peers and supervisors if they want to contribute, and the 2 counsels (who are not her subordinates but are junior to her) who have already told her they'd like to contribute, of the planned flowers and let them contribute what they want. She also said that the family is suggesting donations to the UNCF in his memory; she should not do this since it is a fundraising for a charity. Stay with the flowers. (b) (6) August 3, 2010

65. (b) (6) PAO, gifts question. A good friend of hers (that she has know since they were in college) invited her to attend the Legg Mason tennis tournament with her this weekend. She received two tickets from a partner at the law firm where she works, to do with as she pleased. (b) (6) wanted to make sure it is ok for her to attend with her, since she works for a law firm. They have a prior relationship that has nothing to do with (b) (6) work at Justice (they see each other at least once a week) and the tickets were given to her with no expectation that (b) (6) would be a recipient necessarily, just two tickets to do with as she pleased, plus she's inviting (b) (6) as her friend, not because of her position at Justice. I advised that this fits within the exception in the standards of conduct for a gift based on a personal relationship. (b) (6) August 3, 2010

66. (b) (6) (ODAG) called with a recusal question. She is a non-career employee who started in May 2009. She wanted to know if she could participate in a matter that related to a case she worked on for a client (RIA, record companies) when she was in private practice. She litigated a copyright case against (b) (5) and got a summary judgment. The matter is now coming to the Department in various ways. (b) (5)

(b) (6) was not sure if she would be asked for input. Secondly, it is possible that at a later time the Department might investigate/prosecute (b) (5). (b) (6) thought that because she had knowledge of underlying facts that might also be relevant in a DOJ enforcement action that she should not participate in that matter. But she wondered if that would preclude her from assisting OMB. I said that it would be better if she did not. She is also an addressee on emails about it and she decided to have her name removed as an addressee so that she does not receive emails on the subject. (b) (6) 07/20/10

67. (b) (6) (CRT) wanted to know if there were any ethics concerns if CRT were to post on Facebook page dealing with a complaint against a company about national origin discrimination a message that tells people how to get in touch with CRT if they believe they were subject to discrimination. I said this was permissible as long as it was clear that they should file the information with CRT. They were also going to consult PRAO which might have a problem with this. (b) (6) 07/28/10

68. (b) (6) (CRT) had a question from an attorney (b) (6) who is on the board of the Washington Council of Lawyers. (b) (6)

(b) (6) he letterhead does have the names of the board on it but not their affiliation. She would not sign the letter which would likely be signed by the Executive Director. She wanted to know if she could participate in the board decision to send the letter which would protest the provision to the Chairman of the Armed Services Committee. (b) (6) did not know if the United States had an interest or the Department had taken a position. I said it was ok for her to participate in the decision as long as PRAO did not believe it involved any breach of a lawyer's duty of loyalty. In reviewing the WCL website (b) (6) discovered that her Department affiliation was listed. He was going to advise her to remove that from the website. (b) (6) July 28, 2010

69. (b) (6) (JMD) asked whether there was any ethics concern in contacting (b) (6) a possible speaker at a Hispanic Heritage event at the Department. (b) (6) is currently the nominee to be General Counsel at the Department of Agriculture. She is corporate counsel for DuPont. A number of people are under consideration to be the keynote speaker. The speaker selection is vetted through JMD channels and goes to (b) (6) Told (b) (6) that she could contact (b) (6) but should mention to her that she might want to speak with the person working on her nomination at the White House for advice on taking on speaking engagements while her nomination is pending. An email is in the file. (b) (6) July 30, 2010

70. (b) (6) called with a recusal question. (b) (6) is scheduled to do internal DOJ training tomorrow. She is going to talk about the lessons of Disability Advocates, Inc. v. Patterson. The Department has entered the case as an intervenor. She represented DAI pro bono when she was with the firm of (b) (6). She left (b) (6) in May 2010 and started in CRT in June 2010. This is an Olmstead case. Other CRT attorneys on the panel will talk about Olmstead precedent. She will talk about DAI. It is internal. Only DOJ attorneys present. Said she would need a 502 determination and also to resolve PRAO issues. It is highly unusual for an attorney to be commenting this way on an open case. (b) (6) drafted a 502 determination which I reviewed and sent him some edits which he agreed to. She will be limited to discussing only public information. Other CRT attorneys should be advised to limit their remarks to publicly available information. And the audience should be informed of this. The email and draft memo are in the log file. (b) (6) August 2, 2010

71. (b) (6) (OCIO, (b) (6) called to ask whether there were any concerns about a team building experience for regular Department employees that involved paint ball. Each employee would pay for the game. It would take an afternoon. He said (b) (6) supports team building but is concerned about liability issues. Discussed with (b) (6) Told (b) (6) we shared the concern about liability and also there was an issue about having an employee pay for the paint ball when it was in effect and official activity. Suggested he contact (b) (6) who has recently worked on some team building programs for people in JMD. He said he would contact (b) (6) (b) (6) 08/02/10

72. (b) (6) a contract employee in JMD, called with a Departmental gift acceptance question. ATF is holding an event and the Boston Celtics have offered certain facilities for free. The ATF agent in Boston spoke to (b) (6) who said it was ok. (b) (6) was looking for the gift acceptance form. I told him where it was on our website but said that he should contact (b) (6) about getting them to initiate the request for approval to accept the gift. Approval for this gift is in the gift acceptance file. (b) (6) 08/02/10

73. (b) (6) (CRT) had a question as to whether (b) (6) could participate in matters relating to the implementation the surviving provisions of Arizona Senate Bill 1070. She is non-career. She was an attorney for (b) (6) until she joined CRT in July 2009. So she still is subject to the Ethics Pledge for one roughly one more year. As (b) (6) attorney she worked on (b) (6), a case that involved allegations of racial profiling targeting Hispanics. The Department had no involvement in that case. (b) (5) (b) (6). She has not been involved in that investigation. The Department challenged 1070 and obtained a preliminary injunction suspending certain provisions of the law. CRT is monitoring the implementation of the surviving provisions of 1070. CRT would like her to work on the implementation matters. It might involve contacts with CRT people working on the investigation of the Sheriff's Office. The one year recusal under 502 has passed. (b) (6) asked whether the similar of charges and underlying facts would mean that the Pledge restriction would apply. The (b) (6) is not a party to the investigation or the court case involving 1070. Told (b) (6) that the Ethics Pledge would not prevent her from working on 1070 implementation matters. She is prohibited by the Pledge for one more year from communicating on these matters with the (b) (6). She can work on 1070 implementation issues and can talk to people working on the investigation. As far as any future actions go we would have to assess the specific facts and (b) (6) should continue to consult with ethics officials to see how events unfold. For example, the situation should be reassessed if (b) (6) became involved in the DOJ case or investigation. I also told (b) (6) that we do believe there are PRAO issues involved as she was personally and substantially in representing (b) (6) clients in that case. We advised that she should consult with PRAO to see how limited her work for DOJ might be as a result of her professional responsibility obligations. The emails are in the file. (b) (6) August 3, 2010

74. (b) (6) (FBI) called with an endorsement question. A SAC has been approached by someone who is applying for a grant from the Department. He asked the SAC for a letter supporting the grant. (b) (6) says they do not approve such requests because of endorsement concerns, etc. But he asked whether it would be any different instead of asking for direct support, the SAC merely says that the FBI could use whatever it is the grant applicant is going to do or provide under the grant. I said that seemed to raise the same issues and (b) (6) said he was going to recommend against it. (b) (6) August 4, 2010

75. (b) (6) (Civil) had a WAG question. (b) (6) has been invited by the Lantos Foundation for Human Rights to attend a performance of the Shen Yun Performing Arts Group at a private event at the Kennedy Center. (b) (6) asked if such events could qualify as a WAG. I said they generally do not and pointed him to the OGE memo on WAG's that strongly discouraged treating entertainment, sporting events etc. as WAGs. (b) (6) looked at it and said it was helpful. The email is in the file. (b) (6) 08/05/10

76. (b) (6), OASG, Gift question. (b) (6) received a book about Puerto Rico during the Puerto Rico Task Force hearing. According to Amazon, the book is valued at \$16.95. (b) (6) passed on the book on behalf of (b) (6) (b) (6) is not sure if either is a lobbyist. I advised that (b) (6) is a registered lobbyist, but (b) (6) is not, and his business affiliation also is not, so if the gift is from (b) (6) i (which sounds like it is), (b) (6) may accept it. (b) (6) August 6, 2010

77. (b) (6) (Access to Justice) sent an email with a follow up question regarding how she can be listed on the websites of the two organizations that she serves as a board member. Advised that for StoryCorps that just has a one line affiliation she should not use her Department position. For ABIM Foundation which has a bio type entry she could list herself in the body of the bio with no special emphasis as an attorney with the United States Government. The emails are in the file. (b) (6) July 28, 2010

78. (b) (6) (OSG) sought 1353 travel reimbursement for travel expenses related to her attendance at the ABA annual meeting in San Francisco in August 2010. She will be on a panel on the Supreme Court term and will review criminal cases. (b) (6) approved on July 29, 2010. The one issue to be worked out was the fact that she would fly from DC to San Francisco on official travel. Then fly to Los Angeles on personal travel. And then fly back from Los Angeles to DC on official travel. ABA would reimburse the official travel and she would pay for the personal middle leg of the trip. (b) (6) confirmed that this arrangement was permissible. OSG travel should come through DEO not through OLC. The emails and a copy of the approval memo are in the log file. (b) (6) July 29, 2010

79. (b) (6) (OJP) called on July 29, 2010 to follow up on the question of whether providing the cover page of an OGE Form 450 to an OJP audit unit would be permissible under the Privacy Act. Suggested he call (b) (6) at OGE if he needed a quick answer as we would have to consult with OGC. Subsequently, in talking with (b) (6) on August 5, 2010, he indicated he had talked with (b) (6) and she advised him that it could not be disclosed under those facts. She said he could provide a list of OGE Form 450 filers and (b) (6) said he is prepared to do that. (b) (6) July 29, 2010

(b) (6) (JMD), a security specialist with SEPS, is leaving the Department on August 11 to go to work for the Department of Homeland Security as a Program Analyst. He is not a supervisor and has not worked on contracts. Discussed the permanent restriction with him and explained that it lasts for the life of the matter. He said he has no plans to leave federal service. Told him he could always consult an ethics official at DOJ or DHS, as appropriate. Sent him an email to use to document his check out list that he got an ethics briefing. The email is in the file. (b) (6) August 6, 2010

81. (b) (6) (OSG) sought a determination to allow her to work on (b) (6). (b) (6) a case in which her husband's firm, (b) (6), is representing the Petitioner. He is an income not an equity party. We made a recommendation for 502 authorization and (b) (6) approved. The email is in the file. (b) (6) August 6, 2010

82. (b) (6) (Access to Justice) sought WAG approval to accept free attendance from the ABA at an awards luncheon and reception in connection with the ABA annual meeting in San Francisco in August 2010. The event met WAG requirements and there was a benefit to the Department. (b) (6) (b) (6) approved on August 5, 2010. The email is in the file. (b) (6) August 5, 2010

83. (b) (6) (Access to Justice) is traveling to the West Coast and Hawaii for a number of events. He will be speaking at the ABA annual meeting in San Francisco at several sessions. The ABA offered to pay travel expenses but ATJ decided not to use that authority so the Department will pay his travel expenses. He will not be attending all of the conference, just the sessions he is involved in. He is the speaker at the Awards Luncheon so there is no issue with him accepting that lunch. (b) (6) will be assisting him at that speech and she obtained WAG approval to accept free attendance. He will also be meeting with the State Bar of California on one day to discuss access to justice. It will be a brown bag lunch under \$20. The State Bar is not a registered lobbyist so he can use the \$20 exception. If (b) (6) attends that event, she also may use the \$20 exception to accept the brown bag lunch. (b) (6) is also attending the 2010 Ninth Circuit Judicial Conference in Hawaii. The Ninth Circuit is a federal entity so it is not necessary to obtain 1353 approval for the Department to accept reimbursement of his travel expenses. There is also a District Dinner which is part of the conference and he was invited to

attend the dinner hosted by the Chief Judge of the Ninth Circuit. Attendees were permitted to bring a spouse or guest. (b) (6) is also attending that dinner provided by the Ninth Circuit. (b) (6) was advised that he could not personally accept the \$50 per diem that the Ninth Circuit offered although that could be applied to the Department's expenses if the Ninth Circuit were to do that. Worked with (b) (6) these travel related issues. Email exchanges are in the file. (b) (6) August 5, 2010

84. (b) (6) (Access to Justice) sought approval to continue to serve on liaison positions in the Young Lawyers Division of the ABA and to participate in some related activities. (b) (6) scaled back her original request and on August 3, 2010, we sent a memo to (b) (6) concluding that this ABA related outside activity could be approved. Emails and a draft of the memo are in the file. (b) (6) August 3, 2010

85. (b) (6) asked a follow up question regarding CRT's official participation in an ABA language access project. See entry #27 07/14/10 for the related entry. PRAO opined on the professional responsibility aspects. We advised that CRT could do this provided it was in an official capacity, as a technical advisory role, with no vote on, endorsement or approval of any recommendations or standards that the group might develop. (b) (6) & (b) (6) August 3, 2010

86. (b) (6) sought a determination permitting him to participate in (b) (6), the case which challenged the (b) (6). The ABA participated as an amicus. (b) (6) is (b) (6) of the ABA. He had no involvement in the ABA's decision to file an amicus brief. He sought approval to participate and coordinate the case within ODAG. He would not make an appearance in the case. (b) (6) approved on August 4, 2010. The background emails and the approval email are in the file. (b) (6) & (b) (6) August 4, 2010

87. (b) (6) ATR, (b) (6) invitation. (b) (6) (b) (6) received an invitation - a small event outside of Florence, Italy - only 30 people and it seems to be entirely underwritten by law firms and economic consulting firms. As they say, they expect the participants to be: "around 30 leading contributors to the work of the competition law community throughout the world, including in particular senior representatives of competition authorities, judges, and academics specializing in the field. Senior representatives of the sponsor firms also participate." (b) (6) take on it is that they should pay the travel if she decides to go, but (b) (6) wasn't sure whether there were other non-discretionary considerations. I agreed with (b) (6) that (b) (6) could go in her official capacity (not personal capacity) and that DOJ should pay if she decided to participate (not accept travel from the sponsoring law firms and not pay herself). (b) (6) August 9, 2010

88. (b) (6) OASG, Recommendation. (b) (6) has been contacted to fill out a form rating an applicant as a potential judge. She worked with the applicant when she was at DOJ. I advised that this is permitted by the rules, and that my standard advice is it's fine if she feels she knows the person well enough to provide meaningful feedback/information on the qualities or experience being asked about. (b) (6) August 9, 2010

89. (b) (6) (ENRD) had an outside teaching question. (b) (6) at Georgetown is now (b) (6) of the President's Oil Spill Commission. He was scheduled to teach a seminar this fall that would focus on the Deepwater Horizon oil spill. He cannot now teach the course. Two attorneys in ENRD wanted to know if they could teach the course. (b) (6)

(b) (6) Both sections are or will be involved in the case or cases in ENRD. They would be paid \$750 each. There are about 14 students in the class. Each week a different guest scholar will come in to talk about current scholarship on the oil spill. Most would be from academia. None would be from law firms. (b) (6) had already lined up most of the guest scholars but a few slots were still vacant. They asked whether (b) (6) of ENRD could be a guest scholar. They would facilitate discussion and be responsible for the administration of the course, reading seminar papers, and determining grades. They would do this in their personal capacity. The course meets during work hours in the afternoon. They might alternate the weeks that they attend. (b) (6) asked for DEO's views because of the high profile of the case. Discussed with (b) (6). Advised (b) (6) that we do not believe that they should teach this course. It would be difficult if not impossible for them to do this in a personal capacity given their positions and the fact that the subject matter of the course essentially concerns a single, ongoing, high profile case in the Division. Also even if they made a disclaimer and avoided actually disclosing confidential information, it would be difficult if not impossible to avoid having their discussions be informed by confidences and information gained from working on the case. If they were to do it, they would have to be careful to not misuse their official position in inviting guest scholars and they could not invite their supervisor, (b) (6). They will be advised not to teach the course. The situation here is different from the situation where a Division attorney might teach a general environmental law course. That type of course fits more comfortably within the exception for teaching a course involving multiple presentations as part of the regular curriculum. The emails are in the file. (b) (6) August 9, 2010

90. (b) (6) (OJP) sent an email asking if a proposed announcement by Harvard of (b) (6) confirmation as Director of NIJ was permissible. (b) (6) had a full time position at Maryland and was also a Visiting Scholar at Harvard, a position he had to leave when he joined DOJ. Harvard wanted to do a statement on this. Discussed with (b) (6). Told (b) (6) the announcement looked alright but if they were going to put it on a website they should only keep it up for a reasonable period of time, not permanently. (b) (6) said he thought that would work out fine. The emails and announcement are in the log file. (b) (6) August 9, 2010

91. (b) (6) (on detail from USAODC to OSG) had a recusal question. His wife is a partner at Sidley and they do a lot of Supreme Court work. (b) (6) had earlier discussed this with (b) (6) and exchanged emails describing various scenarios and the appropriate action to deal with conflicts. Called (b) (6) to discuss further the situations that would require authorization and the level of approval that would be needed along with screening arrangements. At this time, there are no cases that (b) (6) is aware of that would trigger recusal. He will call us when this comes up. If his wife is involved, then he is out of the case and no authorization. If Sidley is involved but not his wife, he will generally try to avoid the case. However, if there is a need for his involvement, he will seek 502 approval as long as his wife is screened from the case and does not share in fees. The 502 approval will be needed, however, even if the firm takes the case pro bono as opposed to being paid. Also 502 is needed if the firm participates as an amicus as opposed to as a party. The earlier email exchange is in the log file. (b) (6) August 9, 2010

92. (b) (6) (CRM) called to ask if there was any ethics issue involved if an employee was stopped and arrested on a DUI charge. He was aware of the obligation to report as a security matter. I said there might be an ethics issue of an employee asserted their DOJ position and attempted to use that to obtain favorable treatment by a law enforcement officer. He said he did not think that was the fact in this case. (b) (6) August 10, 2010

93. (b) (6) (OSG) called to ask whether there would be any ethics concern raised if he were to become a member of the South Asian Bar Association. He would not be an officer or director. He would not chair a committee or take any active leadership role in the group. He would merely be a member. I said mere membership does not raise any concern. (b) (6) August 10, 2010

94. (b) (6) (Civil) sent a draft 502 determination for (b) (6) who is working on the Deepwater Horizon matter and has a brother-in-law who is a partner at Pillsbury. The firm is representing a Japanese company that owned a piece of the drilling platform. The relative is not involved in the case. (b) (6) has a meeting coming up next week. Discussed with (b) (6). Sent (b) (6) an email saying the memo looked fine but (b) (5). (b) (6) agreed. The emails are in the log file. (b) (6) August 11, 2010

95. (b) (6) (CRM) called to ask if it would be permissible for a CRM attorney to provide a letter of support for his brother-in-law who has been charged with a federal felony which will be tried in a federal court by a federal prosecutor. The defense attorney asked for the letter and suggested certain information to be included including job title and employer. (b) (6) did not believe he should identify himself as a Justice Department lawyer in the Criminal Division. I

agreed. Discussed with (b) (6) Called (b) (6) and confirmed no reference to DOJ or his title. He should also not make any comment or provide information regarding the facts of the case or anything that would be material to the charge. He should also not offer any opinion on whether the conduct charged merits leniency. Suggested that (b) (6) review the letter in draft. He said that was a good suggestion and he would ask the attorney to do that. (b) (6) called back with a follow up question. The attorney showed him a draft and in it he refers to his background in law enforcement, the fact that he was a county sheriff, and that he assists foreign law enforcement agencies (which is what he does at (b) (6)). I agreed with Jim that he should take that out of the letter as it does use his law enforcement background and indirectly points at his position with the Department. (b) (6) is going to tell him to take that part out. (b) (6) August 12, 2010

96. Gave ethics debriefings to two JMD/SEPS employees: (b) (6) a summer intern who is returning to school and has no private sector employment planned, and (b) (6), Security Assistant, who is going to work for OPM as a federal employee. Neither is a supervisor. Discussed the lifetime ban and the preservation of confidential information. Stover is not an OGE Form 450 filer - but told him he might be at OPM - it is a good idea to touch base with his ethics official when he arrives there. Told each to contact us with any future questions. (b) (6) August 12, 2010

97. (b) (6) COPS, travel question regarding official government rate. Clarified what is taught at New Employee Training - official government rate is for official travel only, and is distinct from a bona fide federal employee discount which may be acceptable under the gift rules. COPS employee (b) (6) may not use the official government rate to purchase airline tickets for herself and her boyfriend. Sent (b) (6) the slides used during NET and relayed how this info is provided in NET. (b) (6) August 12, 2010

98. (b) (6) JMD, Gift acceptance. (b) (6) was seeking my approval on a gift of the logo for Kid's Day at DOJ from an employee's daughter. I approved. Signed gift acceptance form in gift acceptance file. (b) (6) August 12, 2010

99. (b) (6) (b) (6) called with a recusal question. He is reviewing an OSG response to a cert petition which is due on August 17. They would like him to edit the response. (b) (6), a Sidley partner of his wife, filed an amicus brief on behalf of the National Association of Criminal Defense Lawyers. He is the Deputy Co-Chair of the organization's amicus committee. The Sidley address and phone number appear on the brief but not Sidley's name. His wife has no involvement in the case. Said he should check with (b) (6) to see if he was participating through his position with the organization and Sidley is not involved. Also is he unpaid. (b) (6) said he would have no reason or need to interact with (b) (6) regarding merits or substance. If all of that is true, then there would not need to be a 502 determination. If he did need to interact with (b) (6) even if the firm were not involved there should be a 502 determination. (b) (6) August 12, 2010

100. (b) (6) (Civil) called with a travel question. An employee is going to travel in an official capacity to speak at a money laundering conference in Europe in September. An association of banks will pay for his travel expenses. The banks are not state owned but are controlled by local municipalities. (b) (6) asked if this were covered by the Emoluments Clause. I said it was not because the reimbursement would be to the Department not to the employee. So they could process it as a request for 1353 approval. The attorney should not accept any cash as per diem expense. He will have to report everything they provide either by paying for it or in kind. (b) (6) August 12, 2010

101. (b) (6) CRT, Attendance at Political fundraiser. (b) (6) emailed (b) (6) a request for Approval for Senior Counselor (b) (6) to attend the Democratic National Committee LGBT Leadership Council's Brunch. I provided additional information to (b) (6) and advised that (b) (6) was provided advice also. (b) (6) approved based on the advice DEO provided the requestor. Email docs are in file. (b) (6) August 12, 2010

102. (b) (6) NSD, Follow up on conflict issue. (Legislative issue). (b) (6) is providing follow up on to our conversation on whether or not (b) (6) who is (b) (6) NSD needs a waiver under 5CFR Section 2635.402 (d)(1) to work on certain Legislative matters. (b) (6) advised that DOJ is advocating the change because it is easier for the gov't to get the records via an NSL than through the FISA process and a few of the companies asked to comply with NSLs have refused to turn over certain types of records, arguing that the authority is unclear and their customers might object. I advised (b) (6) that I agreed this is not a particular matter, so no waiver is needed; however, is the specificity of the issue increase at some point in the future we may need to reevaluate. (b) (6) August 16, 2010

103. (b) (6) USMS, Conflicts issue. A USM has a litigation issue. (b) (5)

The USM would like to know if there is a need to exclude himself as a member of the class. He would prefer to be part of the class as this will affect him. I advised that I didn't see any conflict. (b) (6) August 16, 2010

104. (b) (6), JMD, seeking and post employment. He is thinking of retirement in next year or so and wanted an overview of what restrictions are relevant for him. We went to our Leaving Government website together and reviewed the restrictions for him, including the Procurement

Integrity Act which we do not think apply to him - he is only a COTR on a matter, not a CO, and it does not exceed \$10M. He has never been involved in selection of vendors or contractors. As time gets near and parameters develop, he will call again. (b) (6) August 17, 2010

105. (b) (6) NSD, Outside employment question. NSD has a new IT employee who owns and operates as the only employee a private software consulting company. He is seeking permission to continue the work of his company while he is a DoJ employee - he had such permission at his prior job at USDA. This is a first time request for NSD so they do not have any precedent to look to. His supervisor is OK with it, but the thing giving (b) (6) concern is that he on rare occasions interacts directly with his client's federal government customers. He would not be representing his company in these matters, but rather asking for clarification of contract requirements for his client. (b) (6) and I discussed this several weeks ago and concluded he could be approved to continue with a few additional restrictions. (b) (6) modified the form NSD uses for outside teaching to also cover outside employment issues and this person's request. She asked me to review it also. I advised that it looked good with one addition that he will not use his DOJ phone, email or other contact information in connection with the business. (b) (6) August 17, 2010

106. (b) (6), (b) (6), who is still at (b) (6) but not representing clients against the U.S., asked if the firm could have a small dinner for him once he is confirmed; also whether a brother of a firm partner who is a trustee of the Kennedy Center may invite him to the KC Honors. Yes to second, since OGE's recent guidance allows officials to accept invitation from the KC itself (e.g., trustees); as to first (b) (6) will need to find out whether (b) (6) is a registered lobbying organization or any of the individual partners attending are (he does not think so) and if not, they may have an event similar to what they do for those partners at his level who leave the firm. (b) (6) August 18, 2010

107. (b) (6), ODAG, re: ENRD detailee to Oil Spill Commission, wanted to confirm the advice we sent (b) (5)

(b) (6) This doesn't change our advice; it sounds fine. (b) (6) August 18, 2010

108. (b) (6) - post employment questions. (b) (6) (b) (6). He worked for several components in the two years before leaving DOJ to go to United Healthcare as in house counsel. We asked him to get his post employment briefing from EOUSA/EDVA as his employing component when he left, which he did, and to seek specific advice from the component at issue if he had anything come up. (See prior log entries.) He called to ask about social contacts - could he go to lunch with friends who were still at DOJ? Yes - limit discussions to nonbusiness as he cannot try to influence government employees in their duties. Payment for the lunch would be covered by the gift rules. (b) (6) said he would not

offer to pay or have his company pay. Would it really be a social contact, or would he want to discuss work? He said he wanted to talk about task forces and prosecutorial work he did while at DOJ and how he could duplicate those efforts now in new matters, not anything he worked on while at DOJ. Told him he would be placing the federal employee in a tough position in that they would not be able to discuss with him nonpublic information. It would not be a social contact at all, but him contacting DOJ with an intent to influence - him trying to get an "in" with DOJ based on his former position, or to talk about nonpublic information. (b) (6) mentioned "partnerships" with nonfederal entities while he was on the healthcare task force. We discussed that even though goals may be similar when DOJ sometimes works with private sector companies, they are not identical. (b) (6) wanted to talk hypothetically about things, because nothing is in place now, but I told him that post employment restrictions are fact and matter specific and he would need to contact us for fact specific advice if he is going to contact someone at DOJ. He said he will. (b) (6) August 18, 2010

109. (b) (6) ATR - international 1353 travel acceptance. He is working on approval for acceptance of 1353 travel to Mexico City - I confirmed for (b) (6) that the maximum allowable rate is as set by the State Department. I sent (b) (6) the link to the per diem rates on the State Department's travel website and his traveler's proposed rate is \$205 which is fine. (b) (6) August 18, 2010

110. (b) (6) (OJP) provided a copy of a transcript of a voice mail sent by (b) (6) of OGE that memorializes the advice OGE provided on the question of whether the front page of the OGE Form 450 could be separated from the report and provided to OAAM in connection with their audit. There must still be a routine use that would apply in order for such a release to be consistent with the Privacy Act. No routine use appears to be applicable. The email and voice mail transcript are in the file. (b) (6) August 13, 2010

111. (b) (6) (Civil) had a follow up question on the issue of whether the project to develop (b) (5) would be considered a "particular matter" within the meaning of 208. See the related log entry for June 2, 2010. A (b) (5)

[REDACTED]

At this point it is not clear what the end product will be, what steps will take place in the next few months, what will be on the

agenda, etc. The project is in a very conceptual phase. Based on this information, we advised (b) (6) the project was not sufficiently focused on the interests of these companies as to constitute a particular matter. Consequently, neither a 208(b)(1) waiver nor a 502 determination was necessary for the three Civil employees to participate in the internal DOJ meetings. However, the development of the project must be closely monitored and waivers would need to be considered when the project becomes more focused. Emails and background information are in the log file. (b) (6) August 16, 2010

112. (b) (6) (OAG) asked for a review of a form letter that is used when persons ask (b) (6) to support or endorse some private project, product, service, enterprise etc. In this case the person was writing asking (b) (6) to support a campaign to get a postage stamp commemorating Alcatraz Island. Sent some edits to the form letter to (b) (6). The emails and background are in the log file. (b) (6) August 17, 2010

113. (b) (6) (b) (6), called with a recusal question. Her older half sister who lives in Massachusetts is involved in a same sex marriage. There are three lawsuits coming out of Massachusetts that challenge the Defense of Marriage Act (DOMA). Her half sister is not a party to, and is not representing a party in, these cases. (b) (6) is not aware of any financial interest of her half-sister, such as a pending benefits claim, that would be affected by the outcome of these cases. Based on this information, we advised that a 502 determination was not required. If she becomes aware of a financial interest of her half sister that could be affected by these cases, she should seek further advice. The email is in the file. (b) (6) August 17, 2010

114. (b) (6) (OJP) sent an email with a follow up question regarding the OAAM review of the OJP ethics program. (b) (6) wanted to know if it was permissible to provide OAAM with names and dates of training of the 466 persons that OJP trained in 2009. Discussed with (b) (6) and advised (b) (6) that we had no objection to providing that information. He will not provide them with the actual sign in sheets. The email is in the file. (b) (6) August 18, 2010

115. (b) (6) (OSG) called with another recusal question arising from his wife's position as a partner with Sidley. There is a case in the 9th Circuit that involves an entity called (b) (6) and deals with steroid use by baseball players. His wife represents (b) (6). The legal issue involves when a search warrant is required. That case is being handled by the (b) (6). The case is not currently in OSG. (b) (6) has had nothing to do with the case and he recuses himself from baseball related matters. There are other cases around the country that involve a similar legal issue of the use of search warrants but entirely

difference factual circumstances. (b) (6) question was whether he could participate in those cases. I said that the mere fact that the same legal issue is involved in these distinct cases would not trigger a recusal obligation. (b) (6) agreed that he would need to give further consideration to recusal and seek advice if there was a more inclusive discussion of the position that the Department would take on this issue that could involve or affect the (b) (6) case. (b) (6) August 18, 2010

116. (b) (6) (JMD) sought approval to teach two on-line IT courses for the University of Maryland in the fall semester. She has taught these courses before. A memo recommending approval was sent to (b) (6) on August 18, 2010. There are background emails in the log file. (b) (6) August 18, 2010

117. (b) (6) (JMD) sought approval to teach two IT courses for George Washington University in the fall semester. One course he will team teach with (b) (6). A memo recommending approval was sent to (b) (6) on August 18, 2010. Emails are in the file. (b) (6) August 18, 2010

118. (b) (6) (JMD) sought approval to teach an IT course at Marymount and team teach with (b) (6) IT course at George Washington University, both this fall. A memo recommending approval was sent to (b) (6) on August 18, 2010. Emails are in the file. (b) (6) August 18, 2010

119. (b) (6) ODAG, teaching request. (b) (6) revised his syllabus from the course he sought approval to teach last fall, which (b) (6) (b) (6) disapproved. (b) (5)

ODAG agreed that he ought not to teach. (b) (6) August 19, 2010

120. Former DOJ attorney on disability retirement, referred by (b) (6). She is considering coming back part time but is representing an employee before EEOC against USMS.. Has her client's consent to pursue a possible job with DOJ while continuing to represent him. Advised her to disclose it to DOJ but I did not think this would be a factor at all since she is not considering a position in USMS. Advised on 205/203 and the possible effect these statutes could have on future fee recovery if case was not settled or an unequivocal agreement reached with her successor counsel to pay her fees at a future date regardless of the outcome of the case. (b) (6)

August 18, 2010

121. (b) (6) JMD (b) (6), asked about participation of DOJ official on board of (b) (6), - he has a FACA question given our involvement. Reminded him they can only serve in a representative capacity, ex officio, and no involvement in any funding or management of the organization. Gave him copy of Holder memo from 2000. (b) (6) August 18, 2010

122. (b) (6), CIV, Conflicts question on a DOJ contract. (b) (6) is working on a case, (b) (5)

(b) (5)

would like to look into this review and see what determinations were made, and what records of the review we have retained. I attached the two memos in an email to (b) (6) that my office prepared regarding (b) (6) post-employment activities following his departure from DOJ. They are for the purpose of analyzing whether (b) (6) had restrictions under the criminal post-employment statute, 18 USC 207, with respect to particular work in which he sought to engage with specific companies. We wouldn't look at or analyze a conflict involving his wife's role with the company. (b) (6) August 19, 2010

123. (b) (6) OVW, Letter to newspaper Editor question. An OVW employee wants to write a letter to the editor of a newspaper critical of their coverage of the murder of the UVA lacrosse player. It would be in her personal capacity without reference to her government job. However, the subject matter does overlap with the mission of OVW. (b) (6) believes she is not prohibited from sending the letter, but there are likely parameters or guidance she should give the employee and would like to have our input on this because it probably has come up before. I advised (b) (6) that the employee may write the letter but should not mention her position with DOJ; however, sometimes the publication wants to put the writer's employer or other affiliation when they publish. We really object to this but are not always able to insist that it be excluded. Would advise employee to write it only if no DOJ affiliation, and only if OVW will have no potential involvement in the case, except to assist them in applying for technical assistance prospectively under existing grants. (b) (6) August 19, 2010

124. (b) (6) USMS, USM attendance at political event. (b) (6) recommended approval for (b) (6) to attend a political event. I sent the following email to (b) (6) for approval: "(b) (6), (b) (6), requests approve to attend a political fundraiser for the (b) (6) Republican Party on August 26. The event is a cocktail reception featuring a speech by (b) (6), it is open to the public, and (b) (6) received an invitation from the party in the mail. Attendance is \$150 per couple, and (b) (6) will

pay personally for he and his wife to attend. It is from 6:30 – 8:30 at the (b) (6) Country Club in (b) (6). Although the invitation includes a photo opportunity, he will be advised not to have his photo taken, and that his attendance must be passive.” (b) (6) approved. (b) (6) August 19, 2010

(b) (6) (JMD, Finance Staff) called about a facilities request. EOUSA is holding a retreat/training for the U.S. Attorneys Office in South Dakota. It will be held on September 15, 2010 and is called the South Dakota Conference. (b) (6) is the Administrative Officer. DOJ will pay for 30 rooms and get 20 rooms free, plus free conference space. Approval is required under the recent law that requires approval for such training in a non-federal facility. (b) (6) asked if we were processing a gift acceptance request. Discussed with (b) (6). Told (b) (6) we have not yet seen one. Suggested he talk with (b) (6) or someone who worked on the deal with the hotel. It may be that the 20 free rooms were bargained for and thus not a gift to the Department. (b) (6) said he would follow up with EOUSA. (b) (6) August 19, 2010

126. (b) (6) (OJP) sent an email asking whether (b) (6) (b) (6) who is on a leave of absence from his tenured faculty position at the (b) (6), could permit the university to recognize his DOJ appointment in a physical banner that would be displayed on campus. Other outstanding faculty have been recognized in this way including one who received a Nobel Prize. (b) (6) was inclined to tell them no. Discussed with (b) (6). Left (b) (6) a voice mail saying he could not allow a banner which listed his DOJ position. (b) (6) acknowledged the voice mail with a follow up email saying he had so advised (b) (6). The emails are in the file. (b) (6) August 19, 2010

127. (b) (6) (Civil) sent an email with a gifts question. (b) (6) applied for an ABA Minorities in the Profession Scholarship and was selected. The ABA will pay her travel expenses to attend three Young Lawyers Division conferences in the coming year. She will do this as a personal activity. Told (b) (6) that acceptance could be approved by (b) (6) provided that the criteria of the awards exception, 5 C.F.R. § 2635.204(d), are met. This qualifies as a bona fide award program. (b) (6) said her official duties do not involve working with the ABA. (b) (6) will include in the memo advice that she should not work on matters that could affect the ABA and she should not make requests to the Department on behalf of the ABA. The emails are in the file. (b) (6) August 19, 2010

128. (b) (6) (ENRD) had a question regarding (b) (6) a (b) (6), participation in a Marcus Evans Environmental Management and Regulatory Compliance Conference. He would give a presentation in an official capacity. Marcus Evans is not paying travel expenses. The website page on the conference lists his name and title as one of the speakers. (b) (6) asked whether that was permissible. Discussed with (b) (6). Told (b) (6) that it was ok for them to list him that way as a speaker. We would have a concern if it were a fundraising event which it is not. Suggested she follow up and check the agenda to see if there

are any one on one sessions scheduled such as a meet the (b) (6) session. (b) (6) said she would check and also advise (b) (6) that he should not participate in any one on one meetings as that would be special access. (b) (6) said she would follow up on this issue. The emails are in the file. (b) (6) August 20, 2010

129. (b) (6) (ENRD) had a question concerning an official speech that (b) (6) has been invited to give to the Defense Research Institute, a bar group that will be meeting in New Orleans next year. Said he could give the keynote speech. Thus far there is no offer to pay travel. (b) (6) will tell (b) (6) not to solicit reimbursement of travel expenses. The group is not a registered lobbying organization. (b) (6) thinks he will only attend on the day he gives the speech. (b) (6) August 20, 2010

130. (b) (6) ODAG, Teaching request. (b) (6) made efforts to revamp his course so that his outside teaching request may be approved. I advised that the subject matter would still be too closely related to his responsibilities in ODAG and that the decision remains not to approve him teaching the course. Back up documents are in the log file. (b) (6) August 20, 2010

131. (b) (6) DEA, "Take-back" program questions concerning soliciting participation of major league sports organizations in a DEA program. DEA plans to sponsor a first ever Take-back day for prescription drug medications and OLP wanted our office's review. I sent a series of questions concerning the nature, scope and duration of the collaboration effort, to which (b) (6) responded. Also advised that the AG is recused from matters or communication with the NFL. (b) (6) updated responses addressed the major issues. All questions and additional documentation is in the log file. (b) (6) August 20, 2010

132. (b) (6) OASG. A good friend and former colleague of his, (b) (6) who was the former (b) (6), recently invited him to be his guest at a Nationals' game, courtesy of his firm (O'Melveny & Myers) in their suite. (b) (6) and his significant other, whom (b) (6) has also known for more than ten years, were among a group of 12 or so folks he invited. Other former colleagues from the D.C. USAO (most of whom are with rival law firms) and their family members along with one mutual college friend and his wife comprised essentially the rest of the group. (b) (6) insisted on not accepting any money, but (b) (6) told him he would run it by the Department's Ethics Advisor and reimburse him if need be. (b) (6) in his current role as (b) (6) has no business dealings with (b) (6) or his firm. I advised that my recollection is that (b) (6) is not a registered lobbyist and the firm is no longer registered as a lobbying organization, so that is not a factor. However, the firm is a prohibited source for DOJ. So, the other question under the gift rules is to what degree this is a business event as opposed to a genuine social event. (b) (6) also advised that the other former colleagues included (b) (6) (also a former (b) (6) now at a rival firm) and his wife (an appellate AUSA in D.C.) and their young two kids; (b) (6) (former (b) (6) now at Covington) and his wife and young daughter; (b) (6) (former (b) (6) and now head of D.C.'s Criminal Justice Coordinating Council) and his two daughters; and (b) (6) (a college classmate of (b) (6) and his wife

(lawyer at FBI). (b) (6) wife, two of his daughters and his father were also present. There were no clients of the firm present. (b) (6) August 20, 2010

133. (b) (6) (b) (6), asked for review of the recusal screening notice and an accompanying policy directive which sets forth the specific procedures for COPS awards etc., and the Director's participation at the various stages. (b) (5)

(b) (6) Draft in log documentation file. (b) (6) August 20, 2010.

134. (b) (6) (OCIO, JMD) called for her ethics outbriefing. She is a regular employee and next week she starts a new job at the Treasury Department. She is a GS-15 IT Specialist who worked on negotiating software licenses. Discussed the post-employment restrictions with her and sent her a follow up email. The email is in the file. (b) (6) August 23, 2010

135. (b) (6) (OCIO, JMD) called for her ethics outbriefing. She is a GS-14 IT Specialist and next week she will be going to work for USDA. Discussed the post-employment restrictions with her and sent a follow up email. The email is in the file. (b) (6) August 23, 2010

(b) (6) (OCIO, JMD) called for his ethics outbriefing. He is a GS-15 IT Specialist who works in Rockville and has supervisory duties. Discussed both (a)(1) and (a)(2) restrictions. He will be going to work at the Treasury Department. He will be doing data management. Sent a follow up email which is in the file. (b) (6) August 23, 2010

137. (b) (6) OAG (formerly in OLP), was asked by an employee in OLP with whom she worked closely on several projects to write a recommendation for law school. She may use DOJ letterhead, but I suggested regular, not OAG letterhead, and she may sign with her current title. Letter just needs to be clear it is a personal reference and what it is based on. (b) (6) August 25, 2010

138. (b) (6) (b) (6) was an (b) (6) until June 2010 when he went back to UVA law school. He was a GS-15 career employee with no supervisory responsibilities. His only post employment restriction is 207(a)(1). He was recused from anything involving UVA while he was in OSG. A colleague at UVA may invite (b) (6) to be on a moot court for a case that was pending in OSG while (b) (6) was there. (b) (6) never worked on the case and in fact was not aware it was there. Advised him that (a)(1) did not bar him from assisting in the moot court. An email is in the file. (b) (6) August 24, 2010

139. (b) (6) (OJP) had a question regarding the application of the Ethics Pledge to (b) (6) (NIJ) Director's participation in the Harvard Kennedy School of Government's Executive

Session on Policing and Public Safety. NIJ funds this Executive Session and it is a high level think tank type of operation. Each session goes several years. The current session is already funded but he would be expected to be involved in the funding decision in the future. He was a Visiting Scholar at the Harvard Institute for Quantitative Social Science (IQSS). He resigned this position as part of his ethics agreement when he was nominated. The position involved no compensation, he never provided any consulting services, and he had no leadership position. Basically, IQSS stored research data for him. IQSS is in the College of Arts and Sciences. He resigned from this position and has a 502 recusal from IQSS in connection with his ethics agreement. Discussed with (b) (6). Advised (b) (6) that the Ethics Pledge would not be triggered with respect to the Executive Session. Also advised that a formal 502 was not required for him to participate in the Executive Sessions but that it would be good to document his analysis. Emails are in the file. (b) (6) August 25, 2010

140. (b) (6) (Civil) called with a 207 question related to a bid protest case that he is defending. He is in the national courts unit of the Commercial Litigation Branch. The plaintiff has asserted a 207 violation in its complaint filed a week ago and (b) (6) has until September 1 to file a responsive pleading. Former (b) (6) used to work at Eglin Air Force Base. He retired and got a job with (b) (6). They won a contract to provide employment and personnel services. He was not a "senior" employee and so no 207(c) issue. He got a 30 day letter saying that the Procurement Integrity Act did not apply to him. He never had any personal involvement in the contract. His only connection to the case is that a person who he supervised was assigned to serve on a team that worked on the development of the RFP. (b) (6) not supervise the team. He did not supervise the employee in his role as a member of the team. Section 207(a)(1) did not apply. However, section 207(a)(2) was applicable as the employee was under his supervision. See 5 C.F.R. 2641.202(j)(2). However, he retired more than 11 months before the RFP was even issued. So unless there had been some solicitation of interest from parties or the pool of companies who could provide the services was so small, it is likely that this was not a specific party matter at the time he was an employee. (b) (6) August 25, 2010

141. (b) (6) (FBI) sent his memo regarding Vatican awards for three current FBI employees and one former FBI employee. Our ethics review applied only to current FBI employees. (b) (6) will tell TSA that they have to handle the former FBI employee who now works at TSA. (b) (6) August 25, 2010

142. (b) (6) (JMD) had a gift to the Department question. The gift is from the State of (b) (6) of 30 rooms and conference facilities for training exclusively for the U.S. Attorneys office. (b) (6) said that they will also pay for 20 additional rooms for attendees who could not be accommodated in the facility. Advised (b) (6) he could go ahead and process it through the gift committee in the usual way. (b) (6) August 25, 2010

143. (b) (6) (ENRD) had an Ethics Pledge question. EPA and the Bipartisan Policy

Center (BPC) are holding a one day conference on September 14, 2010 to celebrate the 40th anniversary of the Clean Air Act. EPA officials and others are speaking at panels throughout the day and former Senators will be attending. It is being held at Mellon Auditorium which has a 1000 person capacity. There is no fee to attend. A reception is being held at the end of the day. BPC is hosting the reception. BPC is not a registered lobbyist but has an advocacy arm called BC Advocacy Network which is a registered lobbyist. The two organizations operate out of the same office and share staff but BPC is careful not to present itself as a lobbyist. Advised (b) (6) that as long as BPC was the sponsor of the event and no individual who is a registered lobbyist extended the invitation, that the Pledge would not apply and attendance at the reception could be approved if the WAG criteria are met. BPC has a strong interest in environmental issues. Suggested that (b) (6) call (b) (6) the ethics official at EPA to inquire as to their determination for attendance of their non-career employees at the reception. No approval is necessary for attendance at the substantive meetings during the day. The emails are in the file.

(b) (6) August 26, 2010

144. (b) (6) CRS: 2 gift questions. (b) (6) received 3 token items from a departing summer intern: a T-Shirt, a music CD, and a Teddy Bear. He does not want to hurt the intern's feelings and return them but he will if he must. Told (b) (6) that the rules allow (b) (6) to accept the items - the superior subordinate relationship is terminating. We usually advise that departing interns should not give lavish gifts to their superiors upon departure because it could appear to be an attempt to affect future hiring decisions by trying to secure another internship in the future, but these are very small, token items, without much value. He can keep them if he wants. (b) (6) said the Director will be relieved. Also, a CRS employee in Chicago won a fishbowl prize at a conference - a flat screen TV, and has taken delivery of it. Another CRS employee who was at the conference called (b) (6) about it. (b) (6) said the employee was in attendance at the conference as part of official duties - then, the TV belongs to CRS and if CRS cannot use it, it would be excessed. Told (b) (6) to check with the property manager of CRS, every component has one, if they plan to excess it. (b) (6) August 27, 2010

145. (b) (6) (OSG, (b) (6)) sought authorization to work on (b) (5), a case in which a partner of his wife at (b) (6) is filing an amicus brief. We prepared a 502 determination and 208 waiver recommendation and (b) (6) approved. The email is in the file. (b) (6) August 27, 2010

146. (b) (6) (ATF) visited our office on August 27 to discuss a seeking employment & post employment question from (b) (6). (b) (6) is interested in an employment opportunity with (b) (6). They do business with the Department and with ATF. He is subject to 207(a)(1) for matters he personally worked on; to 207(a)(2) for anything under his official responsibility which could be everything in ATF depending on the nature of his duties (b) (6); and to 207(c) with respect to ATF because he is an SES employee and meets the definition of a senior employee. He must be recused from matters affecting (b) (6) if they have reached out to him and he has left the overture open, even if he has not made a decision as to whether he wants to pursue a job. He should set up a screening mechanism and

should notify the people necessary to effectively administer screening. Followed up with (b) (6) on August 31 and he said (b) (6) is inclined not to pursue the opportunity because of the impact it would have on his job. (b) (6) is involved in manpower assessments which is a significant part of his job. In some cases, (b) (6) would be in the room for discussions. He would have to get up and leave and as a practical matter explain why. (b) (6) said he would advise him to tell (b) (6) no so that there is not an overture hanging out there as an open possibility. (b) (6) August 31, 2010

147. (b) (6) an attorney with DavisPolk, (b) (6) (b) (6) called with a question about donating a gift to ATF. She said the value of the gift would be between \$1million and \$2 million. She would not identify the nature of the gift, nor would she identify her client, presumably the prospective donor. She also asked if it might be possible for the Department to purchase the item. I said that was an acquisitions/procurement question. I said such a gift would be reviewed very carefully and would need approval from the AAG for Administration. We would need more specifics to be able to give her any more detailed direction. She asked for a contact for an ethics official in ATF. I gave her (b) (6) number and she talked with (b) (6) I also spoke with (b) (6) She would not identify the gift to (b) (6) but indicated it might be "evidence." (b) (6) August 31, 2010

148. (b) (6) OAG, (b) (6) University of Montana Law School, the Jones Tamm Lecture. (b) (6) sent me a draft postcard that UM would like to mail prior to the lecture. I advised that the postcard looked fine. I also verified that (b) (6) would not be doing dinner at a private home as was originally discussed. (b) (6) office declined that offer. (b) (6) August 31, 2010

149. (b) (6) EOUSA, Fundraiser question. (b) (6) would like to attend a fundraiser in which (b) (6) is a special guest. Since he was attending in a passive capacity (b) (6) wanted to verify that it did not need DAG approval. I confirmed that it just required "regular" WAG approval from EOUSA and not DAG approval. (b) (6) August 31, 2010

150. (b) (6) EOUSA, Pledge question. (b) (6)(b) (6) would like to attend an event sponsored by General Electric, a registered lobbyist. The event offers free attendance. I advised that (b) (6) was correct in his analysis that free attendance is not dispositive - and rarely does it mean the event is not a gift so WAG approval would almost certainly be needed as a general matter. (b) (6) and all politicals are prohibited from accepting gifts including attendance if sponsored by a lobbying org, so he would not be able to attend under the WAG exception. However, OGE has specifically advised that appointees may attend under the speaker provision in the regs. So if he is speaking at the event he may attend on the day he is speaking under the standard of conduct (but not on the other bases suggested by the district). (b) (6) September 1, 2010

151. (b) (6) NSD, WAG. (b) (6) (b) (6) has been invited to participate as a discussant on a panel titled "Executive Update on Developments in National

Security Law” on November 4, 2010, in Washington DC. This is the opening panel of a two-day conference -- the 20th Annual Review of the Field of National Security Law – which is co-sponsored by the American Bar Association (ABA) Standing Committee on Law and National Security, the Center for National Security Law at the University of Virginia School of Law, and the Center on Law, Ethics and National Security at Duke University School of Law. Mr. (b) (6) has been invited to attend the entire conference, including a dinner on the day he will speak honoring event speakers. He would like to attend as much of the event as he can. Mr. (b) (6) participated in this event last year. According to the ABA, they expect about 450 people, who represent all types of organizations, including both the executive and legislative branches, the press, academia, law firms, think tanks, and not for profit organizations, to attend the conference. The ABA expects 100 of these attendees also to attend the dinner (the decrease is because many of the attendees reside in the Washington DC area). The fee to attend the conference varies – for non-ABA members it is \$210 for one day and \$350 for both days. The dinner is part of the conference agenda but there is a separate charge of \$60. I advised that I don’t think the ABA itself is a 501(c)(3) – I think they are a (c)(5) or something else. We have run into the lobbyist gift ban and only have been able to allow free attendance for appointees when the ABA Foundation (which is a 501(c)(3)) is the sponsor. We also have generally not considered a separate-charge event to be part of the offering to all attendees on the day a speaker ..speaks, so I think there is a hitch with the dinner on day 1. For non-appointees, we have considered the event to be a WAG in its own right and approved attendance, but again, because of the lobbyist gift ban, I don’t think that’s an option. (b) (6) followed-up on the ABA’s status and the entity sponsoring the conference is the ABA Fund for Justice and Education is a 501(c)(3), therefore AAG (b) (6) attendance at the event is permitted, just do a separate WAG approval for dinner. (b) (6) September 1, 2010

152. (b) (6) OAG, Use of (b) (6) photo and bio information (b) (6). On September 21st, (b) (6) will be speaking at the 50th Anniversary of Harper Lee’s “To Kill a Mockingbird” celebration at the University Of Alabama School Of Law. The law school would like to include a photo of (b) (6) and his bio in the program and present (b) (6) with a copy of the signed book. I advised that it was fine to (b) (6) photo and bio for the event. We will have to look at the gift of the signed book- but of course he may accept it if presented, and we’ll deal with the value later. (b) (6) September 1, 2010

153. (b) (6) CRM, supervisor/subordinate question. (b) (6) sent an email to all staff that there would be the first annual office picnic on 9/10. The theme of his email did not clearly state that attendance was voluntary. The picnic will be catered by Red Hot and Blue an attendance price was set at \$20 for GS13 and above, and \$15 for GS-12 and below. There would be door prizes. This is worrisome to (b) (6) for several reasons: It’s Rosh Hashana so those who observe will not attend. When asked about that (b) (6) said it was the only time available but (b) (6) thinks he just did not think through the date. Also, is it right for (b) (6) to send an email like this to his subordinates, esp one asking for money? No, it is not - should have designated a nonsupervisory employee to do it. Turns out, second email came out with more details and the RSVP’s and collection are being taken care of by a nonsupervisor. That’s ok, and it is also ok to set a requested amount - as long as attendance is voluntary. The difference, if any, will just have to be made up but not with appropriated funds. Also of concern

is the door prizes - no soliciting of outside businesses for items for DOJ employees. If it is something internal like use of the Director's parking space for a day or 59 minutes of office leave, that would be okay. Also, if people do not RSVP, the nonsupervisory employee should not contact them individually about it - I think in light of (b) (6) sending out the original email asking for RSVP's *or regrets*, a personal contact as follow up seems coercive - a general reminder to everyone could go (from the admin) for people not to forget to RSVP to her. Those who do not attend and do not have approved leave are assumed to be working that day in the office. Those who attend the picnic are going to be excused at 10:30. (b) (6) is going to talk to (b) (6) about these concerns. (b) (6) September 2, 2010

154. (b) (6) (JMD) called with a question he had received from (b) (6) (Community Relations Service). It is a sponsorship question. By becoming a sponsor of a conference being hosted by Applied Research Center, the Department could have a table and send two people for \$1000. If they were not a sponsor, it would cost \$1700. Told (b) (6) that getting a discount was not a sufficient reason for the Department to become a sponsor of an event. They will not pursue the sponsorship option. The emails are in the log file. (b) (6) September 1, 2010

155. (b) (6) (Civil) asked whether an employee could participate in a product assessment and development proposal offered by LexisNexis that involved use of a Kindle. (b) (6) confirmed that the employee would be using it for official purposes, i.e., in his work. Said employee could participate if supervisor approved, if the Department has an interest in his participation and gets a benefit from it, if it complies with IT security requirements, and if LN will not use the employee's participation for promotional or endorsement purposes. The emails are in the file. (b) (6) September 1, 2010

156. (b) (6) (Civil) had a 207 question involving an unpaid intern who worked in appellate and now wants to work on the same litigation involving the health care legislation now that he is back at Yale on behalf of the Yale Chapter of the American Constitution Society. I said the question is whether he was an employee. (b) (6) confirmed that some interns are put on the payroll and are clearly employees. He was not. Said while that is one factor that would point toward not having employee status, it was not necessarily determinative. Suggested he contact OARM for further help this personnel question. (b) (6) September 1, 2010

157. (b) (6) (Civil) asked us to review his training materials for his annual training. Reviewed them and provided comments. The emails and background are in the log file. (b) (6) September 2, 2010

158. (b) (6) (JMD) is a new employee who had worked for a contractor, Mantech. The issues related to his private sector employment were vetted in a May 26, 2010 memo to (b) (6). He is now an employee and he provided exact information regarding the value of his

Mantech and Cisco Stock and two diversified mutual funds in a Mantech 401k plan. The values of the stock even when aggregated were (b) (6). The funds were both widely diversified mutual funds. Sent him an email describing the limits on the exemption for individual stock and for sector mutual funds and said he should keep them in mind when he makes investment decisions and also should monitor the value of his holdings to make sure they do not exceed the exemptions. He sent an email thanking us for the information. The emails are in the log file. (b) (6) September 2, 2010

159. (b) (6) (NCUA, (b) (6) called us at the suggestion of (b) (6), her desk officer at OGE. She is the alternate ethics official at NCUA. NCUA has two corporate supervisory examiners. One of them got a job with a corporate credit union. NCUA is concerned about protecting confidential information that he knows about the agency's corporate stabilization plans. He is not a "senior employee" subject to 207(c). He is a supervisor and so is subject to (a)(1) and (a)(2). He is not an attorney and she is not aware of any other professional codes that might be applicable to him. The standards of conduct do not apply once he leaves. She has looked at 1905 and does not believe that it helps. He does not deal with classified information. I confirmed that the 207(a)(1)&(2) restrictions he is subject to do not prohibited him from providing behind the scenes advice and assistance based on what he knows. This is the conclusion she had reached but was calling to see if she had missed anything. She mentioned that they have a FOIA reg which might be of some help. (b) (6) September 2, 2010

160. (b) (6) (ENRD) wanted to know if (b) (6) could accept a lunch being hosted by the Court of Federal Claims to plan a panel for an October Court of Federal Claims Conference. I advised that as long as the Court was paying for the lunch and it was not someone else like a professional association or a law firm, then she could accept. The emails are in the file. (b) (6) September 2, 2010

161. (b) (6) OLA, WAG. (b) (6) has been invited to attend a reception titled "Cracking the Disparity", on September 7th at the Open Society Policy Center. I agreed that it sounded like a WAG. I advised that the issue is participation by registered lobbying organizations. (b) (6) was invited by someone at the ABA. ABA itself is a registered lobbying organization and not a 501(c)(3). However, there are 2 (that I'm aware of) ABA entities that ARE 501 (c)(3)s – the ABA Fund for Justice and Education, and the ABA Foundation (not sure of exact title). So, if one of these is the ABA entity that is co-sponsoring (I'm assuming ABA is involved given email from ABA guy), that does not present a problem. I advised (b) (6) to confirm that ALL sponsors are 501(c)(3)s if they also are registered lobbyists. If even one co-sponsor is a lobbyist without being a 501(c)3, the pledge would not permit attendance by politicals. The open society center, which is one of the sponsors, is a registered lobbyist organization and a 501 (c)(4), so politicals may not accept gift of attendance. (b) (6) September 2, 2010

162. (b) (6) (CRM) & (b) (6) (OAG), (b) (6) picture & Bio. (b) (6) is attending a conference in Hong Kong at the Grand Hyatt Hotel from October 19th - 21st sponsored

by INTERPOL, Hong Kong Police and Underwriters Laboratories. The conference organizers would like to include a picture of (b) (6) and his bio on the conference brochure. I advised that it's alright to provide (b) (6) picture and bio to be included in the conference brochure/website, identifying him as one of the keynote speakers. I also advised them to please ask the conference organizers not to use his participation in any other way without checking further. (b) (6) September 2, 2010

163. (b) (6) NSD, Foreign Gifts & Decorations Act. (b) (6) contacted to verify that a work function dinner to which several NSD employees were invited, with their Indian counterparts (Director, CBI and Embassy Officials), even if it qualifies as a WAG would need to be approved by ODAG and could not be approved within NSD. I advised that she was correct, it would need ODAG approval. (b) (6) September 3, 2010

164. (b) (6) OAG, (b) (6) attendance. (b) (6) has received an invitation to a book signing to celebrate the publication of The Grace of Silence by Michele Norris, on September 19th. (b) (6) will be attending as her spouse. (b) (6) wanted to be sure that this was permitted. I advised that there wasn't a problem with (b) (6) attending. (b) (6) September 3, 2010

165. (b) (6) (TAX) called with a reimbursement question. (b) (6) is the incoming Chair-elect of the Tax Section of the Federal Bar Association. They have offered to reimburse him for travel expenses (\$250 for air fare and \$170 for one night at hotel) to attend a conference in New Orleans from September 22-24. He would not be speaking, just an attendee. He would do this on his own time in his personal capacity. He is a career employee. The offer is not because of his DOJ position and is extended to other chairs of sections. Advised (b) (6) he could accept under 5 C.F.R. 2635.204(e)(2) for gifts provided from an outside employer. An email is in the file. (b) (6) September 3, 2010

166. (b) (6) FBI, asked if an association of Native American law enforcement was a foreign government under the FGDA. No, and in fact the tribes themselves are not. (b) (6) thought that was the case, but someone had told a new senior FBI official differently and he wanted to make sure. Advised that any gifts (a blanket in this case), from a Native American individual or tribe, can only be accepted under the standard exceptions, or accepted on behalf of DOJ under Dept's gift acceptance authority. (b) (6) September 7, 2010

167. (b) (6) OLC, asked me to review a draft advice email he was sending to a new OLC employee concerning her outside activities assisting a blind attorney. She would not be practicing law, as the attorney doesn't actually practice either. It was fine. (b) (6) September 7, 2010

168. (b) (6) (OPCL) to ask about another Government Executive sponsored breakfast seminar at the National Press Club. She had asked about attending a similar event in June and been advised that she could under the de minimis exception as only light breakfast items were being served. This event was similar. I advised that she could attend but that this would be the

last Government Executive seminar she could attend this year because of the \$50 cap. Government Executive hosts a monthly seminar. I said the limitation on the use of gift exceptions on a regular basis would also be applicable. She said that if she attends this will be the last one that she would attend this year. The emails are in the file. (b) (6) September 8, 2010

169. (b) (6) (EOIR) called with an award question. The Legal Orientation and Pro Bono Program which does "know your rights" presentations around the country has been nominated for an award by the Harvard University Kennedy School of Government. 25 winners will get \$10,000 grants and one will get a \$100,000 grant. (b) (6) did not know who nominated them. However, at this point they are entering the next level of selection and have been asked to provide information by Friday. We discussed the Department's gift acceptance authority and how it would be processed and approved. (b) (6) said a Harvard Law School clinic does cases before EOIR but the Kennedy School has no dealings with EOIR. I discussed with (b) (6) and advised that they should run this by (b) (6) and (b) (6) and there contact person in ODAG. (b) (6) then said it may be that the Vera Institute is the organization that nominated them. Vera is the contractor for the Pro Bono program. They provide the presentations. They use many sub-contractors all over the country to provide presentations. Discussed further with (b) (6). Advised that we would not recommend that an award be accepted if Vera, the contractor for the program, made the nomination. The award money could go back to that program and thus benefit Vera. (b) (6) said she would check and confirm whether Vera made the nomination. If it turned out that it was one of the subcontractors, that would need to be further analyzed before determining that they could go forward to participate in the award selection process. (b) (6) September 8, 2010

170. (b) (6) (CRT) asked whether a career attorney who is under consideration for a position as a D.C. Superior Court judge could obtain a letter of support from an attorney who was opposing counsel in an open case. Discussed with (b) (6). Advised that she should not ask for a letter of support from someone in an open case. She could ask someone who was opposing counsel in a case that is closed. (b) (6) asked about getting letters of support from other DOJ employees. Advised that she could ask a supervisor for such a letter but should not ask someone who is her subordinate. (b) (6) September 9, 2010

171. (b) (6) (JMD, Facilities) is moving from a GS-12 position in JMD to a GS-12 position in EOIR. She called to ask about an ethics debriefing. Said that since she is moving within DOJ the ethics rules remain the same although the application may be slightly different, i.e., different prohibited sources for different components, etc. She had no specific question and was calling because there was a place on the form to show an ethics debriefing was received. She should check with EOIR ethics officials if questions arise. (b) (6) September 9, 2010

172. (b) (6) (CRT) called with an Ethics Pledge question. (b) (6) worked for the National Office of the ACLU. The Arizona chapter of the ACLU is involved in litigation

related to the Arizona immigration law. The National Office has no involvement. Advised that she could participate in meetings that included the ACLU-Arizona. If the National Office became involved she would have to recuse. (b) (6) sent a copy of the advice email he sent to (b) (6). The emails are in the file. (b) (6) September 10, 2010

173. (b) (6) (EOIR) sent an email asking whether a work of fiction could relate to an Immigration Judge's official duties. The judge would use personal details such as the amateur sleuth in the murder mystery would be an immigration judge (b) (6). But he would not draw on any confidential information or use any actual cases. I advised that the use of such personal details in a fictional work would not in itself mean that the work related to his official duties. He should be advised that he and the publisher cannot use his official title or position to promote the book. If he has any questions about content, he should consult an ethics official. The emails are in the file. (b) (6) September 10, 2010

174. (b) (6) a former DOJ employee who left in January 2009, and is now a partner with Jenner & Block, sent an email with a post-employment question. An associate in the firm is handling an appeal from a murder conviction on a pro bono basis. The case was prosecuted in the (b) (6) when (b) (6) was an AUSA there. She had no personal involvement in the case, did not work in the homicide section, and was never a supervisor in the office. Told her that section 207(a)(1) and (a)(2) did not apply to her with respect to this matter. She indicated she would only be providing behind the scenes consulting on the case to the associate. Said we do not provide advice on whether bar rules might have any application. Her email is in the file. (b) (6) September 10, 2010

175. (b) (6) (FBI, (b) (6) called with a financial disclosure question. The OIG is doing an investigation (b) (5). Said the OIG should make a written request for the reports and state that they are aware of the restrictions on the use of information contained in the reports. She then found out they may also want OGE Form 450's. Referred (b) (6) to part 2634 and the Privacy Act Statement on the form of the routine uses. Law enforcement purposes is a routine use. Said she should check on Privacy Act requirements and that the request should be in compliance with those requirements. (b) (6) September 10, 2010

176. (b) (6) (Civil) called to discuss a draft 502 determination for (b) (6) to allow her to participate in the Deepwater Horizon matter. The need for the recusal arises because her son is discussing summer employment with (b) (6) a firm representing Transocean. By email dated September 8, 2010, (b) (6) had advised (b) (6) on her recusal obligations. (b) (6) sent a draft of the memo for our review. I suggested a change that would have the language in the waiver memo track the language in (b) (6) memo to (b) (6) more closely. (b) (6) agreed to the change. The emails and draft waiver are in the file. There is also attached to this log entry, the email I sent to (b) (6) advising him on what constitutes a "dependent child." (b) (6)

September 10, 2010

177. (b) (6) (CRT) called to ask if DEO had written guidelines on what should be included in a "proper" recusal. Said we did not have anything in writing but there is guidance in the reg itself as to what should be done with respect to notification and documentation. Advised that if a matter came up unexpectedly at a meeting from which an employee is recused, that the employee does have to leave the meeting and cannot simply remain without participating. (b) (6) September 10, 2010

178. (b) (6) (OJP) called with a question as to whether (b) (6) who is on leave of absence from the (b) (6), could give a keynote luncheon speech in an official capacity at a one day seminar (b) (6) on "Technology, Crime and Terrorism." There are to be four panels throughout the day which will be lead by (b) (6) faculty although others on the panels will be from other institutions. I advised (b) (6) that this would raise section 208 concerns because he would be participating in an official capacity a particular matter (making the decision to give the speech, and giving it) that would effect the financial interest of his employer, (b) (6) which interest is imputed to him. There was no fee for the conference and (b) (6) did not see how it affected the financial interest of (b) (6). He recognized the validity of a so-called "Flutie effect" but did not think there was a Flutie effect here. I advised (b) (6) that (b) (6) has an interest in a successful conference which would contribute to its academic prestige and standing and enhance its ability to recruit faculty, increase admissions, and strengthen its position in fundraising. (b) (6) said he would explain that (b) (6) cannot participate give the official speech because it would benefit (b) (6), his employer. (b) (6) eventually agreed to decline the invitation. The situation would be different if it involved a broadly based national conference sponsored by a professional association and was not so closely identified with (b) (6) as it was here. (b) (6) September 10, 2010

179. (b) (6) (OJP) asked whether (b) (6) could participate in a meeting of experts invited by NIJ to come to the Department and have a general discussion on the current state of death penalty research. There would be five experts from five different institutions, one of which would be an expert from (b) (6) and they would be discussing a matter of general applicability. I advised it was not an Ethics Pledge question because the Pledge applied to a former employer and (b) (6) was a current employer. Rather it was a section 208 and 502 question. I said he could attend such a meeting as it would not be a matter that would affect the financial interest of (b) (6) and it would not be a specific party matter. I suggested that (b) (6) remind (b) (6) to be alert if the subject of the meeting should change or if a discussion of funding would evolve. He should also be careful about one on one discussions with the (b) (6) expert that might occur outside the scheduled meeting. An email is in the file. (b) (6) September 13, 2010

180. (b) (6) PRAO, asked if another federal agency could provide the PRAO attorney who is coming there to do training with a metro card instead of the cumbersome process

of submitting an interagency voucher for reimbursement. From a gift standpoint I think this is okay; I would see it as a question for the other agency whether the payment (clearly a lawful expense) has to be accomplished another way. (b) (6) September 14, 2010

181. (b) (6) ODAG, asked whether there were any specific rules regarding resumes - just do not include any non-public information in it. We discussed the seeking employment rules and the potential for recusal. She has the IP portfolio and while there are few cases, she does work on enforcement initiatives and legislation that affect the industry. Told her that we should talk as things arise and she sends out resumes or responds (she is not actively seeking employment now but has received unsolicited inquiries). Some matters will be so general that she would not have to recuse; others may require recusal because their impact is on identifiable parties. Update: (b) (6) called on 9/15 and had sent her resume to (b) (6). Based on our discussion, she is not working on any particular matter that affects them except as a member of an industry that provides software that can be pirated. Told her this was fine unless she starts to work on something more targeted to their products. Also, she will not meet with any (b) (6) officials if they are involved as part of Business Software Alliance, of which they are one of many members. (b) (6) September 14, 2010

182. (b) (6) ODAG, who I sent detail to ODAG from CRM, asked about giving the Heyman public service speech at Seton Hall. Explained 1253 and sent the memo. He will return through us. (b) (6) September 14, 2010

183. (b) (6) (Civil) sent an email asking whether the Government could pay the cost to return an offered gift that could not be accepted. Referred (b) (6) to 5 CFR 2635.205(b) which allows it. The email is in the file. (b) (6) September 14, 2010

184. (b) (6) (Civil) sent a draft 502 recusal memo for our review. The memo would authorize (b) (6) to continue working on a case involving patent rights in which many universities have an interest. Her husband teaches at University of Pennsylvania Law School. Penn is seeking to participate as an amicus. Suggested one change to include the condition that she not communicate with Penn in the approval paragraph and (b) (6) agreed. The email and draft memo are in the log file. (b) (6) September 14, 2010

185. (b) (6) asked about a friend who is a lobbyist inviting her to the (b) (6) dinner on Saturday. She told her no and the individual then asked if (b) (6) could accept a ticket from the (b) (6), to which (b) (6) said no since they didn't know her (and it felt like a sham). I confirmed this was the right response. (b) (6) September 16, 2010

186. (b) (6), OASG, asked about his participation next year as a presenter at a seminar sponsored by a multi-national, UNIDROIT, of which the US is a member. Before DOJ (b) (6) developed model legislation in a UNIDROIT initiative to address investment in developing

countries. (b) (6) thought the World Bank would likely pay the travel for presenters. He'd like to do it if it presents no issues. I thought the travel could be worked out and that the basic issue was whether it was appropriate for him in his private capacity but while still a DOJ official, to do this. He said the US (State) likes the model legislation and views it as a good thing. I suggested that the first step would be to check within DOJ to see if anyone raised any concerns; then with State. If no issues, we could pursue the travel piece. (b) (6) September 15, 2010

187. (b) (6), White House Personnel, asked about the Indian Law and Order Commission, newly authorized in July and whether it will be housed in DOJ and what reports the appointees will have to file. First time I'm hearing of it, will check, but since they are part time and do not require confirmation it will probably be 450's. Punted to (b) (6) find out if DOJ will be administratively supporting this commission. (b) (6) September 15, 2010

188. (b) (6) (CRT) called with a question relating to an honors attorney candidate. She is clerking for a judge. The judge told her she needed to withdraw her application to DOJ because the U.S. Attorneys Office handles criminal cases and that creates a conflict for her. Advised (b) (6) that federal ethics laws and regulations do not apply to her until she becomes an employee. Said it may be a PRAO question. They have asked PRAO for an opinion. (b) (6) September 15, 2010

189. (b) (6) (Civil) sent an email with a CFC question. (b) (6) want to know if they can allow Children's Hospital to run an ad in the Express that includes a reference to their DOJ employer. Discussed with (b) (6) of OGE. She advised that they could not use the DOJ name and could not say federal government employee or something similar. They can use the story of how the hospital helped their son when he was born by they cannot include a federal employment identification in the ad. There is no issue of soliciting a subordinate if the newspaper ad should be seen by one. (b) (6) September 15, 2010

190. (b) (6) (ENRD) had an outside practice of law question. (b) (6) who belongs to a choir wants to help the choir prepare an application to the IRS to obtain 501(c)(3) status. His name would not appear on anything and he would not communicate with the IRS. Advised that this could be approved by the AAG. It should only be for this application and should not be to provide ongoing legal services to the choir. (b) (6) said it would be limited to a one shot deal. The emails are in the file. (b) (6) September 15, 2010

191. (b) (6) (ENRD) had an Ethics Pledge and WAG question. Two employees, one career and one non-career, are on an official trip to the Pacific to participate in meetings of the U.S. Coral Reef Task Force, a U.S. government entity. The meetings involve officials from other federal agencies, from States and Territories, and from island nations in the Pacific. There is a reception on Friday or Saturday night that is being sponsored by The Nature Conservancy (TNC) and the Micronesia Conservation Trust (MCT). MCT is not a registered lobbying organization. TNC has filed lobbying reports but it is a 501(c)(3) organization. So the WAG exception is available for both the career and non-career employees. Discussed with (b) (6) on 09/16/10 and she believed that the WAG numerosity and diversity criteria would be met and that there clearly was a strong interest of the Department in having the employees attend the event and interact with federal, State, territorial, and Pacific nation officials. She will send a WAG memo to the AAG. Emails are in the file. (b) (6) September 16, 2010

192. (b) (6) NSD, (b) (6) (b) (6) travel reimbursement. (b) (6) sent a request to (b) (6) for approval of (b) (6) to accept travel reimbursement from Columbia Law School. (b) (6) approved. September 9, 2010

193. (b) (6) OFDT, award question. The vendor (b) (6) seeks to nominate OFDT for an industry award for their product (b) (6), which monitors prisoners. Past recipients include city county and foreign governments and the NRC. The award is trophy bowl - judges are members of a non-profit standards organization and industry analysts. There is an entry fee of \$295 which (b) (6) expects to pay, and winners are requested but not required to allow a case study to be published in a book which will be sold for \$39.95. (b) (6) is concerned about the for-profit nature of the book. (b) (6) concurs with her concerns: there is a commercial nature to this award and it seems like product promotion. At a minimum, the payment of the entry fee would be a gift to OFDT/DOJ requiring AAG/A approval which is unlikely. (b) (6) advises (b) (6) against allowing/pursuing this. (b) (6) September 9, 2010

194. (b) (6) ATJ, (b) (6) Pro Bono Video. I discussed the with (b) (6) and advised that (b) (6) could do the video, but the emphasis should be on supporting pro bono and how it promotes access to justice, not on supporting the ABA per se. Also the ABA should be advised that they may not use (b) (6) video in any fundraising that is done to support pro bono programs. (b) (6) September 10, 2010

195. (b) (6) EOUSA, Speaking engagement in personal capacity. GCO is seeking approval for the (b) (6) (b) (6) to participate in his personal capacity on a panel sponsored by the Omega Psi Phi fraternity on the topic of the importance of fatherhood. (b) (6)(b) (6) is a member of the fraternity, which is sponsoring a panel during the Congressional Black Caucus's (CBC) annual legislative conference on Thursday, September 16th. The invitation appears to be based on his membership in the fraternity. As this is a one-time event and appears to be based on his membership in the sponsoring fraternity and is not a position, GCO is seeking approval. I advised that I think this

was fine as long as he is not introduced with his title, etc. (b) (6) September 14, 2010

196. (b) (6) OAG, (b) (6) attendance at WAG. I emailed the following to (b) (6) (b) (5)

(b) (5)

(b) (6) approved. (b) (6) September 14, 2010

197. (b) (6) PRAO, Representing DOJ employees. (b) (6) had a volunteer ask about representing a DOJ employee in a landlord case. The volunteer would like to know if it could fall under the representing friends and family members. I advised that she could not represent a fellow DOJ employee. (b) (6) September 15, 2010

198. (b) (6) ATR, Writing for a publication. (b) (6) (b) (6) received an invitation to write a forward to a book being edited by two European attorneys. (b) (6) did not think this was the kind of thing that our officials are permitted to do, but didn't feel up to date on the issue. They say they have a judge from the European Union General Court doing the EU forward and (b) (6) would be the US forward. Since they would want her contribution submitted by October 22, we need to make a determination quickly. I advised that I wasn't aware of anything new - I don't think she may do this. With or without title it would be an endorsement. (b) (6) September 15, 2010

199. (b) (6) USAEO, Official Capacity Speech. (b) (6) has been asked to be the guest speaker in his official capacity at an awards banquet hosted by the Second District Metropolitan Police Department Citizen Advisory Council (CAC). These are nonprofit councils set up in each of the police districts in the (b) (6) designed to foster police-community partnerships. The event is a fundraiser to the degree that the tickets cost \$40.00 and there is a program booklet in which people can purchase advertisements. (b) (6)(b) (6) ticket would be provided by the CAC. (b) (6) have spoken at these events in the past. The date of the event is September 30, 2010. (b) (6) (b) (6) has agreed that his speech will relate to his official duties as (b) (6) for the (b) (6). (b) (6) (b) (6) plans to discuss his office and his priorities as (b) (6) including the importance of reducing crime in the (b) (6) by strengthening collaboration and cooperation between law enforcement agencies and

community-based organizations. I advised that I think approval for this event is appropriate.
(b) (6) September 15, 2010

200. (b) (6) ENRD, WAG. (b) (6), (b) (6), emailed ASG
(b) (6) the following for approval: (b) (5)



(b) (5)

(b) (6), (b) (5)

(b) (6) approved with a further note to be careful who she is seated with for appearance concerns. (b) (6) September 15, 2010

201. (b) (6) OASG, Pledge restriction questions. I sent (b) (6) the following emailed as a follow up to our phone conversation: "I thought more about the last of your 3 questions and took another look at OGE's guidance on the Pledge restrictions on accepting gifts. This is my understanding, but correct me if this is wrong: your friend and mentor, (b) (6) who is

a retired partner of A&B, is receiving a major award from American Lawyer magazine. He is one of 8 recipients of lifetime achievement awards, his as a Distinguished Law Firm Leader, at the annual AL magazine awards dinner in NY. A&B has purchased a table at the dinner in honor of the firm's former managing partner. He is deciding who to invite to sit at the table (although I expect that a few current senior firm members will also be there-?), and one of the persons he has invited is you. Given your long-standing relationship with him, and the fact that he is free to invite at least several persons of his own choosing to who will sit at the table, I think the correct analysis is that this is a gift from him to you, based on your personal relationship. I do not believe that the concerns that inform the Pledge gift restrictions are implicated here. Although you will be at the table purchased by the firm, this is an event honoring and celebrating a lifetime of achievement of an accomplished lawyer who is your close friend and mentor, so this is both a professional and a personal event. I think it is fine for you to accept the invitation to join your mentor and friend at the awards dinner." (b) (6) September 15, 2010

202. (b) (6) ATJ, Speaking request. ABA has asked (b) (6) to do a short video to appear on their website to urge people to participate in Pro Bono work. I advised that the language would have to be pretty plain, but I'm not comfortable with (b) (6) as the only person appearing on the site- I think it comes across as him being the face/voice of this ABA initiative. And, we generally do not want to be in the position of directing an outside organization to make significant changes in what they had planned for their activities (e.g., adding others to the webpage to fit our needs), and we avoid a lot of back and forth negotiation about what would be satisfactory. We try to just accept (with minor tinkering or specific limits) or decline offers like this. And, as she points out, she'll have to review the rest of the website for its content. At this point, I would recommend declining the video offer. They will go ahead and decline this offer. (b) (6) September 16, 2010

203. (b) (6) OLC, (b) (6) is out. Her sister is married to a representative who is attending the Congressional Black Caucus Foundation's events and invited (b) (6) to accompany her. (b) (6) is subject to the Pledge. (b) (6) has already determined that the Foundation is a 501c3 so (b) (6) may be able to attend as her sister's personal guest and eat the meal and accept the gift bag. (b) (6) decided not to go to the dinner after all but instead just meet with her sister at the spouses' tent. (b) (6) September 17, 2010

204. (b) (6) JMD, Recusal question. (b) (6) was looking to get an opinion on a prospective member of a technical evaluation panel (TEP). Mr. (b) (6) Mr. (b) (6) was employed by a company five years ago that is bidding on a new, and very large, requirement today. His former company was a subcontractor on the current contract during the early years of the contract. (b) (6) doesn't think there is any rule that actually prohibits him from serving on the TEP, but wanted to ensure from both a regulations standpoint as well as an appearance standpoint that it would be acceptable for him to serve on their panel. I advised that the impartiality standard of conduct, 5 CFR 2635.502, would generally require him to recuse from participating in any matter in which an entity he was employed with during the previous year, was bidding. Under the "catch-all" provision of the regulation, we sometimes extend the recusal period beyond the one year. We may do this if the individual held a position of significant responsibility with the former employer, or had direct knowledge about the matter now pending. However, we would generally

have a compelling reason to recuse someone who left a former employer 4 years ago if we felt the individual had the desired knowledge or experience to contribute to the TEG. If Mr. (b) (6) has no other ties to the bidder (e.g., a spouse, relative or close friends working for the company), and no financial interest in the company (e.g., a pension plan or stock), I do not see a conflict, either actual or apparent, that would counsel against his serving on the TEG. I recommended that (b) (6) confirm with Mr. (b) (6) that he has no other ties, personal or financial, to the company. (b) (6) September 16, 2010

205. (b) (6) NSD, Dinner Invitation. (b) (6) (b) (6), have been invited to dinner on September 24, 2010, at the home of (b) (6), to meet with (b) (6) Legal Advisor to the United Kingdom's Foreign and Commonwealth Office (the equivalent to our State Department) and (b) (6), Legal Advisor to the GCHQ (the equivalent to our National Security Agency). About ten people are expected to attend. Attending the dinner will further the interests of the National Security Division by promoting its work and role, expanding its support of international security policy, and building rapport with foreign partner nations. They have received clearance to attend from a security perspective. The applicable standards of conduct beginning at 5 C.F.R. § 2635.201 generally prohibit an employee from accepting gifts, including entertainment, from an entity that does or seeks to do business with the Department or that may be substantially affected by performance or nonperformance of the employee's official duties, or given because of the employee's official position. Under this standard, the British government is a prohibited source and in order to accept the gift of the dinner, there must be an exception to the general prohibition. In this case, no exception applies because the cost of the meal likely will exceed \$20 and the dinner is not a widely attended gathering, that is, open to a large number of persons with a diversity of views or interests. However, since the meal will be provided by representatives of a foreign government, the Foreign Gifts and Decorations Act (5 U.S.C. § 7342), applies. This statute permits an employee to accept from a foreign government a gift of minimal value (defined currently as a gift valued at \$335 or less, see 41 C.F.R. § 102-42.10) with the permission of the employing agency. It is (b) (6) view that attending outweighs the concern that acceptance of the gift of dinner may or may appear to improperly influence (b) (6) in the performance of his official duties. (b) (6) recommended approval of this request and I concurred. (b) (6) September 17, 2010

206. (b) (6) (OSG) had a 502 recusal question. The research university community is interested in *Stanford v. Roche*, 583 F.3d 832 (Fed. Cir. 2009), a case involving patent rights. A number of universities have filed amicus briefs. (b) (6) is not currently involved in any way in the case but may be in the class of research universities that would be affected by the issue in the case. Advised (b) (6) that as long as (b) (6) is not involved in the case, the mere fact that it may be in a class that could be affected would not be sufficient to trigger a recusal obligation under either 208 or 502. If (b) (6) got involved as an amicus, he would need a 502 determination to continue working on the case. The emails are in the file. (b) (6) September 16, 2010

207. (b) (6) (JMD) sent an email with an example of the kind of free training that is regularly offered by AABPA. She wanted to know if she could forward something like this to DOJ budget officers in the components and to her own staff. Called her and left a message that until the issue of the board position on AABPA is resolved, that she should not be the one to distribute such announcements. If there was no fee for the program, she could send it to her deputy with no specific direction on what to do with it. If there is a fee, then she should not send it to anyone. The email is in the file. (b) (6) September 16, 2010

208. (b) (6) (CRT) had an Ethics Pledge question. (b) (6) used to work for LDF. LDF is interested in filing an amicus brief in a federal district court case. The case was not pending when (b) (6) worked at LDF. Advised (b) (6) that the Ethics Pledge did not apply when the former employer participated in the litigation as an amicus, not a party. He would still need a 502 determination to allow him to participate. And he could have no communications with LDF regarding the case. (b) (6) so advised the employee. (b) (6) September 21, 2010

209. (b) (6) (Civil) sent a draft 502 memo for review. (b) (6) seeks authorization to continue to work on Sherley v. Sebellius, a case involving stem cell research. CAMR and BIO have filed motions to participate as amici. (b) (6) wife is on a non-fiduciary advisory board of (b) (6) and the medical school is a member of an association of medical colleges which is in turn a member of CAMR. (b) (6) owns (b) (6) which is within the exemption. This company is one of 1,100 members of BIO. (b) (6) participation would be subject to the limitation that he not communicate with CAMR or BIO. Suggested one editorial change and told (b) (6) the memo looked fine. The email and draft memo are in the log file. (b) (6) September 21, 2010

210. (b) (6) (OLA) sent an email with an awards and reception question. The (b) (6) (a 501(c)(4) organization and a registered lobbying organization) invited (b) (6) to attend a reception on September 21, 2010 and receive an award for his contribution relating to the Fair Sentencing Act of 2010. The award would be some type of plaque made of glass. The reception would be held in Washington in connection with the opening of a touring exhibit celebrating the 90th anniversary of (b) (6). (b) (6) is unable to attend the event. I advised (b) (6) that if it was a plaque with no monetary value then it could be accepted. Someone could attend on behalf of (b) (6) but that person could not be a non-career person because the WAG exception is not available in this case because the ACLU is a 501(c)(4) registered lobbying organization. This would be true even if the ACLU Foundation which is a 501(c)(3) were also supporting the event. This is pursuant to OGE guidance on the Ethics Pledge. If a career person attended the reception, WAG approval from that person's component head would be required. In this case it looked like the event would meet the diversity and numerosity requirements for a WAG. Sent (b) (6) an email with that guidance on September 20. Copied (b) (6) and (b) (6). On September 21, 2010, (b) (6) discussed these issues with (b) (6). On September 21, 2010, called (b) (6) the Director of the Washington Office of (b) (6) and explained that the Executive Order and the Ethics Pledge prohibited a non-career employee

from using the WAG exception to attend the reception. The emails and the invitation letter are in the file. (b) (6) September 21, 2010

211. (b) (6) (Civil) sent an email with an awards question. (b) (6) has been offered a "scholarship" to attend a weekend program being sponsored by the Aspen Institute. Based on the initial facts, there was no indication that Aspen is a prohibited source or that the offer was extended because of his official position. (b) (6) asked (b) (6) to obtain additional factual information. (b) (6) did so and (b) (6) was able to determine that (b) (6) would not be prohibited from accepting the scholarship. The emails are in the log file. (b) (6) September 21, 2010

212. (b) (6) (FBI, (b) (6) works in the Human Resources Division and is updating FBI leave policies including policy on administrative leave and wants to be sure it is in compliance with DOJ policy. Showed her where the pro bono policy is on the website. She asked at what level administrative leave for pro bono and volunteer activity must be approved. Advised that this is something that is normally decided within the component and would depend upon the facts of the situation such as how large a commitment of time it might involve etc. The benefit to the Department is a factor such as whether or not the activity would enhance skills that could be used in the person's work. Also ethics issues and approval of an outside activity need to be considered. Suggested she talk with (b) (6) and she said she would do so. She asked if there is a list of "sponsored" activities and I said DOJ does not "sponsor" anyone. (b) (6) can provide information on pro bono activities that have been vetted. She said she had talked with (b) (6) office in JMD who said that some activity may need approval by the DAAG in JMD. (b) (6) September 22, 2010

213. (b) (6) OVW, Pledge/Appointee question. (b) (6) is new confidential assistant to the Director. She will not have to submit an SF278, and she is not subject of the Pledge. (b) (6) will brief her on the rules - OVW makes grants so (b) (6) likes to emphasize grant issues in the ethics training she delivers to her employees. (b) (6) September 24, 2010

214. (b) (6) CRM, LOR question. She has someone who wants to provide a letter of recommendation for someone seeking a DC Superior Court judgeship. Is that a federal position such that letterhead and title can be used? Checked with (b) (6) - yes it is fed. Emailed (b) (6) the response. (b) (6) September 24, 2010

215. (b) (6) (ENRD) had a question as to whether air transportation provided by the State of West Virginia could be considered "assistance" as opposed to being treated as a gift to the Department. West Virginia is co-plaintiff with DOJ in a mining case in a rural area. There is an upcoming site visit. West Virginia has its own plane and will fly its people and has offered to fly the ENRD people to the location for the site visit. Advised that under these circumstances, especially the fact that they are a co-plaintiff with the Department, that the air transportation

could be considered assistance and that it was not necessary to process it as a gift to the Department from the State of West Virginia. The email is in the file. (b) (6) September 22, 2010

216. (b) (6) (ENRD) called with a 502 question. An attorney working on the Gulf Oil spill matter has a father who is of counsel with the firm representing Trans Ocean. He had no involvement in the case and will soon be retiring from the firm once a case he is working on is concluded. He is paid a percentage of the fees he collects and although he was formerly a partner he now has no equity interest in the firm and does not share in firm profits. (b) (6) wondered whether it was necessary to do a 502 determination to allow the attorney to continue working on the case. Advised that because of the father's significant association with the firm as a former partner and still employed as of counsel and the high profile nature of the case and the fact that Trans Ocean is a major party, that a written 502 determination is required. The email is in the file. (b) (6) September 22, 2010

217. (b) (6) (OJP) called to discuss the Ethics Pledge and the duration of a recusal for (b) (6). (b) (6) had a paid position as a consultant with (b) (6). The Ethics Pledge bars a non-career person from participating in a covered matter that relates to a former client. The definition of former client includes someone who the employee served personally as a consultant which is the case here. So the two year restriction applies to (b) (6) with respect to (b) (6). (b) (6) started on July 22, 2010. Advised (b) (6) that the Ethics Pledge restriction does apply. (b) (6) September 23, 2010

218. (b) (6) (Criminal) called with a use of government credit card question. There are a number of retirement events planned for (b) (6). Someone was tasked with handling voluntary contributions for a retirement event. She wants to use her government credit card to pay for things related to the event. I told (b) (6) that I did not believe that she could use the government card for that kind of purchase because it should only be used for official purposes. (b) (6) subsequently checked with the admin people in Criminal Division and they told her that the card could not be used for that purpose. Putting a purchase on the card obligates the government and that is not permissible for this use. (b) (6) September 23, 2010

219. (b) (6) (CRT) called with several questions. He asked me to confirm that (b) (6) is a GS-12 Schedule C attorney who works in the front office as (b) (6) is required to file an SF-278. Checked with (b) (6). Confirmed that indeed she is required to file the SF-278. He also asked for confirmation of the policy on avoiding engagements within 30 days of an election. I indicated he was correct. He asked whether the Hatch Act applied to an organization dedicated to reproductive health care for women. I referred him to the definitions in the reg and said that it seemed this group was organized around an issue and probably not covered. If it is not covered, then any fundraising on behalf of the group would be governed by the rules in the Standards of Conduct. (b) (6) September 23, 2010

220. (b) (6) (CRT) called with an Ethics Pledge question. (b) (6) is a non-career attorney in the front office. He has been invited to attend the national dinner of the Human Rights Campaign to be held on October 10. He was invited by an attorney who works at Paul Hastings and he would be sitting at one of Paul Hastings' tables. Paul Hastings is a registered lobbying organization. The Paul Hastings attorney is not a registered lobbyist. (b) (6) believes the value of the dinner would be less than \$335. He believes that the firm is paying for the dinner not the individual attorney. Paul Hastings likely has cases in CRT but it is not a big part of its practice. Discussed with (b) (6) the additional information that he would need to be able to determine whether the gift exception for gifts based on a personal relationship would cover this gift. See 2635.204(b). What were the circumstances under which the PH attorney got the additional ticket? Was it made available to him without any restrictions so that he could bring anyone he wished as a guest? The firm should not have given any indication that a specific person should be invited or that someone from the Department should be invited etc. Second, he needs to get sufficient information to be sure that the gift is based on a personal relationship. How well does (b) (6) know the PH attorney? Is he a personal friend? If the relationship is based on shared professional activities and interests such as shared interests in issues, policies, etc., then that alone would not be enough to qualify for the use of the exception. (b) (6) said he would discuss these issues with (b) (6) and would memorialize the advice. (b) (6) September 24, 2010

221. (b) (6) (ATR) called because the Division is having difficulty in getting assistance from the (b) (5) (b) (5)

[REDACTED]

[REDACTED] was told that the entire office was recused. (b) (6) thought that was overbroad and asked if we had any experience in dealing with recusals like this. I said it sounded more like a PRAO based recusal. He questioned whether the USA's recusal should be imputed to the entire office under these circumstances. (b) (6) subsequently discussed this issue with (b) (6) and a direct contact with EOUSA was made and they are now working on seeing what kind of arrangement can be put in place so that ATR can get its immunity orders. (b) (6) September 24, 2010

222. (b) (6) (CRM) sent an email asking if a career attorney could serve in a personal capacity on the Nominations Committee of the Asian Pacific Bar Association of D.C. (b) (6) asked if this required approval. Advised that formal approval was not required and that counseling, especially on 18 U.S.C. 205, would be sufficient. It would be preferable if the recommendations reflected the consensus of the committee so that the entire group endorses someone and there are not minority views with attribution. He could draft recommendations for the committee but should avoid signing recommendations. An email is in the file. (b) (6) September 27, 2010

223. (b) (6) (CIV) sent an email with a question about two events that (b) (6) wants to attend. (b) (6), his (b) (6) is running for (b) (6). (b) (6) wants to attend a debate that will be held on October 5 at UC Davis law school. He would simply passively attend and observe the debate. The second event is an election night party on November 2, again related to the (b) (6) campaign. Advised that attendance at these events would require approval by the Associate Attorney General. The memo should also address whether he would be on official travel at the time of these events. (b) (6) sent a draft memo. Suggested several changes. PAS employees do not earn or take annual leave so the reference to annual leave should be changed. Also a precaution about avoiding photographs in connection with the debate event should be added. (b) (6) agreed to the changes. The emails and draft memo are in the log file. (b) (6) September 28, 2010

224. (b) (6) (CIV) had a WAG question. A company called (b) (6), that contracts with the Department, is offering a free one day electronic discovery symposium for government agencies on October 20, 2010. Advised (b) (6) that because the sponsor is a vendor and because it is focused on government employees that we would need detailed information about the event, the sponsor, the benefit to the Department, etc. to be able to approve as a WAG. Outlined the information we would need. (b) (6) sent back an email saying that the person who was interested in attending has decided not to attend. The emails are in the log file. (b) (6) September 29, 2010

225. (b) (6) (OJP) asked if we had any written guidance on Departmental acceptance of a gift of services. Checked and told him we did not. He said they were going to process as a gift to the Department an offer of services that had been made. But he did not discuss the specifics of the offered gift. Email is in the file. (b) (6) September 29, 2010

226. (b) (6) (CIV) had an outside activity question. (b) (6) is working on the BP oil spill litigation. She is interested in assisting the Vietnamese American Volunteer Law Corps (VAVLC) by conducting workshops at clinics that will tell Vietnamese fisherman how to apply for emergency claims. I said that raises concerns because of the close connection of this activity to her duties and that we needed more information about her role in the litigation and what interaction she might have with the Vietnamese fishing community in connection with the litigation. (b) (6) subsequently advised her not to undertake this outside activity and she was comfortable with that. The emails are in the log file. (b) (6) September 29, 2010

227. (b) (6) (CIV) asked whether an attorney in the Torts Section who is also in the Marine Corps Reserves and is applying for a promotion could use language taken from the website of the Torts Section to describe what he does in his work in his application. I said there was no objection to doing that. (b) (6) September 29, 2010

228.

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