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LIST OF NAMES

NAMES	POSITION
ALEXANDRE Carl	OPDAT Director, June 1997 to present.
ANDERSEN Martin	ICITAP contractor (1993); ICITAP and OPDAT term employee (1995-97).
BARTSCH Richard	Contractor in Office of Administration who dealt with computer systems.
BEJARANO Edward	FBI Special Agent detailed to ICITAP as Deputy Director 1996 to 1998.
BOLGAK Ludmilla	One of two women with whom Bratt socialized in Moscow and invited to visit him in the United States.
BONNER Mark	OPDAT Resident Legal Advisor, Moscow, Russia September 1996-January 1998.
BRANDEL Sarah	Head of INL Section of State Department that funded OPDAT's Russian, NIS, and Eastern European training programs.
BRATT Robert	Criminal Division Executive Officer August 1995 – July 2000. ICTAP Acting Director 1995. ICITAP and OPDAT Coordinator September 1996 – April 1997. Detailed to Immigration and Naturalization Service April 1997 – March 1998. Detailed to JMD 1998-2000. Retired August 2000.
BRIGHT Sandra	Criminal Division Deputy Executive Officer. Served as Acting Executive Officer, during Bratt's absence from Office of Administration.
BUTLER Lorraine	Criminal Division Facilities and Security staff member.
CANTILENA Linda	Chief, Criminal Division Facilities and Security Staff.
DENNY Stephen	Assistant Director, JMD Procurement Services Staff.
DIDATO Thomas	OPDAT contractor who functioned as NIS Assistant Program Manager 1996 – 1998.
FRYE Eugene	Office of Administration Fiscal staff.
FRARY M. Paul	OPDAT employee (1996-1997) ICITAP and OPDAT Security Officer September 1996 – February 1997.
GAIGE Robin	Criminal Division Deputy Executive Officer; in charge of ICITAP and OPDAT's administration April 1996 – mid-May 1997, when she resigned to go to the National Drug Intelligence Center.
GRAY Michael	OPDAT contractor who functioned as OPDAT Newly Independent States Program Manager, until succeeded by Joseph Lake, and then was an assistant to Lake.

HARRIS Jo Ann	Former Criminal Division Assistant Attorney General (1993-95). Served as a consultant to OPDAT January 1997 – August 1997.
HOGARTY Jill	ICITAP Consultant September 1994 – January 1996. ICITAP Temporary employee January 1996 – January 1997. ICITAP Permanent employee beginning January 1997.
HOOVER Cary	ICITAP employee beginning September 1990. Special Assistant to ICITAP Director Janice Stromsem (1995 to 1997).
JOHNSON Paul	Office of Administration employee, Special Assistant to Bratt.
KEENEY John	Criminal Division Acting Assistant Attorney General 1995-1998.
KORENEVA Yelena (Helen)	Russian woman with whom Bratt became romatically involved, who he invited to visit him in United States.
KOVALENKO Tatyana	Moscow interpreter through whom Bratt met Koreneva and Bolgak.
KRISKOVICH David	FBI Special Agent, detailed to ICITAP, were he served as the founding Director from January 1986 – June 1994.
LAKE Joseph	Criminal Division, Associate Executive Officer 1991 – 1997. Newly Independent States Program Manager in 1996. Retired with Buyout bonus in 1997, returned the next day as contractor first at OPDAT, then at INS
LANG Patrick	ICITAP Program Manager Haiti, through 1998. ICITAP Program Manager South Africa 1998-1999. ICITAP Director 1999 - present
LOCKWOOD Robert	Clerk of the Court in Broward County, Florida. Developed program to bring Russian and Israeli judges to United States and American and Israeli judges to Russia. Received Office of Justice Programs grant through OPDAT.
MANN Raquel	In charge of ICITAP administration 1994 to 1996.
MILLER Robert	ICITAP administrative officer.
MUCKLE Verna	Criminal Division Deputy Executive Officer for finances until succeeded by Gaige. Transferred to head of Office of Administration Management Information Systems.
PERITO Robert	ICITAP Deputy Director 1996 to present. Retired from State Department, served as ICITAP Deputy Director as contractor for six months prior to permanent appointment
PODGORSKI John	Office of Administration employee. Contracting Officer's Technical Representative for Interlog contract.
RASMUSSEN Jane	ICITAP consultant.
REILLY Richard	Office of Administration employee. Mann and Gaige's successor as head of ICITAP and OPDAT administration (1997).
RICHARD Mark	Criminal Division Deputy Assistant Attorney General.

RODEFFER Mark	JMD, Associate Assistant Director, Financial Operations Service, Finance Staff.
RUBINO Jerry	Director, Security and Emergency Planning Staff.
SHANNONHOUSE John	ICITAP Security Officer 1995-96. Contracting Officer's Technical Representative for Interlog contract and for development of ICITAP automated financial management systems.
SILVERWOOD James	OPDAT staff member; Criminal Division attorney and ethics advisor. Acting OPDAT Director April 1997 – June 1997.
SPOSATO Janis	JMD, Deputy Assistant Attorney General.
STROMSEM Janice	Director, ICITAP (1995-99).
TREVILLIAN Robert	ICITAP Management Analyst.
TRINCELLITO Joseph	ICITAP Associate Deputy Director. Head of ICITAP and OPDAT Haiti program.
TRUEBELL Beth	Contractor who functioned as Lake's assistant 1995 – 1997. OPDAT federal employee September 1998.
WARLOW Mary Ellen	Criminal Division Counsel for National Security Matters. ICITAP/OPDAT Coordinator May 1997 – March 1998.
WILLIAMS Learia	ICITAP Administrative Management. Maintained ICITAP's personnel files and list of personnel with a security clearance.

EXECUTIVE SUMMARY

The International Criminal Investigative Training Assistance Program (ICITAP) is an office within the Criminal Division of the Department of Justice that provides training for foreign police agencies in new and emerging democracies and assists in the development of police forces relating to international peacekeeping operations. The Criminal Division's Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) trains prosecutors and judges in foreign countries in coordination with United States Embassies and other government agencies. The Criminal Division's Office of Administration serves the Criminal Division's administrative needs. This report details the results of an investigation by the Office of the Inspector General (OIG) into allegations that managers in ICITAP, OPDAT, and the Office of Administration committed misconduct or other improprieties.

The allegations raised a wide variety of issues including managers' improper use of their government positions to obtain visas for foreign citizens, widespread violations of the rules governing the handling and storage of classified documents, managers' use of business class travel without authorization, managers' use of frequent flyer miles earned on government travel for personal use, violations of contractual rules and regulations, failure to supervise contracts leading to substantial cost overruns and overcharges by contractors, and favoritism in the hiring and promotion of certain employees. Many of the allegations concerned the actions of Robert K. "Bob" Bratt, a senior Department official who became the Criminal Division Executive Officer in charge of the Office of Administration in 1992. At varying times during the years 1995-1997, Bratt also was the Acting Director of ICITAP and the Coordinator of both ICITAP and OPDAT.

We substantiated many of the allegations and found that individual managers, including Bratt, committed serious misconduct. We also concluded that managers in ICITAP, OPDAT, and the Office of Administration failed to follow or enforce government regulations regarding ethics, security, travel, and contracts. As a result of our investigation, we recommended discipline for three employees. We would have recommended significant discipline for Bratt, including possible termination, but for Bratt's retirement effective August 1, 2000. We also found that some of the problems revealed by this investigation go beyond holding individual managers accountable for their actions and that the Department can make changes to enhance the performance

of other managers, employees, and offices. Therefore, we made nine recommendations concerning systemic improvements for the Department to consider.

The report is divided into chapters addressing the major allegations. In this Executive Summary, we summarize the background of the investigation and the allegations, the investigative findings, and the OIG conclusions with respect to each chapter.

I. BACKGROUND OF THE INVESTIGATION

ICITAP was created in 1986 and although it is part of the Department of Justice, its programs are funded by the Department of State. OPDAT, created in 1991, is similarly funded. Both ICITAP and OPDAT are headed by Directors, with a Coordinator responsible for overseeing the management of both organizations. The Office of Administration handles the administrative functions for the Criminal Division, including personnel, budget, information technology, and procurement matters. The Executive Officer heads the Office of Administration.

Bratt became the Executive Officer for the Criminal Division in 1992. He was appointed the Acting Director of ICITAP in March 1995 following the dismissal of the previous Director. After Janice Stromsem was selected as ICITAP Director and assumed the post in August 1995, Bratt resumed his duties as Executive Officer. Bratt was appointed to the newly created post of Coordinator in September 1996 where he remained until being detailed to the Immigration and Naturalization Service (INS) in April 1997 at the request of the Attorney General.

ICITAP has had a long history of turmoil. Between 1994 and 1997, four different individuals assumed the responsibility of Director or Acting Director. During that period, there were two different investigations into allegations of misconduct as well as reviews of ICITAP's organizational structure and financial systems. In 1994, at the request of the Criminal Division Assistant Attorney General, the OIG completed two investigations of ICITAP that examined allegations of favoritism in selecting consultants, misconduct in travel reimbursements, poor quality of ICITAP's work products, waste and inefficiency in program and contract expenditures, and management of foreign programs. The OIG did not substantiate the allegations of misconduct but did

find that ICITAP did not plan its programs carefully. The OIG also made recommendations to improve ICITAP's financial management. In January 1995, Bratt examined a proposed ICITAP reorganization plan and conducted an investigation following additional allegations of misconduct that were made to the Criminal Division, allegations that Bratt substantiated.

This OIG investigation began in April 1997 when an ICITAP employee reported to the Department's security staff that an ICITAP senior manager had provided classified documents to persons who did not have a security clearance. The Department's security staff and the OIG investigated the allegation and confirmed it. The OIG continued the investigation to determine the extent of security problems at ICITAP. While this investigation was ongoing, the OIG received numerous allegations of misconduct and mismanagement at ICITAP and OPDAT, and we broadened our investigation to encompass these new allegations.

II. INVESTIGATION OF ALLEGATIONS

A. Issuance of Visas to Russian Women

Bratt made four trips to Russia in late 1996 and 1997 in conjunction with his duties as ICITAP and OPDAT Coordinator. We received several allegations of impropriety relating to these trips. The most serious allegation was that Bratt and Criminal Division Associate Executive Officer Joseph R. Lake, Jr. improperly used Bratt's government position to obtain visas for two Russian women, one or both of whom it was alleged were Bratt's "Russian girlfriends."

Our review determined that in 1997 Russians seeking to visit the United States had two methods of obtaining visas from the American Embassy in Moscow: the standard process and the "referral" process. The standard process could be used by any Russian seeking to visit the United States. Russians applying through the standard process were required to wait in long lines at the American Embassy in Moscow to submit their applications, and the process included an interview by an American Embassy official. The Embassy official could deny the application if, among other reasons, the official did not believe the applicant had established that he or she would return to Russia. The "referral" process could be used in much more limited circumstances. The referral process required that United States government interests be supported

by the applicant's visit to the United States or that a humanitarian basis existed for the visit. In the referral process, the visa application was submitted by an Embassy official who completed a form approved by an Embassy Section Chief setting forth the United States government interest in or the humanitarian basis for the applicant's visit. No interview was required, and the use of the referral process generally ensured that the applicant would receive a visa.

Two Russian citizens, Yelena Koreneva and Ludmilla Bolgak, received on April 7, 1997, visas to visit the United States. They received the visas because Lake submitted their applications using the referral process and purported that a government interest existed for their visit to the United States. On the referral form Lake wrote that "[a]pplicants have worked with the Executive Officer (EO) Criminal Division in support of administrative functions, Moscow Office." He signed it "Joe Lake for BB." In addition to being the ICITAP and OPDAT Coordinator, Bratt retained the title and many of the responsibilities of the Executive Officer.

We determined that neither woman had ever worked for Bratt or the Criminal Division. Both women socialized extensively with Bratt during his visits to Moscow, but Bratt did not have a professional relationship with them. We concluded that the statement written on the referral form was false.

We found that Bratt first visited Moscow in November 1996 during which he received a tour of various tourist sites from a Russian interpreter. According to the interpreter, during the tour she told Bratt that she also worked for a Russian "match-making" agency. She said that in response, Bratt told her he would like to meet a single Russian woman. The interpreter contacted a business associate, Bolgak, who had a friend who was single, Koreneva. Bratt met Koreneva and Bolgak on his next trip to Moscow, in January 1997. On this trip, as well as his later trips to Moscow, Bratt socialized extensively with Koreneva and Bolgak, usually meeting them for dinner or drinks.

During the January trip, Bratt invited the women to come to the United States to visit him. Koreneva told Bratt that she had previously been denied a visa to visit the United States. Between the January trip and his next trip to Moscow in March 1997, Bratt investigated how Russians could obtain visas to visit the United States. He made inquiries of a personal friend who worked for the State Department and also of Cary Hoover, the Special Assistant to the ICITAP Director. Bratt learned that Russians applied for visas at the American

Embassy in Moscow, that they were interviewed by Embassy officials, and that the Embassy made a determination as to whether the applicant would return to Russia. Bratt also asked Hoover specifically for information about the referral process.

In March 1997 Bratt and Hoover returned to Moscow on business. During this trip Bratt and Hoover met with an unidentified Embassy official to learn more about the visa process. The evidence showed that Bratt, Hoover, and the Embassy official discussed the likelihood of Koreneva being denied a visa. During the meeting Bratt told the official that one or both of the women might work for the Department of Justice in the future. We concluded that Bratt learned through these various inquiries that Koreneva would likely be denied a visa again if she used the standard application process.

Although Bratt and Lake deny it, the evidence showed that Bratt returned to the Embassy again during this March trip, this time accompanied by Lake who was also in Moscow, and met with Donald Wells, the head of the Embassy office responsible for issuing visas through the referral process. Bratt and Lake told Wells that they wished to bring two women with whom they had a professional relationship to the United States for consultations. Wells told the men that the referral process could only be used if there was a government interest in the women's visit to the United States.

We also learned that within a few days of the meeting with Wells, Lake obtained a visa referral form from the Embassy. The evidence showed that Lake called Bratt, who had returned to the United States, to discuss the form. Lake submitted the women's applications and the visa referral form containing the false statement about the women having worked for the Executive Officer to the Embassy. The visas were issued shortly thereafter although they were never used by the women. Although he initially falsely claimed to the OIG that he was just friends with Koreneva, Bratt later admitted to the OIG that he had an intimate relationship with her.

We concluded that Bratt and Lake knowingly used the referral process even though they were aware that it required a government interest in the women's visit and that no such government interest existed. We also found that Bratt's and Lake's explanations of their conduct, as well as their denials that certain events happened, were not credible. We concluded that Bratt and Lake committed egregious misconduct.

B. Security Failures at ICITAP

In April 1997 the Department of Justice Security and Emergency Planning Staff (SEPS) received an allegation from an OPDAT employee that Special Assistant to the ICITAP Director Hoover had improperly given classified documents to individuals who worked at ICITAP and who did not have security clearances. SEPS and the OIG confirmed the allegation. SEPS then conducted an unannounced, after-hours sweep of the ICITAP offices on April 14, 1997, to further assess ICITAP's compliance with security rules and regulations. During that sweep and a follow-up review conducted by the Criminal Division Security Staff, 156 classified documents were found unsecured in the office of Joseph Trincellito, ICITAP Associate Director. The OIG and SEPS conducted further investigation to determine the extent of ICITAP's security problems and ICITAP management's responsibility for the failures.

The OIG found that the problems discovered in the 1997 security reviews had existed for many years. Evidence showed that senior managers provided or attempted to provide classified documents to uncleared consultants or other staff. Staff, including senior managers, routinely left classified documents unsecured on desks, including when individuals were away from their offices on travel. Stromsem, Hoover, and Trincellito improperly took classified documents home. Highly classified documents containing Sensitive Compartmented Information (SCI), or "codeword" information, were brought to the ICITAP offices even though ICITAP did not have the type of secure facility (a Sensitive Compartmented Information Facility or "SCIF") required to store SCI. The evidence showed that ICITAP inaccurately certified to United States Embassies that individuals had security clearances when they did not. We also found one instance where classified information was sent over an unsecure e-mail system.

As an example of the inattention ICITAP managers gave to security, we set forth the troubling history of ICITAP Associate Director Trincellito's handling of classified information. From 1995 through early 1997, ICITAP's security officers repeatedly found classified documents left unattended in Trincellito's office. The security officers warned Trincellito that he was violating security rules, and they also notified other ICITAP managers about the problem. One security officer, after becoming aware of repeated violations, documented the violations in writing and recommended discipline for

Trincellito. ICITAP Director Stromsem on occasion spoke to Trincellito about his violations and attempted to make it easier for him to comply with rules by putting a safe in his office. However, in the face of repeated violations indicating that Trincellito refused to comply with security regulations, Stromsem and other senior ICITAP managers failed to take sufficient action, such as initiating discipline, to ensure that Trincellito complied with security regulations.

We found that ICITAP managers' own violations of the security rules, their tolerance of Trincellito's known violations, and the removal of the security officers who attempted to enforce the rules sent a message that security was not important at ICITAP. We also found that the Criminal Division did not adequately supervise ICITAP's security program even though security reviews conducted by both SEPS and the Criminal Division beginning in 1994 showed a pattern of security violations.

In this chapter we also discuss the security implications raised by Bratt's involvement with Koreneva. Bratt held a high-level security clearance and had access to highly classified documents. We concluded that Bratt's intimate involvement with a Russian citizen about whom he knew very little, his invitation to her to visit the United States and his office, his improper use of his government position to obtain a visa for Koreneva and Bolgak, and his attempt to conceal the true nature of the relationship left him vulnerable to blackmail and represented a security concern.

We found that the actions of another ICITAP employee who was intimately involved with a Russian national also represented a security concern.

C. Business Class Travel

We found that Bratt and other ICITAP and OPDAT managers improperly flew business class when traveling to and from Moscow in 1996 and 1997. Government and Department Travel Regulations restrict the use of business class by government travelers. Even in circumstances when business class may be used, it must be authorized by the traveler's supervisor. We found that Bratt instigated and approved a scheme to improperly manipulate his flight schedules in order to qualify for business class travel. We concluded that Bratt's and the

other managers' use of business class was not authorized and violated the rules limiting the use of business class travel.

On one trip, in November 1996 Bratt, Lake, and Thomas Snow, the Acting Director of OPDAT, traveled to Moscow and several other European cities using business class on at least one leg of the trip. Business class was arranged by the Department's travel agency because the method used by the airlines to calculate the cost of trips with several stops made the use of business class less expensive than coach class. However, we found that a weekend stop in Frankfurt, Germany, violated the Travel Regulations and that the stop should not have been used as a basis to obtain business class accommodations. We also found that the Department's travel agency had suggested an alternative itinerary for this trip that would have saved the government substantial money but that the itinerary was improperly rejected by Lake.

On a second trip, in January 1997 Bratt and Hoover flew business class to Moscow purportedly pursuant to the "14-hour" rule. If authorized by a supervisor, government regulations permit travelers to fly business class when a flight, including layovers to catch a connecting flight, is longer than 14 hours. For this trip, Bratt requested that his Executive Assistant determine whether the flight proposed by the travel agency qualified for business class under the 14-hour rule. His Executive Assistant checked with three different individuals and based on the information she received, she told Bratt that he did not qualify for business class because both legs of the flight took less than the requisite time.

Nonetheless, according to Bratt's Executive Assistant, Bratt told her to "do what you can to get me on business class." As a result, Bratt's Executive Assistant arranged with the Department's travel agency to lengthen Bratt's flight for the purpose of obtaining a flight long enough to qualify for business class travel. Even with the manipulations, however, the flight from the United States to Moscow was still less than 14 hours. We concluded that Bratt and Hoover did not qualify for the use of business class and that they were not authorized to use that class of service.

In March 1997, on a third trip, Bratt, Hoover, and Stromsem flew business class from Moscow to the United States even though there were economy flights available that would have fit the business needs of the travelers. Although Hoover and Stromsem were originally scheduled to fly on an economy class flight, Bratt directed that their flights be changed to avoid the

disparity between his subordinates traveling economy while he traveled on business class. We held Bratt accountable for all the excess costs of the March trip. On his fourth trip, in June 1997 Bratt flew business class on both legs of his trip to and from Moscow. Contemporaneous documents show that the choice of flights for both of these trips was dictated by Bratt's desire to use business class rather than for business reasons. In one facsimile to the travel agency concerning the June 1997 trip, Bratt's Executive Assistant asked, "Can you rebook him [Bratt] with a slightly longer layover in Amsterdam …. So that at least two extra hours is added onto the trip? …." In addition, the travelers were not authorized to travel on business class for either the March or June trip.

In sum, we found that Bratt pressured his staff to obtain business class travel and approved a scheme to lengthen his travel time solely for the purpose of obtaining flights that would qualify for business class travel under the 14-hour rule. We concluded that Bratt's manipulation of flight schedules to qualify for business class travel violated the Travel Regulations and was improper. The government spent at least $13,459.56 more than it should have for these four trips.

We also found that the Justice Management Division (JMD), which is responsible for auditing foreign travel vouchers, did not question the use of business class travel by Bratt or the other managers who accompanied him even when the lack of authorization was apparent on the face of the travel documents that the travelers submitted to be reimbursed for their expenses.

In this chapter we also detail a conversation between Bratt and his Executive Assistant that led her to believe that Bratt was coaching her how to answer OIG questions. Through a series of rhetorical questions that falsely suggested that Bratt was not involved in making decisions regarding his use of business class, Bratt tried to shift to his Executive Assistant the responsibility for the decisions leading to Bratt's business class travel. Bratt also told her that she should not report their conversation to anyone. For some time after that conversation, Bratt continued to contact her asking whether she had been interviewed by the OIG and what she had said. Despite OIG requests to Bratt that he not discuss the subject of our interviews with individuals other than his attorney, we found that Bratt discussed topics that were the subject of the investigation with individuals who would be interviewed by the OIG. Bratt also called individuals, such as the two Russian women for whom he had

improperly obtained visas, to alert them that the OIG would be seeking to interview them.

D. Failure to Follow Travel Regulations

During the course of the investigation, we found that ICITAP, OPDAT, and Office of Administration managers violated government Travel Regulations with respect to the use of frequent flyer benefits. Government regulations state that all frequent flyer miles accrued on government travel belong to the government. Because airlines generally do not permit government travelers to keep separate accounts for business and personal travel, travelers may "commingle" miles earned from business and personal travel in one account. However, the Travel Regulations are explicit that it is the responsibility of the traveler to keep records adequate to verify that any benefits the traveler uses for personal travel were accrued from personal travel.

We found that between 1989 and 1998 Bratt used 380,000 miles for personal travel. Bratt told the OIG that while he had no records to verify how many miles he had accrued from his personal travel, he believed that he had collected at lease 150,000 miles from personal travel as well as miles from the use of a personal credit card. Even giving Bratt the benefit of his recollection, we concluded that Bratt improperly used between 156,000 and 230,000 miles earned from government travel for his personal benefit.

We found that Hoover also used frequent flyer miles accrued from government travel to purchase airline tickets and other benefits for personal travel for himself and a family member. Stromsem used miles accrued on government travel to upgrade her class of travel in violation of government rules.

The investigation revealed that managers violated other Travel Regulations as well. Lake was inappropriately reimbursed by the government for some of the travel expenses associated with weekends that he spent in Frankfurt, Germany, when he was on personal travel. In violation of the regulations requiring a traveler's supervisor to authorize travel and approve travel expenses, Bratt repeatedly either authorized his own travel or had subordinates sign his travel requests. Both Bratt and Stromsem routinely had subordinates approve their travel expenses.

We received an allegation that Stromsem took a business trip to Lyons, France, as a pretext that allowed her to visit her daughter who was in Tours, France. Although Stromsem did not list a business purpose on her travel paperwork for her stop in Lyons, we did not conclude that her trip to Lyons was pretextual.

We also received an allegation that Bratt's trips to Moscow in 1997 were for the purpose of furthering his romantic relationship with a Russian woman. We found that the lack of advance planning for the trips, the fact that most of his meetings in Moscow were with his own staff rather than Russians, and his romantic relationship with a Russian woman strongly suggested that the trips to Moscow were not necessary or were unnecessarily extended for personal rather than government reasons.

E. Lake Buyout

On March 31, 1997, Lake retired from the federal government after receiving $25,000 as part of a government-wide buyout program (the Buyout Program) to encourage eligible federal employees to retire. The following day Lake began working for OPDAT as a consultant. Lake worked as a subcontractor to a company that had been awarded a contract to provide various support services to ICITAP. In May 1997 at Bratt's request, Lake worked as a consultant to the Immigration and Naturalization Service (INS) after Bratt was detailed there.

The Buyout Program prohibited former federal employees from returning to government service as either employees or as contractors working under a "personal services" contract for five years after their retirement. A personal services contract is defined by federal regulations as "a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, [to be] Government employees." Violation of the prohibition requires repayment of the incentive bonus.

We found that while at OPDAT and INS after his retirement Lake reported to and was supervised by Bratt, that Lake supervised and gave directions to federal employees or other contractors, that he used government equipment, and that other staff were often unaware that Lake was not a federal employee. The evidence showed that Lake essentially did the same job as an OPDAT consultant that he had performed while a government employee. We

concluded that Lake worked at OPDAT and the INS under a personal services contract in violation of the Buyout Program requirements.

The evidence showed that Lake planned for several months to return to work for the Department as a consultant. Both Bratt and Lake were warned by officials in JMD and the Criminal Division Office of Administration that Lake's return as a consultant could constitute a personal services contract. We concluded that Bratt and Lake improperly failed to ensure that Lake's work met the requirements of the Buyout Program.

After allegations were raised in the media that Lake had received Buyout money and then improperly returned to work for the Department, Bratt asked JMD for an opinion as to whether Lake should repay the Buyout bonus. A JMD official concluded that Lake was not obligated to pay back the money based upon a "good faith" exception to the rule requiring repayment. We determined that there is no "good faith" exception to the requirement that a person who violates the Buyout Program prohibition against performing personal services must repay the bonus. We also concluded that even if a good faith exception existed in the law it would not apply in this case as Lake was aware of the prohibition against personal services and was warned that his return as a consultant might constitute the performance of personal services.

We also found that JMD permitted Lake to work at INS without a contract for several months. In addition, while JMD issued a purchase order for Lake's INS work in July 1997, senior JMD procurement officials later expressed concerns that the purchase order that had been issued by their office was a personal services contract. We also found that hiring Lake as a subcontractor to a third party contractor added unnecessary costs to the contract.

F. Harris Contract

Jo Ann Harris was the Assistant Attorney General for the Criminal Division from November 1993 until August 1995, when she left the federal government. Under federal regulations, Harris was barred from contracting with the government for one year after her government service. In December 1996 Harris agreed to become an OPDAT consultant to organize, moderate, and evaluate three conferences that OPDAT was planning to hold at the International Law Enforcement Academy (ILEA) in Budapest, Hungary, and to

assist OPDAT in developing curriculum for other OPDAT training programs. The OIG investigated allegations that the award of this contract to Harris violated ethical rules that prohibit contracting with former government officials on a preferential basis. We found that OPDAT's award of a contract to Harris to develop curriculum for OPDAT programs and the processes used to develop the contract, to determine Harris' fee, and to modify her contract raised the appearance of favoritism.

In September 1996 Harris had discussions with Criminal Division managers, including Bratt, about the possibility of her assisting OPDAT as a consultant. In November 1996 Harris discussed on the phone with Bratt specific projects that she could work on such as the ILEA conferences and curriculum development. At Bratt's direction, an OPDAT official called Harris in early December 1996 and had a similar conversation with Harris during which she reiterated her interest in working on OPDAT projects. On December 12, 1996, Bratt, Harris, and Lake met in Harris' former office at the Department of Justice, and Harris agreed to Bratt's proposal that she work as a consultant on OPDAT projects. The Statement of Work, a contract document that set out the tasks that OPDAT was seeking from a consultant, was issued on January 23, 1997. The tasks included preparing for the ILEA conferences, acting as the conference moderator, and developing curricula for other OPDAT programs.

Because no competition was involved in awarding Harris' contract, we evaluated the propriety of OPDAT's award of her contract under the rules pertaining to the award of sole-source contracts. Sole-source contracts, which do not require the solicitation of competing bids, may be awarded when the exigencies of time or the consultant's expertise justify the waiver of the competitive process. We concluded that OPDAT could have awarded a sole-source contract for her work on the ILEA conference given her extensive experience and the short time frame that existed to prepare for the conference. However, we concluded that Bratt's decision to hire Harris to develop curricula for OPDAT projects other than the ILEA conferences created the appearance of favoritism. We also found that Bratt discussed with Harris what projects she could perform and the Statement of Work was written to fit those projects. We concluded that the process OPDAT used to develop Harris' contract violated the principle that the task to be accomplished should drive the development of a contract rather than the desire to hire a particular consultant.

We disproved the allegation that Harris was paid $65,000 for eight days work. She was paid approximately $27,000 for 42 days work on two ILEA conferences. However, we found that Harris' rate of pay was not the result of an "arms length" negotiation. Harris told Bratt, her former subordinate, to set the fee and to "scrub it" because she did not want to read about the fee in the newspaper. She agreed to accept $650 per day although her contract was later modified to permit her to be paid based on an hourly rather than a daily rate. We were unable to determine the basis for the $650 per day fee or find any evidence that Bratt and Lake used any comparable consultant fee arrangement as the basis for setting Harris' rate. Evidence showed that the Department of State, ICITAP, and OPDAT generally set the fees for their consultants at a lower rate. We concluded that the lack of a clear record setting forth the basis for the fee raised the appearance that Harris was given preferential treatment by her former subordinates.

We also found that OPDAT hired Harris to perform work outside the scope of the contract, which only authorized services to ICITAP not OPDAT.

G. Improper Personnel Practices

The OIG received various allegations relating to ICITAP's and OPDAT's hiring and management of personnel. The evidence showed that ICITAP and OPDAT managers misused contractor personnel. Federal regulations prohibit contractor personnel from directing federal employees or exercising managerial oversight. Yet, ICITAP and OPDAT managers did not distinguish between employees and contractor personnel and often failed to identify personnel working for contractors as such. As a result, ICITAP and OPDAT staff were often confused about consultant's roles and the scope of their authority.

We found that contractor personnel were used as managers. For example, one of ICITAP's Deputy Directors was a subcontractor employed by a contractor that provided a variety of services to ICITAP. After ICITAP Director Stromsem was advised by an administrative official that there were limits to the authority of personnel employed by contractors, Stromsem cautioned the Deputy Director about the limitations. However, Stromsem did not notify other staff about the Deputy Director's status as a subcontractor, and he remained in the position of Deputy Director until he became a federal employee six months later.

We found other problems with the use of contractor personnel including ICITAP's selection of particular consultants to be hired by its service contractors. This left ICITAP vulnerable to claims that it was violating the rules restricting personal services contracts. The practice of directing the hiring of consultants wasted money because ICITAP was performing the administrative work associated with hiring consultants at the same time that it was paying its service contractors administrative fees. In addition, consultants often began work before the Statement of Work was issued to the prime contractor. This practice required the paperwork to be backdated or ratified in order for the consultant to be paid. We also found that consultants were hired as federal employees and then made decisions affecting their former contractor employer in violation of ethical regulations. This practice was stopped by Mary Ellen Warlow, who became the Coordinator for ICITAP and OPDAT in 1997 after Bratt left for the INS.

We investigated allegations that ICITAP managers engaged in favoritism in the hiring of staff. Federal employees are hired after a competitive process that begins with the public issuance of a vacancy announcement that describes the application process and sets forth the responsibilities and other particulars of the position. Managers were alleged to have engaged in "preselection," that is, they decided whom to hire before beginning the competitive selection process required by federal regulations.

The hiring of Jill Hogarty in particular raised complaints. Hogarty was an attorney who worked as a bartender at Lulu's New Orleans Cafe, an establishment located near the ICITAP offices which was visited regularly by ICITAP Associate Director Trincellito and other ICITAP staff. While visiting Lulu's, Trincellito discussed ICITAP's work with Hogarty, and eventually Trincellito invited Hogarty to consider working as a consultant to ICITAP. Hogarty gave Trincellito her resume, and Trincellito wrote the paperwork that resulted in her being hired as an ICITAP consultant in September 1994. According to Hogarty, while she was a consultant to ICITAP, she dated Bratt for several months, from September 1995 to December 1995. At that time Bratt had resumed his position as Executive Officer but he retained authority to approve personnel decisions at ICITAP. In November 1995, during the time that Hogarty and Bratt were dating, Hogarty applied to become a temporary federal employee at ICITAP. She was selected by Trincellito for this position in December 1995.

On January 5, 1997, Hogarty's employment status changed once again, and she became a permanent federal employee. It was this selection that raised the complaint about preselection. The vacancy announcement for the position that Hogarty obtained opened on November 1, 1996. An ICITAP employee who held a term position told the OIG that while the position was still open for applications, he was discussing the announcement for the position with another employee when Hogarty told them that it was her position and that she had been selected for it. The employee told the OIG that even though he was interested in the position himself, he did not apply for it because he believed Hogarty's statement that she had already been selected.

To investigate the allegation of preselection, we attempted to determine which manager had selected Hogarty for the position and the reason for the selection. The paperwork listed Stromsem as the official requesting the recruitment. The paperwork did not show who had made the selection, however. All of ICITAP's top managers – Director Stromsem, Associate Director Trincellito (who was also Hogarty's direct supervisor), the ICITAP Deputy Directors, and Special Assistant to the Director Hoover – denied having selected Hogarty for the permanent position. Bratt also denied selecting Hogarty.

We found strong evidence that Bratt and Stromsem preselected Hogarty. An e-mail from Bratt on October 8, 1996, showed that Bratt authorized hiring Hogarty before the vacancy announcement that opened the position for competition was issued. We also learned from an ICITAP administrative official that in October or November 1996, Stromsem asked the official to determine how they could get Hogarty health benefits, which Hogarty did not have at that time. The administrative official said that he and Stromsem agreed to create a "term" position vacancy for Hogarty, but that instructions came back from Bratt through Stromsem to make the position permanent. We concluded that Bratt and Stromsem engaged in preselection in violation of federal regulations governing personnel hiring.

We investigated other allegations of favoritism, including the hiring of a consultant who was the father of Stromsem's former husband's stepchildren. He was subsequently selected by Stromsem to become an ICITAP term employee although his qualifications for the position were questionable. He was ultimately not hired for the term position because of the intervention of

Warlow when she became Coordinator. We concluded that Stromsem's involvement with this hire gave rise to the appearance of favoritism.

The OIG also received numerous allegations that Bratt gave favored treatment to a select group of Office of Administration and ICITAP staff and that he dated subordinates. Although we only conducted a limited investigation into these allegations, we found that some of the employees who socialized with Bratt received rapid career advancement and that Bratt was often involved in the promotions. We saw evidence that he dated staff in the Office of Administration and ICITAP and that in one instance he intervened to protect the salary of a subcontractor with whom he had a social interest but who had been found unqualified by Office of Administration staff for the position she held. We concluded that Bratt's actions gave rise to an appearance of favoritism.

H. Financial Management

In response to allegations that ICITAP's finances were mismanaged, the OIG examined ICITAP's financial management system. We found that until 1997 ICITAP could not account for its expenditures. ICITAP did not receive sufficient information from its contractors to permit it to track whether it received the goods and services for which it had paid. This led to significant problems in 1997 when the State Department, which was funding ICITAP's programs, asked for detailed information on how the money for programs in the Newly Independent States had been spent. ICITAP spent several months trying to provide an acceptable answer to the State Department's request and only succeeded by the use of estimates and extrapolations from the financial information ICITAP did collect. Although the OIG had advised ICITAP in its 1994 report following an earlier investigation into ICITAP's financial management system that ICITAP needed to collect more detailed information from its contractors, the problem was not remedied until after the State Department requested detailed financial information in 1997.

We found that ICITAP did not pay sufficient attention to the services its contractors provided and left itself vulnerable to overcharges. In one instance, a contractor notified ICITAP that it was unilaterally raising one of its fees, an action not permitted by the contract. Despite this notice, ICITAP did nothing for two years until a JMD contracting officer noticed the overcharge.

Subsequent negotiations with the contractor resulted in reimbursement to ICITAP of some of the money.

Office of Administration managers hired staff for the Criminal Division by using contractor personnel for jobs that were outside the scope of the contract under which they worked. In 1991 the Criminal Division awarded a contract to provide computer support services and in 1996 the Criminal Division awarded the same contractor a second contract for computer support services. The contractor provided employees to work in the Criminal Division's correspondence units performing tasks such as reading and responding to correspondence. This work was outside the scope of the first contract, which only authorized computer support services. The contractor also provided employees who worked as writers, planned conferences, published reports, and organized parties. The services of these personnel were outside the scope of both contracts.

We also found that Criminal Division managers failed to adequately supervise the contract and the contractor charged the government for the services of personnel who were unqualified under the terms of the contract. The contract set out very specific labor categories, such as Senior Programmer Analyst, and set forth the tasks to be accomplished and the qualifications for each labor category. We found problems with 25 of 56 of the contractor's personnel under the first contract and problems with 19 of 54 of the contractor's personnel under the second contract. We concluded that the minimum the contractor overcharged the government was $1,164,702.01.

The OIG received an allegation that ICITAP had spent substantial sums of money on an automated management information system (IMIS) that did not function properly. Our investigation showed that the development of IMIS was difficult, that users were unhappy with the product, and that a system designed to replace IMIS could not be completed by the contractor. We concluded that managers did not adequately analyze ICITAP's needs in the initial stages of development, and consequently IMIS was constantly being upgraded and modified leading to new problems. Also, the decision to use floppy disks to transfer information from the field to headquarters rather than develop a network capacity that could be utilized by all users led to significant problems, such as that the data from the floppy disks was often out of date or could not be accessed once it was received at headquarters. IMIS and the attempt to develop the replacement system ultimately cost more than one million dollars.

We did not investigate to determine how much money might have been saved had IMIS been better planned.

ICITAP's lack of planning also led to a substantial cost overrun of the translation budget for the first ILEA conference. A hypothetical transnational crime and the statutes of various countries were translated for the conference. The budget for translations was $16,000; the ultimate cost was $128,258. Lake delegated much of the responsibility for coordinating the ILEA conference to his assistant, who worked for a contractor. Lake's assistant ordered large amounts of material to be translated on an expedited basis without adequately determining the cost of the translations. The assistant failed to research whether some of the material was already translated and ordered some of the material on a costly expedited basis when it was unnecessary to do so. We concluded that Lake delegated responsibility to someone who was not qualified to manage the task and then failed to adequately supervise her.

We examined whether ICITAP could account for the goods it ordered for use in Haiti by selecting 131 expensive items to track. The investigation showed that the contractor responsible for providing goods and services to ICITAP in Haiti had in place an effective inventory control system and that ICITAP could account for all but one of the selected items.

I. Miscellaneous Allegations

In this chapter we summarize the results of our investigation of additional allegations, most of which we did not substantiate.

We found that Bratt directed that Criminal Division excess computers be sent to a school associated with a girlfriend, and Deputy Executive Officer Sandra Bright initiated and pursued the donation of computers to a school associated with her husband. In 1996 Bratt directed that 35 computers be sent to an elementary school in Virginia where his then girlfriend was employed as a teacher. On one occasion in 1996 Bright directed that 25 computers be sent to the school district in Virginia where her husband was employed as a principal and on another occasion in 1996 Bright directed that 30 computers be sent to the school at which her husband was employed. We concluded that Bratt's and Bright's actions created the appearance of favoritism.

We did not substantiate an allegation that Robert Lockwood was awarded an OPDAT grant because of his alleged association with Attorney General

Janet Reno. The American-Israeli Russian Committee that Lockwood directed received a $17,000 grant from OPDAT in 1997. At the time, Lockwood was the Clerk of Courts of Broward County, Florida, and was acquainted with the Attorney General, although not closely so. We determined that the Attorney General received a phone call from Lockwood in 1997 but that they only discussed Lockwood's organization and its mission; he did not seek any funding from her. Lockwood became involved with OPDAT through the OPDAT Resident Legal Advisor in Moscow. We did not find evidence that the Attorney General encouraged anyone to award a grant to Lockwood's Committee or that she knew that an award had been made. We also did not find any evidence that the Attorney General or anyone from her office took any action after Lockwood's grant was not renewed the following year.

The remainder of the chapter discusses allegations that we failed to substantiate concerning personnel issues, financial matters, allegations of retaliation, and other issues.

III. RECOMMENDATIONS AND CONCLUSIONS

In this chapter of the report, we offer a series of recommendations to the Department, including that certain employees receive discipline and that the Department seek compensation from employees who improperly received money or benefits from the Department. We also made nine recommendations concerning systemic improvements in the areas of travel, ethics, and training.

Bratt retired from the Department effective August 1, 2000, and is not subject to discipline. We recommended that the Department recover the costs of his improper use of business class travel and his improper use of frequent flyer miles.

Lake is also not employed by the Department any longer and is not subject to discipline. We recommended that the Department recover the $25,000 Buyout bonus and the cost of travel expenses that Lake improperly charged the government, including costs associated with the November 1996 trip to Moscow.

We found that Stromsem violated security regulations, improperly used frequent flyer miles accrued on government travel for personal benefit, and was involved in the preselection of Hogarty in violation of personnel regulations. We concluded that Stromsem's conduct warrants the imposition of discipline.

We also recommended that the Department recover the costs of Stromsem's improper use of frequent flyer miles.

We found that Hoover violated security regulations by disclosing classified information to uncleared parties and by removing classified documents to his home. We also found that he improperly traveled on business class on a flight to Moscow in January 1997 and that he improperly used frequent flyer miles accrued on government travel for his personal benefit. We concluded that Hoover's conduct warrants the imposition of discipline. We also recommended that the Department recover the costs of Hoover's improper use of business class travel and frequent flyer miles.

We concluded that Trincellito's repeated failure to observe fundamental security practices and his continued resistance to the advice and warnings of ICITAP's security officers warrants the imposition of discipline.

We also recommended that SEPS and other agencies responsible for issuing security clearances carefully consider the findings and conclusions set forth in this report before issuing a security clearance to the individuals most involved in the security breaches. In addition, we made non-disciplinary recommendations with respect to two other individuals.

During the course of the investigation, we observed various systemic issues, and we suggested improvements for the Department to consider relating to oversight of ICITAP and OPDAT, security, investigative follow-up, travel, training, performance evaluations, and early retirement programs. For example, we recommended that the Department monitor ICITAP's compliance with security regulations by continuing to perform periodic unannounced security reviews.

Because many of the travel violations that we found were apparent on the face of the travel forms, we recommended that the Department review the process JMD uses to audit travel vouchers. We believe the Department should offer increased training on travel regulations to employees and secretarial or clerical staff who process travel-related paperwork. And we offered suggestions designed to increase Department employees' use of frequent flyer miles for government travel and to decrease the incidents of improper use.

We recommended that increased attention be given to the recommendations and lessons learned from investigations. We found that despite numerous investigations of ICITAP, the same problems continued to surface and that managers failed to act on investigative recommendations. Management must take increased responsibility for ensuring that the results of investigations are appropriately considered and addressed.

CHAPTER ONE: INTRODUCTION

I. ALLEGATIONS

The Office of the Inspector General (OIG) initiated this review to investigate allegations of misconduct and mismanagement by officials in three Department of Justice Criminal Division offices: the International Criminal Investigative Training Assistance Program (ICITAP); the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT);[1] and the Office of Administration.

In April 1997, an ICITAP employee alleged to the Department of Justice Security and Emergency Planning Staff (SEPS), and later to the OIG, that an ICITAP manager had repeatedly and knowingly violated government security regulations. SEPS preliminarily confirmed that the allegation had some basis and, at SEPS' request, we opened an investigation. In the summer and fall of 1997, we received additional allegations that significantly enlarged the scope of our investigation. Also in August and September 1997, several newspapers ran accounts of security breaches, travel abuses, improper hiring and contracting practices, and improper conduct by ICITAP officials in Moscow. This OIG investigation reviewed these and other allegations of misconduct and mismanagement in ICITAP, OPDAT, and the Office of Administration.

II. BACKGROUND

ICITAP was created in 1986 to train police forces in Latin America to conduct criminal investigations. Since its inception, ICITAP's mission has expanded to encompass two principal types of projects: 1) developing police forces in the context of international peacekeeping operations, and 2) enhancing the capabilities of existing policing forces in emerging democracies based on internationally recognized principles of human rights, the rule of law, and modern police practices. Mark Richard, former Deputy Assistant Attorney General in the Criminal Division, told the OIG that because the Department of

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[1] The office's original name was the "Office of Professional Development and Training." The name was changed in 1997 when OPDAT's mission shifted exclusively to international training issues.

Justice believes that international or transnational crime will be a central priority of 21st century law enforcement, ICITAP provides training to ensure that foreign law enforcement officials work cooperatively with the United States and other countries.

Even though it is located in the Criminal Division, ICITAP programs may be instituted at the request of the National Security Council and the Department of State. ICITAP does not appear as a "line item" in the Department of Justice budget. Rather, the majority of ICITAP's budget is project-specific funding provided by the Department of State and the Agency for International Development.[2]

When the allegations against ICITAP officials were raised in 1997, ICITAP had a Washington, D.C.-based staff of approximately 40 employees. The Headquarters' staff oversees the work of ICITAP managers stationed in nine foreign countries and a cadre of contract instructors and advisors stationed in foreign countries who teach basic criminal investigative techniques and provide administrative guidance to local police organizations.

From 1986 until 1994, the Director of ICITAP reported to the Deputy Attorney General. In 1994, supervision of the office was transferred to the Criminal Division.[3] Even with this move, ICITAP retained a unique status within the Criminal Division: it was the only program office to report directly to the Criminal Division Assistant Attorney General (AAG). All other Criminal Division offices reported to the AAG through a Deputy AAG.

OPDAT, created in 1991, works with United States embassies and other United States government agencies to coordinate training for judges and prosecutors in South and Central America, the Caribbean, Russia, other Newly Independent States, and Central and Eastern Europe. The office also serves as the Department of Justice's liaison between private and public agencies that

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[2] Beginning in fiscal year 1998, the Department of Justice has funded the Director and Deputy Director positions at ICITAP.

[3] Throughout this report, unless otherwise noted, we identify an individual by the title or position she held at the time of the event. We also provide organizational charts and a list of names.

sponsor visits to the United States for foreign officials interested in learning about this country's legal system. Until 1996, OPDAT, like other Criminal Division program offices, reported to the AAG through a Deputy AAG. In 1996, OPDAT had seven staff members in its Washington, D.C. headquarters and it also had attorneys in Haiti, Poland, Russia, and other countries serving as Resident Legal Advisors. By 1999, OPDAT's headquarters staff had grown to 20.

The Office of Administration supports the Criminal Division's mission by managing its personnel, budget, procurement, and computer services. The Office, headed by the Executive Officer, is organized into operational staffs each directed by a Deputy Executive Officer. During the time period under investigation, the Executive Officer reported directly to the AAG for the Criminal Division. Robert K. Bratt served as the Criminal Division's Executive Officer from 1992 until April 1997. He came to the Criminal Division after serving as Executive Officer in the Civil Rights Division for almost six years. At various times during 1995 to 1997, Bratt was also responsible for the management of ICITAP and OPDAT.

A. Prior Investigations of ICITAP

This review of ICITAP's operations is not the first time the OIG has investigated allegations of misconduct or mismanagement in ICITAP. On April 22, 1994, the same day that Deputy Attorney General Jamie Gorelick transferred oversight of ICITAP to the Criminal Division, Criminal Division AAG Jo Ann Harris referred to the OIG a series of allegations of misconduct at ICITAP. At the time, David Kriskovich, an FBI Special Agent on detail, was the Director of ICITAP and John Theriault, also an FBI Special Agent on detail, served as ICITAP's Deputy Director. Theriault became Acting Director in July 1994 and permanent Director that September.

In response to the referral from Harris in 1994, the OIG completed two investigations of ICITAP that examined allegations of favoritism in selecting consultants, misconduct in travel reimbursements, poor quality of ICITAP's work products, waste and inefficiency in program and contract expenditures, and management of foreign programs. In the first report issued in July 1994, we did not substantiate allegations of misconduct involving ICITAP personnel, but noted "some wasteful and questionable practices as well as areas where better planning and communication should have occurred."

A second OIG report issued in August 1994 discussed weaknesses the OIG found in ICITAP's management. The OIG found that "ICITAP did not have an effective system to verify that goods and services ordered from the service contractors were actually received." The report also noted that ICITAP was deficient in its planning.

In January 1995 AAG Harris asked Bratt to review a proposed ICITAP reorganizational plan and also to investigate allegations of improper conduct by senior ICITAP officials. In late February 1995, Harris relieved Theriault of his ICITAP responsibilities and appointed Bratt Acting Director of ICITAP while the Criminal Division searched for a permanent replacement. In August 1995, Harris announced the selection of Janice Stromsem, formerly ICITAP's Associate Director for Operations, as ICITAP's new Director. Harris resigned from the Department of Justice at the end of August 1995, and John C. Keeney, a Deputy AAG in the Criminal Division, became the Criminal Division Acting AAG until June 1998 when James Robinson took office as AAG.

In summary, within the 18 months immediately prior to the period that is the primary focus of our current investigation, ICITAP had four different Directors (Kriskovich, Theriault, Bratt, Stromsem), had been the focus of two investigations into alleged managerial wrongdoing (OIG and an internal Criminal Division review), and three changes in the Department official to whom the ICITAP Director reported (Gorelick, Harris, Keeney). In addition, in 1994 ICITAP was asked to undertake the enormous challenge of training 5000 Haitian police officers in 18 months.

In September 1996 Keeney created the position of Coordinator to oversee the management of both ICITAP and OPDAT. At the same time, Keeney named Bratt as the first Coordinator. Sandra Bright was named Acting Executive Officer in the Office of Administration. However, she told the OIG that Bratt continued to be involved in the management of the Office of Administration until he left the Criminal Division in April 1997 to assume a

senior management position at the Immigration and Naturalization Service (INS).[4]

During mid-April 1997, after receiving the allegations of security problems at ICITAP as discussed previously, SEPS conducted an unannounced security sweep of ICITAP's offices. SEPS subsequently suspended the security clearances of ICITAP's Associate Director and Stromsem's Special Assistant.

B. OIG Investigation

The scope of the OIG's present investigation included allegations of misconduct, security violations, financial mismanagement, travel violations, and favoritism in ICITAP, OPDAT, and the Office of Administration. During the course of the investigation, we uncovered evidence of possible misconduct that had not otherwise been raised to us and where warranted we enlarged the scope of the investigation to encompass these areas. We found that some of the allegations touched on subjects that the OIG had identified as problems in 1994.

The OIG investigative team was led by an Assistant United States Attorney from the Eastern District of Pennsylvania on detail to the OIG and at various times four investigators, two auditors, an inspector, and a program analyst worked on the investigation. In addition, the team was supplemented by a SEPS employee and a special agent from the Department of State, who assisted at certain times with aspects of the investigation.

In the course of the investigation, we interviewed several hundred witnesses, primarily in Washington, D.C. but also in other cities in the United States and abroad. In order to fully investigate several of the more serious allegations, OIG investigators also traveled to Haiti and Russia to interview

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[4] In March 1998, after the OIG provided the Attorney General with an interim briefing on our current investigation, SEPS suspended Bratt's security clearance, and he was transferred from his position at INS to a position in the JMD. On July 19, 2000, Bratt applied for early retirement. He officially retired from the Department of Justice on August 1, 2000.

additional witnesses. In addition, the OIG team reviewed thousands of pages of documents.

One aspect of our investigation that merits comment was the relative paucity of neutral, credible, and forthcoming witnesses. We found that many witnesses who played central roles in several important matters suffered what we considered to be highly improbable memory lapses during their interviews. We found certain witnesses' memories especially weak with regard to acts that might constitute wrongdoing by ICITAP, OPDAT, or Office of Administration supervisors. In addition, to preserve the integrity of witness statements as well as to reduce the effect of the investigation, we asked witnesses not to discuss our interviews with other Criminal Division employees. Nevertheless, we found the topics we were investigating appeared to be broadly known and discussed among witnesses, despite our request.

C. Organization of the OIG Report

The report is organized into chapters by the type of allegation that we investigated. Chapter 2 addresses the allegation that Bratt and former Criminal Division Associate Executive Officer Joseph Lake improperly obtained tourist visas for two Russian women Bratt socialized with in Moscow. Chapter 3 examines ICITAP's security practices. In this chapter, we detail security violations we found, the failure of ICITAP managers to take steps to correct these persistent problems, and personal conduct that created unreasonable risks that classified information could be compromised.

Chapter 4 examines ICITAP and OPDAT managers' use of business class to travel to Moscow at government expense. Chapter 5 discusses other violations of Department of Justice and federal government Travel Regulations by ICITAP and OPDAT managers.

Chapter 6 examines the allegation that Lake violated the terms of his $25,000 "buyout bonus" after he resigned from the Department of Justice under a special early retirement program and then returned to work as a consultant on OPDAT and INS projects. Chapter 7 discusses the hiring of former Criminal Division AAG Harris as a consultant to OPDAT.

Chapter 8 discusses allegations of improper personnel practices at ICITAP, OPDAT, and the Office of Administration, including those offices' use of consultants. Chapter 9 examines allegations of financial mismanagement, including overpayment of more than $1 million to a

contractor hired to provide computer expertise to the Criminal Division's Office of Administration. Chapter 10 summarizes miscellaneous allegations, many of which we found were either false or could not be substantiated. In Chapter 11, we provide our conclusions and recommendations.

Finally, in an appendix at the end of the report, we include exhibits.

As we have done with some other OIG special reports, we afforded the main individuals whose actions we criticized or who we propose for discipline the opportunity to review the portions of the substantive chapters of our draft report that pertained to their conduct and to make written responses. This review process began July 10, 2000. After carefully considering their written comments, we included information from the responses in the report and revised the report when we believed it appropriate.

CHAPTER TWO: ISSUANCE OF VISAS TO RUSSIAN WOMEN

I. BACKGROUND

A. Allegations and Introduction

Several related allegations were made to the OIG about Criminal Division Executive Officer Robert K. Bratt and his trips to Moscow in late 1996 and 1997. In this chapter, we discuss the allegation that Bratt and former Associate Executive Officer Joseph R. Lake, Jr. improperly used their government positions to obtain visas for two Russian women, one or both of whom, it was alleged, were Bratt's "Russian girlfriends."

We determined that three questions needed to be answered to resolve this allegation:

- Did Bratt or Lake assist any Russian women to obtain visas?
- Did they provide assistance improperly?
- Did Bratt or Lake provide assistance knowing that it was improper to do so?

As a first step, we asked the Department of State to review its Moscow records to determine whether Bratt or Lake had assisted two Russian women to obtain visas to visit the United States. According to State Department records, in April 1997 the Department of State issued visas to Yelena Koreneva and Ludmilla Bolgak on the basis of a written representation Lake made, ostensibly on behalf of Bratt, that the women had worked with Bratt in Moscow and that a visit to Washington, D.C., would assist the women in the future.

Because the answer to the first question was affirmative – that Lake, and possibly Bratt, had assisted two Russian women in obtaining visas – we turned to addressing the remaining two questions.

In our investigation, we interviewed Bratt, Lake, and American Embassy (Moscow) staff. We also interviewed Americans and Russians who were with Bratt and Lake during their visits to Moscow, including the two Russian women whose visa applications are at the center of the allegations. To gather evidence and conduct interviews that would not otherwise be available to us, we conducted some of these interviews in Moscow. We sought and reviewed

various documents, including State Department records, hotel bills, and telephone records.

We begin by describing the visa process that was in place at the American Embassy in Moscow in the spring of 1997.

B. Process by Which Russians Obtain Visas to Travel to the United States

The United States requires citizens of certain countries to obtain visas prior to their arrival in the United States. The visa is a document that authorizes an individual to travel to a port of entry in the United States.[5] It is attached to a traveler's passport. In March and April 1997, Russians needed visas to enter the United States. The United States Embassy in Moscow was charged with issuing visas to qualifying applicants. Russians who wanted to visit the United States as tourists had to apply for a visa prior to purchasing their airline tickets to the United States.

One purpose of the visa process is to screen out foreign citizens who are likely not to return to their home country. The Embassy denied visas to Russian applicants who did not establish to the Embassy's satisfaction that they would return to Russia. Typically, Embassy officials evaluated the strength of an applicant's ties to Russia when determining whether to issue a tourist visa. In making their determinations, Embassy officials looked to factors such as whether an applicant was married, had children, or was traveling with or without family; whether an applicant had valuable property in Russia (an apartment, a business, a car); and whether, when, and where an applicant had previously traveled abroad. If, in an Embassy official's judgment, an applicant had inadequate ties to Russia, then the official would deny the visa application. To avoid unsuccessful re-applications, it was the policy of the United States Embassy in Moscow to tell unsuccessful applicants the reason for the denial of a visa. In that way, applicants knew not to apply until there had been a relevant change of circumstance.

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[5] The Immigration and Naturalization Service (INS) has final authority to admit a visitor to the United States at a port of entry.

Visa applications from persons who did not seek to reside permanently in the United States were processed and issued or denied by the Non-Immigrant Visa (NIV) Section of the Embassy. In March and April 1997, the NIV Section had two different processing mechanisms for non-immigrant visas: the standard process and the "referral" process. The standard process was available to any Russian. The referral process was available only at the request of an Embassy official and only in limited circumstances, usually when the United States government had an official interest in the person's travel.[6]

1. Standard Processing of Visa Applications

In March and April 1997, to apply for a tourist visa using the standard process, a Russian living in Moscow had to obtain an application form, fill it out, and present it in person at the American Embassy Consular Section, with a valid Russian passport and two photographs.[7] An Embassy official would review the papers and interview the applicant at the time the application was submitted. The reviewing American Embassy official immediately made and communicated the official's decision to the applicant. In addition, the applicant had to pay two fees: a processing fee and, if a visa was approved, a visa fee. Visa application forms were free and could be easily obtained from the Embassy.

The process imposed burdens on applicants. There were no appointments, and applications were taken on a first-come, first-served basis. Two lines had to be negotiated – the first to pay the processing fee, the second for the interview. The process routinely took at least one full business day.

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[6] United States Embassies in other countries have similar, but not identical, processes. The State Department issues regulations, but leaves to each Embassy how to implement them.

[7] The only exceptions to this general rule were for circumstances that did not apply to Koreneva and Bolgak, such as travel arranged under a travel agency program or group travel under government sponsorship.

2. The Visa Referral Process

Applications for visas that were referred followed an entirely different path. In the referral process, the request for a visa was made by an Embassy official, rather than the applicant. The Embassy recognized only two bases for an NIV referral: a professional basis that supported United States government interests and a humanitarian basis. As set forth in the American Embassy in Moscow's written guide to the referral process, the purpose of the referral process is to "provide VIP handling for nonimmigrant visa applicants where such treatment directly supports U.S. national interests. Except for cases presenting urgent humanitarian considerations, all referrals requesting waivers of personal appearance by the applicant must be based on U.S. interests."[8]

A referral was made by means of a form, signed by a United States Embassy Section Chief. In addition to the passport, photographs, and visa application completed by the applicant, the visa referral application package included a form with blanks for identifying the Embassy official making the request and the Embassy Section Chief authorizing the request; the form also included several blank lines on which to specify the purpose of the trip and the United States government interest. Unlike visa application forms, which are generally available to anyone, visa referral forms were not available to Russians. They were available only to the sponsoring Embassy official to refer professional contacts. They did not leave the Embassy, but were hand-carried by Embassy personnel from the requesting office to the NIV Section. The Embassy official submitted the visa application, accompanying documents, and the referral form directly to the NIV Section.

In Moscow, when a visa application was referred, the applicant did not have to appear in person at the Embassy or stand in line. By signing the referral form, the sponsoring Embassy official requested waiver of the interview and recommended issuance of the visa. As a State Department official familiar with the referral process told us, the visa referral ensures the applicant will get a visa because it is in the interest of the United States government.

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[8] There were 1,026 referred visa applications processed by the NIV Section in 1997.

In Moscow, in March and April 1997, visa referral applications were reviewed by NIV Section Chief Donald Wells.

C. The Koreneva and Bolgak Visas

The American Embassy issued visas for Yelena Koreneva and Ludmilla Bolgak on April 7, 1997. Their applications were referred. The visa applications were reviewed and approved by NIV Section Chief Wells. Depicted on the next page is the referral form submitted with the applications.

97C0407RE

KORENEVA

VISA REFERRAL APPLICATION

DATE: April 3, 1997

TO: Minister Counselor for Consular Affairs   Local 956-5051

FROM: KIA/Criminal Division   LES   Dept. (202) 514-5749
Embassy Officer   Section   Phone

THROUGH: ______
Signature of Section Chief

RE: Visa Referral for: (include full name and position/title)

Lyudmila Bolgak   Interpretor/Translator

Elena Koreneva   Administrative Secretary

I request a waiver of personal appearance and recommend visa issuance for the applicant(s) named above for the following reasons. Please state purpose of trip and USG interest.

Applicants have worked with the Executive Officer (EO) Criminal Division in support of administrative functions, Moscow Office. EO feels thatfor the above persons to visit HQs, Wash., D.C and metropolitan area would broaden appreciation of Div's national and international functions, and to acquaint them with out Govt. institutions, economy, culture and lifestyle. Such experience and familarization can only have positive impact on their return.

Type of visa (circle one): 3-Year Multiple
1-Year Multiple
~~1-Year Multiple X~~
Other: Single

The following items are attached:

- X Completed visa application form(s) OF-156
- X Passport sized photograph (two per applicant)
- X Valid Passport(s)
- X Other: I-20, IAP-66, sponsor letter, etc.
  Funding...

doc 5264W; May 7, 1996 (Supercedes All Previous Forms)

The referral form submitted with the Koreneva and Bolgak package was signed "Joe Lake for BB," as the "Embassy Officer" making the request. Bratt's Department of Justice telephone number in Washington, D.C., was listed as the submitter's telephone number.[9] In response to the form's direction to specify the United States government interest, Koreneva and Bolgak were described as having "worked with the Executive Officer (EO) of the Criminal Division in support of administrative functions, Moscow Office." The applications submitted by Lake are shown in the Appendix at Exhibit 1.

II. THE VISA REFERRAL FORM CONTAINED FALSE AND MISLEADING STATEMENTS

Using the referral process was appropriate only if the United States government had an interest in the women's visit to the United States or for humanitarian reasons. The referral form submitted for Koreneva and Bolgak stated that such a government interest existed because the women worked with the Executive Officer for the Criminal Division of the Department of Justice, who at the time was Bratt,[10] and implied that they would continue in that capacity. We sought to determine whether that representation was true or whether, as alleged, the women merely socialized with Criminal Division personnel, particularly Bratt. If Bratt's relationship with either woman was purely social, then obtaining a visa for her on the basis of an alleged government connection was improper and constitutes serious wrongdoing.

Lake admitted to the OIG that he had filled out, signed, and submitted the visa referral form. Lake claimed during an October 1997 OIG interview that he took a "broad interpretation" of the fact that one of the women, Bolgak,

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[9] Although the regulations state that only an Embassy Officer can make the referral and Lake was not an Embassy Officer, NIV Section Chief Wells told the OIG that he understood Bratt and Lake to be on temporary duty with the legal attache's office at the Embassy and the form was signed by the Embassy Law Enforcement Section Chief. See fn. 23.

[10] Although Bratt served as the ICITAP/OPDAT Coordinator at the time, he retained the title and many of the responsibilities of the Criminal Division Executive Officer.

had functioned for Bratt as an interpreter while Bratt was in Russia. Lake admitted, however, that all of the times he witnessed Bolgak translating for Bratt were social occasions. Lake also acknowledged that when he completed the referral form, he had no knowledge of whether either of the Russian women had worked for the United States government.[11]

We found substantial evidence that Bratt's relationship with both women was entirely social. He met them through Tatyana Kovalenko, a Russian who gave Bratt and others a tour of Moscow tourist sites in November 1996. According to Kovalenko, she arranged Bratt's introduction to Koreneva because Bratt, upon hearing that Kovalenko at one time had worked for an international "match-making" agency that introduced Russian women to American men, asked to meet a single Russian woman on his next trip. Kovalenko called her business associate Bolgak for a recommendation; Bolgak, who was married, proposed fixing Bratt up with Koreneva. It was Koreneva with whom Bratt ultimately developed a close relationship.

We found that Bratt always met with Koreneva and Bolgak in social settings – bars and restaurants, and on one occasion, Bolgak's home. There is no evidence that the women were ever part of a business meeting with Bratt; that they ever received payment for business services; or that they ever rendered any type of business service for the Criminal Division. Both women said that Bratt rarely spoke about Department work.

In an April 23, 1997, memorandum to Jerry Rubino, Director of the Department of Justice Security and Emergency Planning Staff (SEPS), Bratt characterized his relationship with Koreneva and Bolgak as purely social:[12]

> I would like to give you the names of two friends I have made during my trips to Russia over the past few months. These two

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[11] After reviewing a draft of this chapter, Lake submitted a written response to the OIG on July 27, 2000. In that response, Lake asserted that he was told by Bratt and others that Bolgak and Koreneva worked for the Executive Officer. We discuss Lake's claim that he acted in good faith in Section III E3c of this chapter.

[12] This memorandum was written less than one month after Lake submitted the visa referral form to the American Embassy in Moscow. Bratt wrote it after SEPS reminded Bratt of his obligation to report contacts with Russian citizens.

> individuals, [Bolgak and Koreneva], are Russian nationals I have met and interacted with socially in a setting completely unrelated to the Department's work in Russia. I know these two individuals only as friends ….

See Appendix, Exhibit 2.

ICITAP Director Janice Stromsem and Cary Hoover, ICITAP Special Assistant to the Director, both of whom accompanied Bratt to Russia and met the women, also described the women as friends of Bratt's whom he had invited to visit the United States for personal reasons. Stromsem said that she did not recall any discussion regarding using the women for Department of Justice work.

Neither of the women worked for Bratt on a professional basis. While Bolgak did translate for Bratt, she did so only so he could talk to Koreneva. Bolgak worked out of her home running her own business, the Prospect Business Corporation, and also worked for an American company known as "People to People." Bolgak told the OIG that she never discussed working for the Department of Justice with Bratt, that she was very busy, and that she was not looking for additional work. She also said that Bratt and Koreneva were just friends and that there was definitely no business connection between them. Koreneva also said there was never any discussion about her doing work for the Department of Justice and that the proposed trip to the United States was for personal reasons not business.

Accordingly, we find that the statement in the visa referral form that "[a]pplicants have worked with the Executive Officer (EO) Criminal Division in support of administrative functions, Moscow Office" was false. Additionally, the implication given in the form that the women would continue working for the Executive Officer was misleading.

III. DEPARTMENT OFFICIALS KNOWINGLY MADE FALSE AND MISLEADING STATEMENTS ON THE VISA REFERRAL FORM

We sought to determine whether Lake knowingly made false and misleading statements on the referral form and whether Bratt should be held accountable for the statements because he directed or authorized Lake to use the referral process knowing that it should only be used if the proposed visit supported government interests.

A. Synopsis of the Evidence

To place the evidence in context, we briefly summarize our factual findings. We then discuss these facts in detail and set forth Bratt's and Lake's explanations for their actions.

Bratt made four trips to Moscow, the first of which was in November 1996. On that trip, he asked Kovalenko, a Russian tour guide, to help him meet an unmarried Russian woman on his next trip. Between his first and second trips, he received correspondence from Bolgak, Kovalenko's business associate, and a letter and a photograph from Koreneva, Bolgak's unmarried friend. In January 1997, on his second trip, he met Bolgak and Koreneva. During Bratt's trips in January, March, and June 1997, Bratt socialized extensively with Koreneva and Bolgak. In January, Bratt invited the women to visit him in the United States. Bratt learned in January that although Bolgak had visited the United States on other occasions, Koreneva had been denied a tourist visa when she had previously applied to visit the United States.

After extending the invitation and after returning to the United States, Bratt made inquiries with a personal friend who worked in the State Department as well as with ICITAP employee Cary Hoover about the procedure for obtaining visas for the women. When he returned to Moscow in March 1997, Bratt and Hoover visited an unidentified Embassy official who described generally who qualified for a tourist visa. We concluded that Bratt learned enough from all of these conversations to realize that Koreneva would likely be turned down again for a tourist visa if she used the standard process.

Bratt and Lake, who was also in Moscow in March 1997, then visited Embassy official Donald Wells, who headed the NIV Section and ruled on referred visa applications. Wells described for them the visa referral process and explained that it could only be used when a proposed trip to the United States was expressly in the United States government's interest. Based on Wells' description of the conversation, we believe it would have been apparent to Bratt that if he represented that the women worked for him on government business in Moscow, the visa referral process would likely result in the issuance of the visas.

At dinner with the women during the March trip, Bratt gave Koreneva and Bolgak visa application forms and told them to return the forms to Lake, who was staying in Moscow for several additional days. After they did so, Lake obtained a visa referral form from the Embassy and called Bratt, who was

in the United States, to discuss the form. Lake falsely represented on the referral form that the women had worked for the Executive Officer and then submitted the visa referral application package to the Embassy on April 4, 1997, in Bratt's name. Shortly thereafter, the Embassy issued the visas.[13]

Lake told the OIG that he did not intentionally submit a false statement on the visa referral form. He stated that he was told by Bratt and others that the women had worked for the Executive Officer. In contrast, Bratt placed the blame for what he called the "erroneous" submission on Lake. Bratt said that he had no knowledge of the visa referral process, that he did not know that Lake was using the referral process, and that he had no intent to use the referral process.

Yet, the evidence and the inferences that can be drawn from the evidence show that Bratt and Lake willfully submitted Koreneva's and Bolgak's visa applications for referral processing despite knowing that the referral process could not be used unless the government had an interest in the applicants' visit to the United States. We also conclude that Bratt's and Lake's versions of events are not credible and are contradicted by substantial evidence.

B. Bratt Meets Koreneva and Bolgak

Bratt traveled to Moscow four times: in November 1996, January 1997, March 1997, and June 1997. Bratt was asked by the OIG how he came to meet Bolgak and Koreneva.[14] Bratt said that he met them through Tatyana

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[13] Neither Bolgak nor Koreneva used the visas to come to the United States. Koreneva and Bolgak told the OIG that they planned to come to the United States at the end of April 1997, but that the trip never happened. Koreneva explained that first there was a problem with the women's work schedule; then, when Koreneva and Bolgak were free, sometime after the end of April, Bratt said that he was not. In addition, Bratt then told them that he would only pay for one ticket. Bratt told the OIG that once he was reassigned to the Immigration and Naturalization Service, the women knew his time was at a premium and that his schedule did not permit a visit. Regardless of the reason for it, the women's failure to use the visas does not mitigate the misconduct associated with knowingly submitting false statements on the visa referral form.

[14] In October 1997, Bratt voluntarily agreed to be interviewed by the OIG. In February 1998, when the OIG attempted to re-interview Bratt about the many issues that had arisen during the course of our investigation, Bratt refused to answer further questions. A

(continued)

Kovalenko, an interpreter who gave Bratt's group a tour of Moscow tourist sites in November 1996. Bratt said that at a department store his group stopped for coffee and Cokes, and that he and Kovalenko talked about a range of things, "from the economy and what it was like in Russia, to American women versus Russian women." According to Bratt, he then told Kovalenko that he might be coming back to Moscow and he wanted to go on a tour on an afternoon he was not working. She said that she might be unavailable to take him on a tour on his next trip, and she suggested her friend Bolgak might be available to interpret. Kovalenko then said that Bolgak might bring along her friend, Koreneva, "who is a nice - an attractive single person to join your group." Bratt said he replied that he would "be more than glad to meet with" them. At a later point in the OIG interview, however, Bratt was asked if he recalled having a conversation about being fixed up with someone. He replied that when he and Kovalenko were talking about Russian and American women at the department store, Kovalenko asked Bratt if he was single and asked if he would like to meet one of her friends (Koreneva), who was also single. Bratt replied that he would. Bratt said that after returning to the United States, he received a letter and photograph from Koreneva and several e-mails and possibly a letter from Bolgak.

(continued)

Department of Justice employee may be "compelled," that is, ordered by a supervisor to answer questions but, if compelled, the answers to those questions may not be used against the employee in a criminal proceeding. Garrity v. New Jersey, 385 U.S. 493 (1967). Because of the evidence indicating that Bratt may have committed the crimes of making a false statement during a federal investigation (18 U.S.C. § 1001) and procuring a visa by means of a false statement (18 U.S.C. § 1546(a)), we referred the matter to the United States Attorney's Office for the District of Columbia before we sought to compel Bratt to answer further questions. The United States Attorney's Office ultimately declined prosecution, and in July 1998 Bratt was ordered to answer the OIG's questions. Despite being compelled, Bratt continued to refuse to answer certain questions about his relationship with Koreneva until August 7, 1998, when he was specifically directed by the Acting Assistant Attorney General for the Criminal Division to answer the questions he had refused to answer, as well as any other pertinent questions.

Kovalenko, however, reported the circumstances differently. As she recalled it, at some point during the tour of various tourist sites she gave to Bratt in November 1996, she explained to Bratt that she had once worked for a match-making agency, Scanners, that introduced eligible Russian women to interested American men. On hearing that, Bratt told her that he would be returning to Moscow in the near future and asked her to introduce him to a woman who was single. Bratt wrote his home address on the back of his government business card and asked Kovalenko to have the woman write him.

Kovalenko worked as an English/Russian interpreter and tour guide and occasionally translated for Bolgak's company, the Prospect Business Corporation. Kovalenko considered Bolgak a "business associate." When Bratt asked to meet a single Russian woman on his next trip, Kovalenko told the OIG, she did not know anyone suitable. Kovalenko said that she asked Bolgak if she knew anyone, and Bolgak proposed her friend, Koreneva.

Asked about the nature of his relationship with Koreneva and Bolgak, Bratt initially described them to the OIG as friends. He acknowledged numerous social meetings with the women while he was in Moscow on business trips. Bratt said that in January 1997 he met with the two women socially on three occasions. Bratt said that when he returned to Moscow in March and June 1997, he had at least three social engagements with the women on each of those trips. As we discuss later in this chapter, Bratt ultimately admitted to the OIG that in March 1997 there was a "little bit more intimacy" with Koreneva – "a little bit more hugging" – and that in June he was "sexually intimate" with Koreneva.

C. Bratt Extends Invitation to Visit the United States; Bratt Learns that Koreneva Previously Denied Visa

Bratt told the OIG that he extended an invitation for Koreneva and Bolgak to visit him in the United States because the women had shown him and Hoover "tremendous hospitality," and he wished to reciprocate. Bratt said he had a general discussion in January 1997 with the women about coming to the United States to visit Bratt and Hoover. According to Bratt, Koreneva stated that she wanted to visit the United States and Bolgak said that, although

she had been there, she would like to return. Bratt said that in response he extended a casual invitation to the women. He invited them to stay with him and said that he would show them Washington, D.C., and his beach house in Delaware.[15] Bratt acknowledged being told in January 1997 that Koreneva had previously been denied a visa to visit the United States. He stated that there was "virtually no discussion" about that issue then or on any subsequent occasion.

According to Bolgak, during Bratt's March 1997 trip to Moscow, Bratt invited Koreneva and Bolgak to visit the United States and to stay at his home. Bolgak told the OIG that she had previously traveled several times to the United States on business and with her husband and son for pleasure and was familiar with the visa process. She said that when Bratt invited them she told Bratt that the first step was to get visas. Bolgak said that she explained to Bratt that the visa process was difficult and that it involved waiting in long lines and that sometimes an applicant would wait for hours only to have the office close while the applicant was in line. Bolgak also said that she told Bratt that it might be difficult for Koreneva to get a visa because she had been refused in the past and because she was single. Bolgak told the OIG that Bratt said that he would take care of getting visas for the women.[16]

Koreneva, too, said that Bratt told them that he would take care of their visas. Koreneva confirmed that in response to Bratt's invitation, Bolgak told Bratt of the problems they had experienced in the past getting visas. Koreneva said that she also explained to Bratt her concerns about getting a visa. Koreneva said she told Bratt that she had been denied a visa to visit the United

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[15] In the October 1997 OIG interview, Bratt stated that he extended the invitation after Bolgak and Koreneva initiated a conversation about wanting to come to the United States. In a July 1998 OIG interview, Bratt said that the invitation was extended to all the Russians present at a dinner at Bolgak's home, but that Koreneva and Bolgak had expressed the most interest.

[16] A Russian interpreter who assisted the OIG in setting up interviews in Moscow told us that while he was arranging Bolgak's interview, Bolgak told him that she believed Bratt was going to help her "jump the line," so that she could get a visa without having to go through the long process of waiting in line to submit the application. It was a favor, she explained to the interpreter; it was easy for Bratt to get the visa.

States in 1994 and that the consular officer told her that she had been denied the visa because she could not prove that she would return to Russia. Bratt, she said, told her that he would take care of the visas; he did not explain how. Koreneva said she knew that she had to pay at least $20 for the processing fee and offered to give Bratt the money, but he told her not to worry because he would pay for the visas.

Koreneva also said that in the discussion about the trip, Bratt offered to buy airline tickets for both Koreneva and Bolgak and offered to have them stay with him in the United States. Koreneva said that they only had to bring money for meals and incidental expenses.

D. Bratt's Knowledge of Visas and the Visa Referral System

1. Bratt's Initial Inquiries about Visas

Bratt made at least three inquiries about visas before he returned to Moscow in March 1997. One was directed to Scott McAdoo, a childhood friend with whom Bratt remained close. McAdoo was a program analyst at the Department of State.[17] Bratt said that after his January 1997 trip to Moscow he talked to McAdoo about how Russians get visas to visit the United States. Bratt said, as did McAdoo, that Bratt asked only the most general questions, such as whether Russians apply for visas in the United States or in Russia. Bratt and McAdoo said that Bratt did not discuss visa referrals with McAdoo at that time.

McAdoo told the OIG he recalled that in their first conversation about visas, Bratt told him that he had become friends with two Russian women – an interpreter and her friend – who wanted to visit the United States. Bratt, he said, was unclear where to send the women to get tourist visas. McAdoo said that he told Bratt that the women should go to the American Embassy in Moscow, where they would have to complete the necessary forms and be interviewed.

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[17] McAdoo told the OIG that Bratt called him shortly after Bratt's interview with the OIG. Bratt told McAdoo that the subject of visas had come up in his OIG interview and that the OIG would probably contact McAdoo.

Bratt said that after hearing from McAdoo that the women had to arrange for visas in Moscow, he told that to Hoover. Hoover, according to Bratt, said that "he was aware of that already." Bratt stated that he and Hoover had no other conversation about visas prior to leaving for Moscow in March 1997.

Bratt specifically denied discussing visa referrals with anyone before his March 1997 trip to Moscow. In his OIG interview, Bratt said:

> We never talked about – I never talked with anybody about referring visas. I don't recall – you know, there was just – it wasn't that big a deal. It wasn't like I was running around here and there asking questions about visas. Cary [Hoover] and I talked about visas a little bit in general, you know, in that sense of – all these trips were learning processes for me because it was all brand new as far as never been overseas other than Haiti, wonderful Haiti.
>
> And, you know, I remember – and I don't remember specifically when, but I remember in that time frame talking about how does, you know – quotas on people. Just the general – the issues surrounding, you know, what are, you know – just general conversation about, you know, what the State Department does, what, you know – passports. Just general informational stuff about the comings and going of, you know, how the systems, various, you know, State Department works overseas.
>
> Never ever, ever, … I can tell you this unequivocally was there any intent, was there any discussion to go through referral. It wasn't discussed. It was just not, simply was not an issue that I dealt with.

Bratt denied having any knowledge about visa referrals until after his OIG interview in October 1997 when we raised the issue.

Hoover, however, told the OIG a different version of his conversations with Bratt about visas. According to Hoover, Bratt went on vacation immediately after returning from the January trip to Moscow. Hoover recalled that as soon as Bratt came back from vacation, Bratt asked him how Russians got visas to visit the United States. Hoover did not immediately respond but

told Bratt that he would investigate and get back to him. Hoover reported back to Bratt the next time they saw each other, a few days later.

Hoover's response to Bratt was based on Hoover's conversation with his roommate, who was a contract employee for the Department of State working on computerizing the visa process at embassies abroad, and on Hoover's own experience, both professional and personal. Hoover said he talked over the process as he understood it with his roommate, who told him that Russians got tourist visas for the United States by going to the American Embassy, turning in applications, paying fees, and submitting to interviews.[18]

Hoover said that he relayed this information to Bratt. Hoover told the OIG that he also explained to Bratt that the primary concern of Embassy officials was whether a visa applicant would overstay the visa. To assess this, Hoover told Bratt, Embassy officials would review with the applicant at the time of the interview the applicant's bank accounts, property, previous foreign travel, and similar facts.

Hoover said that after he told Bratt what he knew about the visa process, Bratt either made a statement or raised a question to Hoover about "the referral form." This comment or question required Hoover to go back to his roommate to ask about the mechanics of visa referrals. ICITAP had used the visa referral process in Haiti, although Hoover said he was not familiar with the mechanics of those cases. Hoover told Bratt that he would talk to his roommate and get back to Bratt.

According to Hoover, in response to Bratt's second inquiry, he learned from his roommate that in the visa referral process someone "vouches" for the visitor – presumably for the applicant's character and intention to return to the applicant's country. Hoover said that he told his roommate that the projected visits of Koreneva and Bolgak were not government related. Hoover said that his roommate told him that he did not think that it mattered; it was just a form the government employee filled out because it was a "vouchering." Hoover

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[18] Hoover's roommate was represented by the same attorney as Hoover. Hoover's roommate initially refused to be interviewed by the OIG. Later, through his attorney, he agreed to be interviewed, but only if the government paid his attorney's fees. We declined, and we were never able to interview him.

also said that his roommate told him that it was not a request for special treatment. Hoover said that he told all this to Bratt in February 1997.[19] Hoover said that after that conversation, Bratt told Hoover that he was very interested in bringing Koreneva and Bolgak to the United States and that when Bratt and Hoover returned to Moscow, they would have to go to the Embassy to talk to someone and get the necessary forms. Hoover told the OIG that he thought at the time that Bratt wanted to talk to someone at the Embassy to see whether the visa process could be made easier for Koreneva and Bolgak; to ascertain, at a minimum, that they would not be rejected for visas. It was Bratt's express concern, Hoover said, that Koreneva not be embarrassed by being rejected for a visa.

2. Bratt and Hoover Meet with Consular Official

We found that when Bratt returned to Moscow in March 1997, he made further inquiries about the visa process. Bratt acknowledged meeting with an Embassy official at the American Embassy in Moscow with Hoover present to discuss getting visas for the women. Both Hoover and Bratt described the meeting in innocuous terms, and both denied discussing or obtaining any information about the visa referral process.

Bratt described having a general conversation with an Embassy official, whose name Bratt did not recall, about obtaining tourist visas for the women. Bratt said that he told the official that the women were friends of his who would be traveling to the United States to visit him.

Bratt said that he asked the official if there were any issues involved in getting visas for single women. He said he was told that the Embassy would take a hard look at single women under the age of 20.[20] To the OIG, Bratt

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[19] Bratt has not attempted to explain his conduct in this matter by asserting that he relied on the roommate's mistaken advice regarding the visa referral process. Furthermore, as we establish later in this chapter, Bratt received specific information in Moscow from an Embassy official that a government interest was required in order to use the visa referral process. Therefore, while the incident shows that Bratt was making inquiries about visa referrals in contrast to his claims that he did not, the fact that the roommate gave erroneous advice does not provide Bratt with a defense for his conduct.

[20] Koreneva was 31 and single at the time.

denied knowing about the visa application process before he and Hoover went in March 1997 to the Embassy to pick up the visa application forms. Bratt said that until he went to talk to the official, "to stop by to pick up the forms ... I had no idea what forms you pick up or what, how it worked, until it was explained to us." Bratt said the official told him where the applications could be dropped off. Bratt denied discussing the visa referral process during this meeting, but Bratt told the OIG that Hoover brought up the possibility "that we would be working with these women in the future."[21] Bratt said that the

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[21] The following exchange took place during the OIG's August 1998 interview of Bratt:

Q: Did you ever represent to that consular official that the purpose of the trip was to consult with you in the United States on business?

Bratt: No. I did not talk about that, no.

Q: Did Mr. Hoover?

Bratt: Mr. Hoover brought up – when we were talking in general conversation about Mila [Bolgak] and Helen [Koreneva] was that we were talking about building police training programs in Russia, and that we were looking at – we were telling him what we were doing, and we were looking at hiring up, and it's a possibility that at some point we may – he was still looking at the possibility how we were going to staff it as far as interpreters. And this interpreter contract was one of the ones that we would have used, you know, possibility, Tat[y]ana [Kovalenko].

Q: And when you say "he," you mean Mr. Hoover?

Bratt: Correct.

Q: And you are telling us that it was Mr. Hoover who represented to this consular official at this meeting that he was thinking about hiring these women under the interpreter [contract] – did it occur at that meeting or another time when Hoover made that statement?

Bratt: During this brief meeting we talked in generalities about what we were doing and how we knew these women. There was a reference to, during this, that the potential for – that we would be working with these women in the future.

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Embassy official handed the tourist visa applications to Hoover as they were concluding the meeting.

Hoover told the OIG that he thought it was on Tuesday (March 25, 1997) that Bratt told Hoover he wanted to talk to someone in the Embassy and pick up visa applications for Koreneva and Bolgak. Hoover called the Embassy to arrange a meeting. Hoover said that when he tried to contact the "principal consular officer," an American woman who said she was his secretary told Hoover that the officer was out, but that he would be returning. She said that Hoover could call or come over later and introduce himself.

According to Hoover, later that day he and Bratt walked over to the Consular Section and met with a man Hoover thought was the principal consular officer. Hoover told the OIG that Bratt did the talking at the meeting. Hoover described the meeting as "a routine transaction between bureaucrats." He said that Bratt introduced himself either as an employee of the Department of Justice or as the Executive Officer of the Department of Justice Criminal Division and said that he was picking up tourist visa applications for two women. Bratt told the officer that the women were Russian friends whom he wanted to have visit on a "tourism trip." Hoover said Bratt told the officer that he wanted to know what was required for a visa because he did not want the women to be embarrassed by applying for and then being denied visas. Bratt, according to Hoover, gave the consular official some information about the women, such as their ages, marital status, and travel history.

Hoover recalled that the consular official asked some questions about the "unmarried woman" (Koreneva). The official said that if the women were in their early twenties, had never traveled, and had no bank accounts, then they would not get visas, but that he did not see any problem with the women as Bratt described them. Hoover recalled that, in response to Bratt's repeated requests for reassurance, the consular official repeated that as long as the women were not in their 20s and from the "provinces," there should not be a problem with the applications. Hoover did not recall the official talking about how, to whom, or where to return the completed visa applications.

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Hoover told the OIG that he had a "90 percent recollection" that Bratt represented at the meeting that there was a possibility that one or both of the women might work for the Department of Justice in the future. Hoover said that he was surprised, in his words "cold cocked," when he heard Bratt make this comment.

According to Hoover, at the end of the meeting, the official handed Bratt an envelope that Bratt put inside his portfolio. Hoover said that he never saw what was inside the envelope. He assumed it was two visa application packages.

Hoover said that he found the meeting with the Embassy official difficult because the meeting was not about official government business but Bratt's personal business, and he did not like being made a part of it. Hoover said that after the meeting with the Embassy official, Hoover told Lake about the meeting. Although Hoover did not recall specifically what he told Lake, he did recall talking to Lake about the matter, and Hoover told the OIG that he probably gave Lake a "blow by blow" account of the meeting.

Hoover contradicted Bratt's description of the meeting in certain respects. Hoover described Bratt as being the one who brought up the possibility that one or both of the women would be working for the Department of Justice, while Bratt claimed it was Hoover who brought up the topic. Similarly, Hoover claimed Bratt received the visa applications while Bratt asserted that it was Hoover.[22]

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[22] We attempted to determine with whom Hoover and Bratt spoke at the Embassy. Based on Hoover's description of the consular official and the location of the office in which they met, the consular official may have been Christopher Robinson. In March 1997, Robinson was an Embassy officer assigned to the NIV section. He had an office in that part of the Consulate to which Hoover described bringing Bratt. When we showed Robinson photographs of Bratt and Hoover, Robinson did not recall talking with either. He did, however, routinely talk to Americans about what the visa process entailed for Russians. He told the OIG that he typically spoke to Americans in the open area outside his office, the same area that Hoover identified as the place in which he and Bratt had their conversation with a consular official.

It was Robinson's opinion that it would have been difficult for a woman to obtain a visa based on what the OIG described to him as Koreneva's circumstances. He said that if the

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The evidence contradicts Bratt's claim that the unidentified Embassy official told him that the applications could be "dropped off." Hoover did not recall the official providing any information about where to return the completed visa applications. A State Department official familiar with the procedures used at the Embassy in Moscow told us that the Embassy did not accept applications that were dropped off. Under the circumstances applying to Koreneva and Bolgak, the official said that the only way to drop off a visa application was through the referral process.

3. NIV Section Chief Donald Wells Describes the Referral Process to Bratt and Lake

The evidence shows that Bratt returned a second time to the American Embassy in Moscow during the March 1997 trip, this time with Lake, and made further inquiries about visas for the women. On this second visit, both Bratt and Lake were specifically told about the visa referral process.

In November or December 1997, Marjorie Ames, the American Embassy in Moscow's Anti-Fraud Officer, was at a staff meeting in Moscow where she explained that the Department of Justice (the OIG) was investigating an allegation that two women may have been improperly referred for visas. Donald Wells, the Non-Immigrant Visa Section Chief at the American Embassy in Moscow, immediately told Ames that he thought that he knew

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person had been refused before, it would be very difficult to get a visa. If Robinson were told by Department of Justice employees that they did not want the Russian women to be embarrassed by having the visa applications turned down, Robinson said, he would have told them that the Russian women would have to prove that their situations had changed, unless they were government contacts. Robinson was certain that he would have drawn the contrast between a good case (a person with a business, a home, or a family was a good case) and a bad one (a single woman in her 20's, a student or recent graduate living with family was a bad case) and mentioned that if there was an ongoing government contact they would be able to go through the referral process. Robinson said that if he had been told that there was a business or professional contact with the Russians, he would have referred the Department employees to the NIV section dealing with the referral process.

which visas were involved and described a meeting with two men relating to referred visas for two Russian women.

In January 1998, the OIG interviewed Wells in Moscow about the meeting he had recalled to his colleague. At the beginning of the interview, the OIG showed Wells photographs of Bratt and Lake. Wells immediately recognized them as the men who had come to his office. Wells stated that approximately a year prior to the OIG interview, the two men in the photos, whose names he could not recall, met with him in his office. The subject of the discussion was how to obtain visas using the referral system.

Wells recalled that the men in the photographs (Bratt and Lake) told him that they were Temporary Duty Personnel (TDY) with the legal attaché.[23] Wells said that he recalled that they were with the Department of Justice; at the time he thought they were with the FBI. Wells remembered the case because he thought it was unusual to have two individuals come to his office inquiring about referring non-immigrant visa applicants. Wells also said the case stuck in his mind specifically because it was unusual to have two men discussing two women of a fairly young age and asserting that they had professional contacts.

Wells recalled that Bratt and Lake told him that they worked in Moscow with the women and that they wished to bring them to the United States for consultations. Wells said that although the men assured him that they had a business relationship with the women and that the women worked for them in an official capacity, Wells' "gut" feeling was that the situation was "unusual." Wells clearly recalled that because there were "two men asking for [visas for] two women," he emphasized to the men that a visa referral was only available where there was a professional relationship with the women. Wells said he may have gone on to tell the men that if the women were young, unmarried,

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[23] United States government employees in Moscow on official business are called "Temporary Duty Personnel" by Embassy personnel. The "Legal Attaché" is a Federal Bureau of Investigation (FBI) office in the Law Enforcement Section (LES) of the United States Embassy in Moscow. Mark Bonner, the OPDAT Moscow Resident Legal Advisor who worked with Bratt and Lake in Moscow, had office space in the LES. Thomas Robertson, the head of the LES, signed the Koreneva and Bolgak referral form as the section chief.

and had no professional relationships, "they might even have a hard time getting a visa in the regular process."

Wells told the OIG that a referred visa can only be issued for two reasons, a professional relationship or humanitarian reasons. Wells stated that in this case there was no humanitarian interest expressed by Bratt or Lake; the referral was "strictly for their work as they were working with these two individuals." Wells said that he briefed the men on the two different visa application processes: the referred visa process that required a professional relationship between a government employee and the visa applicant, and a second, standard one, for all cases where there was no professional relationship and no government business purpose to the visit. Wells said that he told the men that the visa referral form was part of the referral process at the American Embassy in Moscow. Wells told us that, in answer to their question, he told the men that if they sent his office a referral form signed by the head of the Embassy Legal Office that he would process it.

Wells explained to Bratt and Lake that his office does not process "personal referrals." Wells told the OIG that he informed the two men that they could give a personal letter in support of a visa application for a Russian friend, but that it would have to go through the standard process, not the referral process. The whole conversation, Wells told the OIG, lasted approximately five minutes.

A few days after the meeting, Wells said, he was presented with a visa referral package for two Russian women, Bolgak and Koreneva. He recalled that the package included a visa referral form signed by Thomas Robertson, Chief of the Law Enforcement Section of the American Embassy in Moscow. Wells told the OIG that even though at the time that Wells was speaking to Bratt and Lake he believed that their relationship with the women was social, not professional, when he saw the referred visa application package come across his desk signed by Robertson, he thought his gut feeling must have been wrong. Because the package contained the appropriate signatures and information, Wells approved the referral application.

Wells' recollection of meeting with Bratt and Lake is corroborated by Mark Bonner, the OPDAT Moscow Resident Legal Advisor. Bonner told the OIG that in March 1997 Bratt questioned him about how to obtain visas for Russian nationals, and Bratt asked Bonner to show him where the consular office was located. Bonner brought Bratt and Lake to a particular floor and

section of the Old Executive Annex of the Moscow Embassy and saw them go down a corridor. The description of the location provided by Bonner corresponded to the location of Wells' office. He said that he was told by Bratt and Lake to wait for them in a corridor. Later, Bratt and Lake returned, and Bonner escorted them back to his office. Bonner said he did not know with whom they met or why.[24]

One other piece of evidence corroborates that Bratt and Lake met with Wells. Because Bratt wanted to talk to someone at the Embassy about visas, Hoover's roommate prepared a small list for Hoover identifying three men who worked at the NIV Section of the Embassy in March 1997. Wells' name is on that list. Lake was last in possession of the list and gave it to the OIG.

Bratt denied talking to Wells, denied making any inquiries about the visa referral system, and denied having any knowledge about the referral system. When asked by the OIG whether he and Lake met with Wells, Bratt responded:

> Bratt: Unequivocably on anything, swear on mother's grave, that is totally false. That never occurred. I never, never ever sat in anyone's office with Joe Lake and had any discussion in Russia on the visas. Absolutely unequivocally did not happen.
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> * * *
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> Bratt: I never talked with anybody with Joe Lake on visas. Joe Lake and I never discussed visas with anybody. That is simply, simply untrue, absolutely untrue.

Bratt insisted that Wells and Hoover were lying:

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[24] Bonner, by his own admission, strongly dislikes Bratt, and we considered Bonner's animus towards Bratt in weighing the reliability of the evidence provided by Bonner. However, we also considered the fact that Bonner told us about escorting Lake and Bratt to a meeting before we interviewed Wells, and Bonner was not present when we interviewed Wells. Therefore, since Bonner would not have been able to gauge the significance of the information he provided to us, we do not believe that he created a story about escorting Bratt and Lake to a meeting or made up the location of the meeting.

Bratt: And, you know, Mr. Wells, I am not saying he is lying, but we never had – I guess I am saying he is lying because I did not, we did not have a discussion with him about the referral system.

* * *

Q: And if people told us that you made specific inquiries about referrals, and visa referrals, and what that process is about, prior to the time that you went to Russia in 1997, in March 1997, are they lying too?

Bratt: Yeah. We never talked about – I never talked with anybody about referring visas.

In an interview with the OIG in May 1998, Lake denied meeting with Wells. However, in his July 2000 written response to the OIG following his review of this chapter, Lake stated that he and Bonner met with Wells to obtain information "that was necessary to obtain visas for two Russian women to go to the United States as guests of Bratt." Lake denied that Bratt was present during the meeting.

In Bratt's August 2000 written response to the OIG, Bratt again denied meeting with Wells. He stated that prior to submitting his response he learned from Lake that Lake and Bonner had met with Wells. Bratt contended that this supported his claim that he knew nothing about visa referrals.

4. OIG's Conclusion

The evidence from Wells, which is supported by Bonner, directly contradicts Bratt's claim and Lake's original claim that neither Bratt nor Lake spoke with Wells. Wells and Hoover contradict Bratt's claim that he had no knowledge of visa referrals in March 1997.

The evidence shows that prior to the March trip to Moscow, Bratt was making plans to have the women visit and was making inquiries of Hoover and McAdoo regarding the visa process. Bratt claimed that he only asked for basic information about the visa process. Yet, there was little reason for Bratt to make such efforts to get that basic information. Bratt knew that Bolgak knew how to obtain visas using the standard process because, as she had told Bratt, she had been to the United States on several occasions. In fact, the evidence shows that Bratt went beyond getting general information and asked Hoover

specifically about the referral process, thereby indicating that he already had some knowledge of the referral mechanism, at least enough information to ask a question about it.

Bratt and Hoover's meeting with the unidentified Embassy official before Bratt and Lake met with Wells is also significant. Hoover stated that he had a "90 percent recollection" that Bratt brought up the possibility that one or both of the women would be working for the Department of Justice. Although Bratt claimed that Hoover was responsible for bringing up the topic, Bratt did admit that it came up during the meeting. If Bratt was only seeking information about tourist visas, there would have been no reason to falsely claim that the women might work for the Department of Justice in the future. If, on the other hand, Bratt knew before the meeting, or learned during it, that a working relationship might ease the visa process, then claiming such a relationship would make sense.

In addition, although Bratt claimed that the purpose of his and Hoover's meeting with the unidentified Embassy official was to learn more about the visa process – "I had no idea what forms you pick up or what, how it worked, until it was explained to us" – very little about the process was discussed during this meeting. Hoover could not recall the official providing any information about how, to whom, or where to return the completed visa applications.

Rather, considering Hoover's account of what was said at the meeting, the focus of the meeting was the likelihood of the women, particularly Koreneva, being denied a visa. According to Hoover, during the meeting Bratt expressed his concern about embarrassing Koreneva if she was denied a visa. We believe that Bratt learned enough during this meeting to realize that Koreneva, a single woman who had previously been denied a visa, likely would be denied a visa again if she used the standard application process. This caused Bratt and Lake to meet with Wells, to represent to Wells that they wanted to bring two women who worked with them in Moscow to the United States, and to ask about the visa referral process through which Bratt might be able to obtain Koreneva's visa for her.

At the meeting with Wells, Bratt and Lake learned explicitly, to the extent that they did not already know, that the visa referral process required the government to have an interest in the issuance of the visa; Bratt's personal interest in the visit would not be sufficient. Therefore, contrary to his own

statements, Bratt did know about the referral process before the visa applications were submitted.

We did not credit Lake's latest version of events in July 2000 in which he claimed that he and Bonner, not Bratt, met with Wells. Bonner denied attending any meeting with Lake where visas were discussed.[25] Bonner told the OIG that on the occasion when he accompanied Lake to pick up the passports that neither he nor Lake discussed visas with any Embassy official and that Lake picked up the visas from a woman. In addition, despite two OIG interviews that covered the subject of Lake's involvement in submitting the referral form in some detail, Lake never mentioned in his interviews such a meeting with Bonner and an Embassy official to discuss visas. In May 1998, when Lake was specifically asked whether he met with Wells, he denied it. Lake did describe an occasion when, according to Lake, Bonner accompanied him to the Embassy to drop off the visa applications and they met an unidentified individual who gave Lake the visa referral form. (Lake's description of this is discussed later in this chapter, in Section III E2.) However, Lake's description of that encounter does not match Well's description of his meeting with the two men. Wells told the OIG that the men asserted that the female visa applicants worked with the men, and Wells said he specifically told the men that the referral process required a government interest in the women's visit. Lake said he only recalled that the man who handed him the form may have said that filling it out was only a "formality" and that Lake never told the man anything about the purpose for the women's visit.

In addition, in his July 2000 written response, Lake said he met with Wells to obtain information "that was necessary to obtain visas for two Russian women to go to the United States…." Yet, there was no reason for Lake to have such a meeting. Bratt had already been told how to obtain visas by McAdoo, Hoover, Bolgak, Koreneva, and an unidentified Embassy official. Lake had the women's application forms; there was no further information that he needed. Therefore, because Lake's July 2000 version of events is

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[25] We also believe that if Bonner had been present for a meeting such as described by Wells that Bonner would have told us about it because it would have incriminated his nemesis, Bratt.

inconsistent with his previous versions as well as other evidence, we do not credit it.

E. The Visa Referral Package is Submitted to the Embassy

1. Bratt Gives Koreneva and Bolgak the Visa Application Forms; Bratt Asks Lake to Submit the Applications

In the evening of the same day in March 1997 that Bratt and Hoover met with the unidentified Embassy official and obtained the visa application forms, Bratt, Hoover, Lake, and Stromsem had dinner with Bolgak and Koreneva at Planet Hollywood in Moscow. Bratt told the OIG that Hoover gave the forms to the women during the dinner. In his October 1997 interview with the OIG, Bratt said he told the women that they could "drop off" the applications or, if Lake was still in Moscow, they could ask Lake to drop them off at the Embassy. He said he told Lake about the visa applications and asked Lake to drop them off and to advance the visa fees for him. In his August 1998 OIG interview, Bratt said that at dinner Bolgak asked Bratt to return the forms to the Embassy because it was difficult for the women to take off from work. Bratt said that because he was leaving Moscow, Lake immediately volunteered to drop off the applications.

Hoover said that Bratt gave the forms to the women at Planet Hollywood. Stromsem, too, recalled that Bratt gave the women the visa applications during dinner at Planet Hollywood and that the others were "all just kind of listening" to Bratt telling Bolgak that she needed to fill out the forms. She recalled that Bratt told the women to return the applications to Lake. Bolgak told the OIG that, in Lake's presence, Bratt gave her the application forms, told her to complete them, and to return them to Lake. Koreneva told the OIG that Bratt told them he was leaving Moscow and that Lake would take care of the visa processing.

Lake said that he met the women for the first time at Planet Hollywood on the March 1997 trip. Lake said that he and Bratt discussed the women's visas the evening before Bratt left Moscow. (Bratt left the morning of Friday, March 28, 1997.) Bratt told Lake to check for an envelope at the hotel front desk the following Monday, because the women would be dropping off passports and completed visa applications. Lake said Bratt asked him to take the applications to a particular person at the Embassy. Lake said he did not remember the name of that person.

2. Lake's Explanation of How He Obtained the Referral Form

Lake told the OIG that pursuant to Bratt's instruction he picked up an envelope containing Bolgak's and Koreneva's completed visa applications at the hotel.[26] Lake said he asked Bonner to take him to the "INS offices" at the American Embassy.[27] Lake said that Bratt told him to ask for a specific "INS" employee. That person – Lake said he did not recall the name – was not in. Another man, also unidentified, helped him. Lake's attempt to drop off the applications, he said, was thwarted when the unidentified Embassy official told Lake that the visa application package needed to include a visa referral form and $40 for each visa. Lake said that the Embassy official handed him a visa referral form and the official may have said that filling it out was only a "formality." Lake said he did not identify himself and did not tell the official anything about the purpose of the women's trip.[28]

Lake said that he took a copy of the form back to Bonner's office to fill out. According to Lake, Bonner saw the completed form but never told Lake there was any problem with it. Lake said Bonner told Lake to have Robertson, the head of the Law Enforcement Section at the Embassy, sign the form. Lake put the completed form in Robertson's in-box. Lake said that Robertson later

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[26] In his second interview with the OIG, Lake said that Bolgak met him at the Hotel Metropol to deliver to him in person an envelope containing the visa applications.

[27] Lake said he needed Bonner to escort him through the Embassy. Lake was incorrect about the INS involvement. The State Department has responsibility for the issuance of visas, not the INS.

[28] As previously noted, Lake claimed for the first time in his July 2000 response to the OIG that he and Bonner met with Wells. Because Lake provided little explanation in his written response, we do not know if Lake is claiming that the unidentified Embassy official who gave him the referral form was Wells. If that is Lake's claim, it is not supported by the evidence: Lake's description of the meeting is different from Wells' description of the meeting he had with two men, and Lake's July 2000 description of the meeting is different from his prior accounts. For example, in May 1998 Lake described his conversation with the Embassy official as unplanned and occurring spontaneously when Lake was trying to drop off the women's application forms. In July 2000 Lake said he was at the meeting for the purpose of obtaining information about visas.

that day asked him what the form was about. Lake told Robertson his reasons, and Robertson signed the form.[29]

Lake's version of events is contradicted by other evidence. First, Ann Sausman, the administrative assistant to Robertson, recalled that Lake had either asked her for or, in her presence, had taken a visa referral form from her desk, which she described as a cubicle adjacent to Bonner's. Sausman told the OIG that she kept visa applications and referral forms, as well as other Embassy forms, on her desk. Sausman recalled wondering at the time why Lake needed a visa referral, since he had been in the country for such a short time. She did not talk to Lake about the form, however. Sausman also noted that although she normally handled the processing for all visa referrals in the Law Enforcement Section, she did not handle any of the paperwork involved in the Koreneva and Bolgak referral. Sausman stated that she could not recall any other temporary duty personnel who visited the Law Enforcement Section submitting a visa referral.

Second, Wells told the OIG that the American Embassy in Moscow was particularly firm about using the referral system only where a government interest existed; therefore, it is unlikely that an Embassy official would have simply given such an important form to Lake, an individual unknown to the Embassy official, with the instruction that filling it out was only a "formality."

Third, Lake claimed that Bonner accompanied him when he was given the application form by the Embassy official. Bonner recalled escorting Lake and Bratt into the Embassy and escorting Lake when Lake picked up the passports after the visas were approved; Bonner said that he did not recall escorting Lake on any other occasion. Bonner also denied reviewing the referral form or discussing it with Lake.

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[29] Robertson told the OIG that he had no recollection of signing the visa referral form, although he did confirm that the signature on the document was his. He said he approved referral letters on a fairly routine basis. Robertson acknowledged that there was an inherent risk in approving referrals for other officials, but when law enforcement personnel or a trusted senior-level official presented a referral to him for approval, he took at face value that it was factual and did not question the information on the referral.

3. Lake Called Bratt to Discuss the Referral Form

Lake dated the referral form Thursday, April 3, 1997. Embassy records show that Lake submitted the visa application package and paid the visa fee on Friday, April 4. The visas were issued on Monday, April 7, 1997.

The evidence shows that Lake called Bratt on April 3, 1997, the day that Lake dated the visa referral form. Bratt did not have any explanation for this phone call. Bratt and Lake are also inconsistent with each other regarding what Bratt knew about the visa referral form.

a. Telephone Records

Telephone records establish that Lake telephoned Bratt in Washington, D.C., on April 3, 1997, the day Lake dated the referral form and the day before Lake submitted the visa referral form to the Embassy.[30] The phone records the OIG reviewed show that on April 3, 1997, Lake placed a seven-minute phone call to Bratt's office starting at 8:45 a.m. Moscow time. That call was received in Washington, D.C. (Eastern Standard Time or EST) on April 2, from 11:45 p.m. to 11:52 p.m. Lake then made a sustained effort to reach Bratt at home. Starting at 11:59 p.m. EST, Lake twice called a number that was one digit away from Bratt's home number.[31] Lake then called Linda Cantelina, the Criminal Division security officer, at home from 12:07 a.m. to 12:12 a.m. While Cantelina said that she did not remember the call, she said that it would not be unusual for Lake to call her to get a phone number. After the call to Cantelina, Lake successfully dialed Bratt's home number. The telephone records show that the call lasted for three minutes, starting at 12:13 a.m. EST, April 3, 1997 (9:13 a.m. Moscow time).

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[30] The time in Moscow is usually eight hours ahead of the time in Washington, D.C. Thus, for example, when it is noon in Washington, D.C., it is 8:00 p.m. in Moscow, and when it is noon in Moscow, it is 4:00 a.m. in Washington, D.C. However, Moscow went to daylight savings time on March 30, 1997, meaning that the time in Moscow was moved forward one hour. The United States did not go to daylight savings time until April 6, 1997. Therefore, between March 30, 1997, and April 6, 1997, the time difference between Moscow and Washington, D.C., was nine hours.

[31] For one of those calls he got credit, presumably because it was a wrong number.

Phone records also show that there were two calls on April 3, 1997, from Bratt's office in Washington, D.C. (from the phone of his Executive Assistant), to Bonner's office in Moscow Each was just under 1½ minutes and was placed between 9:20 a.m. and 10:00 a.m., EST, or between 6:20 p.m. and 7:00 p.m., Moscow time. These are the only calls from Bratt's office to Bonner's office in Moscow between the time Bratt returned to the United States (March 28, 1997) and the time Lake left Moscow (April 9, 1997). Lake next called Bratt at home on Sunday, April 6, 1997. The call lasted 16 minutes.

b. Bratt's Explanation

To the OIG, Bratt denied that he knew that Lake had filled out a visa referral form or knew that Lake submitted the visa applications through the referral process. Bratt said he asked Lake to drop off the applications and then, Bratt said, he heard and learned nothing more about them until he was told, either from Lake or the women, that the visas had been issued. Bratt specifically denied talking to Lake in person or on the telephone about the visa referral form. Any telephone conversation he had with Lake after Bratt left Moscow, Bratt claimed, had to have been about another topic.

Bratt specifically denied any recollection of a midnight call from Lake. Bratt said that the only call from Lake that he remembered receiving after he left Moscow was a call at the office to tell him that the visas had been issued. When we told Bratt that telephone records showed a call on April 3, 1997, to his home, Bratt reiterated that he recalled talking to Lake during that period, but not at home and not to discuss the visa referral form.

Q: And you have no recollection of being informed by Mr. Lake that he was going to be required to fill out a visa referral form?

Bratt: No, he never called.

Q: Do you have any recollection of Mr. Lake ever telling you on the telephone, in person, at any time, that he had any difficulty returning to the embassy the visa application forms, completed visa application forms?

Bratt: In April of 1997? No.

Q: Or in March of 1997.

Bratt: No. Absolutely not.

* * *

Bratt: My last talk to Joe about this issue was at Planet Hollywood at dinner that night when it was being discussed. That was the last time that came up. The next time I heard was when he mentioned to me in some phone call somewhere after, you know, between the 1st and the 15th of April when he called in. But there is just – there is no gray area here. Absolutely, I am perfectly clear about this. Couldn't be clearer.

When asked about Lake's claim that Lake talked to Bratt about the visa referral form, Bratt said about Lake, as Bratt had said about Wells and Hoover, that Lake was lying.

Q: So if Joe Lake were to tell us that he received directions from you at about the time this form was filed, regarding this form, he would be lying?

A: Yes, he would, absolutely would be lying.

Q: And if he had any discussion with you about this form, at the time the form was filed, he would be lying?

A: Yes, he would, absolutely.

c. Lake's Explanation and Claim of Good Faith

Lake's version of events was different from Bratt's. In his first OIG interview in October 1997, Lake told us that he spoke to Bratt about the visa referral form when the office to which Bratt had directed him would not accept the visa application package. Lake said that an Embassy official told him that an additional form had to be completed and fees had to be paid. Lake said that he took the form the unidentified official gave him back to Bonner's office and called Bratt, who was now back in the United States. Lake said that he called Bratt to find out from Bratt how to deal with paying for the visas and filling out the form. Lake said that he and Bratt discussed generally what to put on the form and that he told Bratt that he had to write something regarding the purpose of the trip. Lake told the OIG that he thought the conversation

probably occurred on April 3, 1997, the day that he dated the visa referral form.

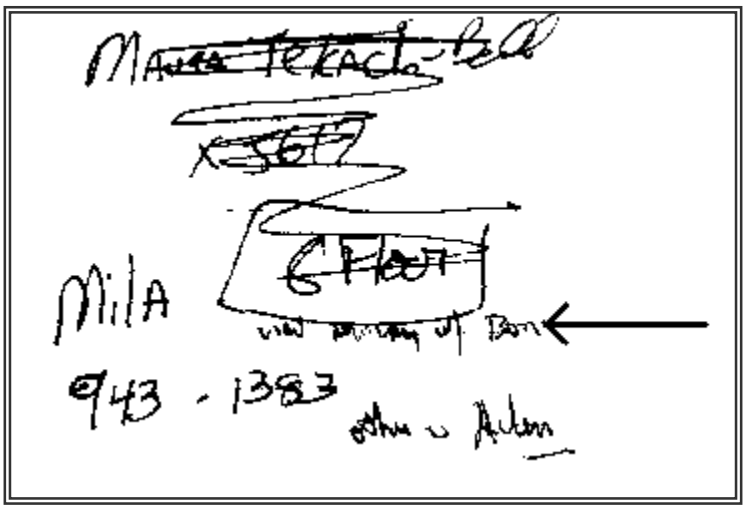
In his second interview with the OIG conducted in May 1998, Lake said at first that he had no recollection of any conversation with Bratt regarding the contents of the referral form. However, later in the same interview, Lake said that he believed he spoke with Bratt about the visa referral form and the fees, that he "might" have called Bratt to discuss the form, and that it was possible that he discussed every aspect of the form with Bratt.

We asked Lake about the calls that he made from Moscow on April 3, 1997, between 11:45 p.m. EST (April 2) and 12:13 a.m. EST (April 3), to Bratt's office and home. Lake said that he thought that he spoke to Bratt once, that he recalled only one late-night phone conversation with Bratt, and that he might have called Bratt to discuss the visa referral form. He said he did not recall leaving any phone messages for Bratt.

During the October 1997 OIG interview, Lake said that in response to his inquiry, Bratt said that the purpose of the women's trip was to visit him, to see Washington, D.C., to visit Bratt's office, and to go to his beach house. According to Lake, Bratt never told him any official government-related reason for the trip. Lake admitted, however, that he knew that describing a strictly social purpose was inadequate for purposes of the visa referral form; it required a government-related interest in Koreneva's and Bolgak's trip to the United States. Lake therefore wrote on the form that the women had worked for the Executive Officer. Lake said that his response to the question of "purpose" was "an exercise in creative writing."

In May 1998 Lake told the OIG a new version of events and Lake implied that this showed he had acted in good faith when he completed the visa referral form. Lake said that Bratt spoke to him on Bratt's last day in Moscow, prior to Lake submitting the visa applications. Bratt asked Lake to pick up the women's passports and applications and turn them in to the "INS" section of the Embassy. According to Lake, Bratt had given him a card with Bolgak's address and telephone number written on it. On the same card, Lake said that Lake wrote "old embassy, 2nd floor," "the other is Helen," and "working w/ Bob." Lake said Bratt made the statement about "working with Bob," and Lake wrote it down. Lake interpreted it to mean that both women were working for Bratt. Lake said that he had recently found the note mixed in with other papers in his Rolodex. He provided the document to the OIG. We show

the note below; the arrow has been added by the OIG to designate the section of the note at issue.



After reviewing this draft chapter in July 2000, Lake made a more explicit claim to the OIG in his written response. Lake stated that he believed the statements he wrote on the visa referral form were true because: 1) Bratt told him the women worked for Bratt, as reflected in Lake's notes, 2) Lake "believe[d] he had [a conversation] with … Bonner, about how payment for the two women's translation work was being handled," 3) Lake observed Bolgak translating for Bratt on one occasion, and 4) Hoover later substantiated that the women had been paid for their work.

Bratt told the OIG that he had no conversation with Lake about the women's visas after the Planet Hollywood dinner. Bratt also denied ever telling Lake where to go to drop off the visas, and he denied being present with Lake on Bratt's last day in Moscow. Implicit in Bratt's statements to us was a denial that he had ever told Lake that the women had worked for him or the Department of Justice.

Lake's claim that he acted in good faith when he wrote that the women had worked for the Executive Officer is contradicted by substantial evidence. First, we do not put much credence in Lake's claim about the meaning and significance of his notes. Lake only recalled this incident in a second interview with us, based upon some notes that he claimed to have made at the time of the conversation with Bratt. Notwithstanding that Lake told us that the

notes he wrote say "working w/ Bob," the notation appeared to us to state "wed. morning w/ Bon[ner]," and the last word in the phrase was clearly not "Bob."[32] Additionally, Hoover informed us that he met with Lake in December 1997, prior to Lake's second interview with the OIG, because Lake had found some notes that confused him. Lake did not show the notes to Hoover but asked if Hoover knew what "working for Bob" meant. Lake told Hoover that even though Lake had written the notes, he did not know what they meant. We find it incredible that Lake, knowing the seriousness of the allegations against him, would not immediately recall in his first interview, if true, that Bratt had told him that the women were working for Bratt and the Criminal Division. Instead, Lake claimed to the OIG that his memory was suddenly jogged by notes that he told Hoover he did not understand and found confusing. Accordingly, we have given little credence to this version of events. We believe that Lake tried falsely to exculpate both himself and Bratt in his first interview and then decided to simply exculpate himself by the time of his second interview by claiming the note said something it did not.

Second, Lake gave no details about his alleged conversation with Bonner regarding payment for the women's translation work, and Bonner denied having had such a conversation.

Third, with respect to Lake's claim that Hoover substantiated that the women had been paid, Hoover told the OIG during one interview that he might have said to Lake and others in March 1997 that because of Bolgak's facility with English, she had the potential to be valuable to ICITAP should ICITAP establish a program in Moscow. In a previous interview, however, Hoover denied to the OIG ever suggesting or considering having Bolgak perform

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[32] In his written response to us following his review of the chapter, Bratt stated that our interpretation of the notes, "wed morning with Bon[ner]," was further evidence that Lake and Bonner met with Wells. Lake, however, stated in his written response following his review of the chapter that he was confident the notes said "working w/ Bob" and that this was further evidence that Bratt had told Lake the women worked for Bratt. Although we disagree with Lake over the meaning of the notes, we do not believe that a reference to Bonner in the notes thereby supports a claim that Bonner attended the Wells meeting, as Bratt claims. Bonner met with Bratt and other members of Bratt's group and attended various meetings with them. The notes could refer to any of those meetings or some other issue involving Bonner.

interpreting work for the Department of Justice. Even in the light most favorable to Lake, Hoover's comments would not have supported Lake's statement on the visa referral form that *both* women *had* worked for the Executive Officer.

In addition, it is a fact acknowledged by all – including Bratt and the women – that the women did not work for the Department of Justice in any capacity. Therefore, neither Hoover nor Bonner would have had a reason to falsely tell Lake that the women had been paid for their work.

F. Motive

We explored whether there was a reason Bratt would direct that the referral process be used. We had been told by several witnesses that they assumed or believed, based on their observations of Bratt and Koreneva together, that Bratt was "interested in" Koreneva. Pursuit of a personal relationship with Koreneva could constitute a motive for Bratt to participate in making false statements on the visa referral document. We therefore asked Bratt about his interest in and relationship with Koreneva.

In his response to us, Bratt misled the OIG about several related topics: how he came to meet Koreneva, the circumstances under which he socialized with her, and the nature of their relationship. In his October 1997 OIG interview, Bratt described his relationship with the Russian women as social, based on a friendship they had developed during his travels to Moscow. Bratt compared the relationship to other friendships he had developed with people in various countries, such as a man who was his driver in Haiti. Bratt specifically stated that, although he liked Koreneva, he did not get romantically involved with her.

In his July and August 1998 OIG interviews, Bratt admitted that he socialized with Bolgak and Koreneva on numerous occasions. He said that in January 1997, he arrived in Moscow on Thursday, called the women on Friday, and invited them to dinner that night, where they were joined by Hoover. On the following Monday, Bratt, Bolgak, and Koreneva went to an Irish pub. Bratt and the women went to a restaurant either on Tuesday or Wednesday night of that trip.

In March, Bratt's group arrived in Moscow on Saturday, March 22, and Bratt, Stromsem, and Hoover had dinner with Koreneva and Bolgak that night. On Sunday Bratt went shopping with Koreneva in the afternoon. While

Hoover and Stromsem told the OIG that they saw Bratt bring Koreneva to the hotel on Sunday afternoon, Bratt denied taking Koreneva to his hotel that day. He refused, on the advice of counsel, to answer a follow-up question regarding whether he spent any other time alone with Koreneva. Sunday evening Bratt and Hoover joined Koreneva, Bolgak, and Kovalenko at Bolgak's apartment for dinner. This was a dinner that had been arranged prior to Bratt's March trip to Moscow. Later in the week (according to Bratt it was on Wednesday night), Bratt, Hoover, Stromsem, and Lake had dinner with Bolgak and Koreneva at the Planet Hollywood restaurant. At the dinner, Bratt gave the visa application forms to Bolgak and Koreneva. On Thursday night, Bratt, Lake, and Hoover had drinks with the two women. Bratt left Russia the morning of Friday, March 28, 1997.

On August 7, 1998, at the request of the OIG, Deputy Assistant Attorney General John Keeney directed Bratt to answer the OIG's questions about his relationship with Koreneva. After he received that direction, Bratt told the OIG that in March 1997, after the Wednesday night dinner at Planet Hollywood at which he had given the visa applications to the women, Koreneva returned with him to his hotel room. Bratt stated that he invited Koreneva to his hotel room so that he could give her some gifts and that she remained about 20 minutes. Bratt further acknowledged that on the next night (Thursday, March 27), his last night in Moscow on the March trip, he again invited Koreneva to his hotel room where, he said, "there was a little bit more hugging, a little bit more intimacy" with Koreneva. Bratt then said that he became sexually intimate with Koreneva when he returned to Moscow in June 1997.

Thus, Bratt's prior statements to the OIG that he had a friendly relationship with Koreneva that was not romantic were false.[33]

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[33] Bratt spoke to Koreneva and Bolgak about the ongoing OIG investigation and alerted the women that the OIG was going to interview them. The OIG initially planned to conduct an unannounced visit to Russia in December 1997. However, the OIG had to postpone the trip until January 1998 and logistics made it necessary to disclose to OPDAT in December the forthcoming trip to Moscow. On December 14, 1997, Bratt placed a 28-minute call to Bolgak. Bolgak told the OIG that Bratt called her and told her there was an investigation being conducted and it involved something "unpleasant." Bolgak said that Bratt did not tell

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The evidence shows that Bratt had a significant motive to circumvent the regular visa application process for tourists. At the time the visa applications were submitted, Bratt was involved in a romantic relationship with Koreneva. He had learned from Koreneva herself that the standard visa process might be an obstacle to Koreneva's coming to the United States. As Hoover told the OIG, Bratt repeatedly expressed his concern that Koreneva not be embarrassed by a denial of her visa application. Unless the regular visa process was circumvented, however, it was likely that Koreneva would be rejected for a visa again.

IV. OIG's CONCLUSIONS

We find that Lake intentionally made a false statement on the visa referral application form. We further conclude that Lake did so at Bratt's behest. We do not credit Bratt's claims that he had no prior knowledge of or involvement in the submission of Koreneva's and Bolgak's visa applications through the referral process. We believe that Bratt knew from Wells the requirements for the referral process and knew from Lake that Lake intended to complete and submit the referral form. Substantial evidence disputes Bratt's claim that Lake was acting on his own in submitting the visa referral form.

The evidence that we developed during the course of this investigation establishes that:

(continued)

her what the investigation was about, only that the investigators would be contacting her and that she should cooperate. During Koreneva's interview, she told the OIG investigators that Bratt called Bolgak to explain that he had some problems with his job and that a "commission" would be coming to Russia to interview them about the time they spent together.

Both women lied to the OIG about the relationship between Koreneva and Bratt in the same way that Bratt initially had. Koreneva falsely told the OIG that she and Bratt were "just friends," nothing more, and that she was never alone with him. Bolgak, too, said that Bratt and Koreneva were never alone and that they were "just friends."

- Bratt initiated the plan to have the women come visit him in the United States;
- Bratt had a romantic relationship with Koreneva;
- Bratt knew that Koreneva stood a substantial risk of being denied a visa if she applied using the standard process, thereby providing him with a motive to circumvent the routine visa processing system; and
- Bratt learned from an Embassy official that the referral process would circumvent the normal visa processing system but that it required that the applicant's visit to the United States be in the interest of the United States government.

Bratt's denial of the most important issue – his knowledge that Lake was submitting the visa referral form on Bratt's behalf – must be evaluated in the context that Bratt provided false or misleading information to the OIG regarding many different issues relating to the issuance of the visas.

Bratt's portrayal of how he came to meet Koreneva was different from the version told to the OIG by Kovalenko, who stated that Bratt specifically asked her to introduce him to a single Russian woman.

Bratt's initial description to the OIG of his relationship with Koreneva as friendly socializing did not accurately portray the true nature of their relationship. By his own subsequent admission, there was "a little bit more intimacy" the day after Bratt provided Koreneva with the visa application, and he became sexually intimate with Koreneva on his next trip to Moscow.

Bratt said that the concern expressed by Bolgak about getting visas was having to take off work to submit the forms. Bratt also said that although he knew Koreneva had been denied a visa previously, there was no discussion about it. Yet, both Bolgak and Koreneva described a conversation with Bratt in which they discussed how difficult it was to obtain visas, particularly for Koreneva, who had been denied a visa previously.

Bratt acknowledged making some inquiries about obtaining visas. After returning from the January 1997 trip, Bratt made inquiries of McAdoo, a personal friend, and Hoover about obtaining visas for the women. Despite obtaining the basic information that Bratt was supposedly seeking, that is, how Russians get visas to visit the United States, Bratt nevertheless sought

additional information about visas from Hoover and about visa processing from an unidentified Embassy official whom he met in Moscow in March 1997. We believe that the purpose of the meeting with the Embassy official was to determine the likelihood that Koreneva would again be denied a visa. We conclude that Bratt judged as a result of this meeting that Koreneva risked being denied a visa and he further learned, or already knew, that another mechanism existed that would provide a different result – the visa referral process.

The evidence shows that Bratt sought information specifically on the visa referral system. Bratt's adamant claim that he knew nothing about the visa referral system is contradicted by both Hoover and Wells. Hoover described a conversation about visa referrals that he had with Bratt after they returned to the United States from their January 1997 trip, a conversation initiated by Bratt. Even more significantly, Wells, a State Department employee with no interest in the outcome of this investigation, described a meeting with two Department of Justice employees to discuss visa referrals for two Russian women. Wells identified pictures of Bratt and Lake as the men with whom he had spoken and identified Koreneva and Bolgak, through their applications, as the women who were being discussed. Wells remembered the meeting because his instinct told him that something was amiss with the applications – feelings that he put aside when the paperwork for Bolgak's and Koreneva's visas came through with the appropriate signature. Wells' statement is corroborated by Bonner, who escorted Bratt and Lake to a location in the Embassy corresponding to Wells' office.

In his third version of events, Lake claimed that he attended the Wells meeting with Bonner, not Bratt. Lake's claim is not credible because it was inconsistent with Lake's prior versions, was denied by Bonner, and was inconsistent with Wells' version of the meeting. Moreover, Bratt and Lake's claim that Bratt did not meet with Wells does not address all the other evidence that demonstrates that Bratt directed or approved Lake's use of the visa referral process. As we discussed, Bratt made inquiries about the visa referral process to Hoover, Bratt falsely asserted to an Embassy official that the women worked for the Department of Justice, Bratt and Lake gave conflicting accounts about whether Bratt told Lake that the women worked for him, and Bratt could not explain the subject of a midnight call on the night before the visa referral form was submitted. All of this evidence, even

independent of Bratt and Lake's meeting with Wells, showed that Bratt directed Lake to use the referral process to obtain the women's visas.

Lake and Bratt contradict each other regarding whether any conversation about the visa referral form took place prior to its submission, and Lake has given differing versions about what he and Bratt discussed. Bratt claimed that he had no conversation with Lake about the visa referral form. In his first interview, on the other hand, Lake said that in a phone call with Bratt they discussed generally what to put on the referral form; in his second interview, Lake first said he could not recall a conversation, but then acknowledged that he believed a conversation about the visa referral form occurred and that he possibly discussed the entire form with Bratt. Lake's phone records show a midnight call to Bratt on the day that Lake dated the referral form. A subordinate is unlikely to contact a supervisor after midnight about something less than a topic of extreme urgency. Yet Bratt could not recall this late night phone call. We believe the most credible version of events that is consistent with the evidence is that after Lake obtained the visa referral form and before he submitted it, he called Bratt to discuss it and ensure that he was following Bratt's directions.

Lake claimed that when they were discussing the visa referral form, Bratt only told him that the purpose of the women's visit was to visit Bratt and Washington, D.C. Even under Lake's version of events – that Bratt did not direct the specific words to use on the referral form – Bratt is still responsible for the wrongful and improper use of the visa referral form. Once Bratt knew that Lake was using the referral process to submit the visa applications, he had a duty to ensure that Lake did not use that process or complete or submit the referral form. Instead, even under Lake's scenario, Bratt left it to Lake to describe a government interest, words that Bratt may not have wanted to state himself but which Bratt knew would be necessary to ensure a successful application.

In addition to the direct evidence that contradicts Bratt's claim that he knew nothing about Lake's submission of the visa referral form, we find that Bratt's and Lake's versions of their involvement strain common sense. Under Bratt's version, he did nothing for the women that they could not do for themselves. Bratt told the OIG that picking up and dropping off the application forms was the part of the process for which he offered assistance. Yet the only part of the visa application process Bolgak did not identify as

difficult was securing visa application forms. Indeed, Department of State officials told us that visa applications are freely and easily available in the Embassy and in other places around Moscow. Moreover, picking up an application form for Koreneva would not address, let alone solve, the problem that Bratt knew she had: establishing to the satisfaction of the Embassy that even though she was young, unmarried, and without substantial financial ties to Russia, she would return home after a trip abroad.

Furthermore, we do not believe Bratt's claim that Bolgak asked Bratt to drop off the visas and Lake interceded to volunteer for Bratt. The Embassy did not accept applications that were "dropped off" for the standard visa process, although it did for the referral process. Bolgak had experience applying for American visas; she had visited the United States several times, and she knew that the process involved waiting in long lines. Given her experience, we believe that Bolgak knew that the application forms to be submitted through the standard process could not be dropped off and therefore she would not have asked Bratt to do so. We also believe that Bratt was aware that the applications could not be dropped off as part of the standard process because Bolgak described to him the lengthy process that they had to go through to get visas – the lines and the time it took to get through the standard process. In addition, when discussing the standard process, both Hoover and McAdoo said they told Bratt that the women had to be interviewed.

Bratt told the OIG that as part of the discussion about obtaining "tourist visas," the unidentified Embassy official told Bratt and Hoover where the applications could be "dropped off." We do not believe that an Embassy official would have told Bratt how to do something that the Embassy did not permit. However, based on Wells' description of his conversation with Bratt and Lake, it is likely that Wells told Bratt that applications for referred visas and supporting documents could be "dropped off" at the NIV Section. Therefore, although Bratt told us that the unidentified Embassy official spoke about "dropping off" applications, we believe that Bratt actually was told by Wells that he could "drop off" the referral package and that this is further proof that Bratt met with Wells and learned about the referral process.

Bratt and Lake each claim that the other is responsible for the false statement on the referral form. Bratt's version of events is that Lake acted completely on his own to submit the visas through the referral process.

According to Bratt, he gave Lake no instructions about where or how to deliver the visa applications, and they had no discussions whatsoever about the visa referral system. Under this scenario, by mere coincidence when dropping off the women's completed tourist visa applications, Lake happened to wind up in the one section of the Embassy that dealt with visa referrals. Lake then, acting completely on his own initiative, made false statements on a government document and put Bratt's initials on it but told Bratt nothing about his actions. We find this version strains credulity and is contradicted by credible evidence.

Lake had no apparent motive for acting in such an improper manner. Lake, unlike Bratt, had no personal interest in Koreneva's trip to the United States. Therefore, it is unlikely that Lake would take it upon himself, without consulting Bratt, to act in a way that would subject himself to possible criminal penalties. We believe Lake acted at the behest of his boss. As Lake wrote on the form, "per BB." In addition, Lake gave Bratt's office number as the contact number on the referral form. Since the Embassy might have called that number to verify or ask a question about the information contained in the referral, it is doubtful that Lake would give that number if Bratt was oblivious to what Lake was doing.

Lake told the OIG that he believed his statements on the referral form were truthful because Bratt and others told him the women worked for Bratt. We find Lake's version of events no more credible than Bratt's. Lake initially told us that his response to the question of purpose on the form was "an exercise in creative writing." In addition, the evidence shows that Lake had no basis for believing the women had ever worked for Bratt in Moscow. Lake's statement that he obtained the referral form from an unidentified consular official who told him to fill it out as a "formality" is contradicted by Sausman, a secretary who worked in the Embassy Law Enforcement Section. Sausman said that either Lake took a referral form from her desk or that she gave him one. Furthermore, given the Embassy's policies about the use of the referral system only for government purposes, it is unlikely that an Embassy official would have simply given such an important form to an unknown individual with the instruction that filling it out was a mere "formality."

Thus, we conclude on the basis of witness statements, telephone records, and other documentary evidence that Bratt learned that Koreneva was unlikely to obtain a visa through the normal visa application process. Bratt learned

about the referral process and asked Lake to submit the Koreneva and Bolgak visa applications using the referral process. To achieve Bratt's goal, Lake intentionally misrepresented that Koreneva and Bolgak worked with Bratt in Moscow. We conclude that Bratt knew, because Lake told him, what Lake was writing on the form before Lake's submission of the women's applications for referred processing. We conclude that Bratt asked Lake to do this because Bratt and Koreneva had a close personal relationship, and Bratt wanted to ensure that Koreneva would be able to get a visa.

Our conclusion that Bratt committed serious misconduct would not change even if Bratt did not specifically tell Lake what to write on the visa referral form or know what Lake had written. Bratt knew that Lake could only complete the form in a manner that would accomplish what Bratt wanted if Lake submitted the applications through the visa referral process, and to do so Lake would have to misrepresent on the visa referral form the government's interest in the women's trip.

Bratt was therefore able to obtain a valuable United States government document – a visa – for a woman who most likely would not otherwise have been able to obtain a visa. We find that Bratt's actions in this matter constitute egregious misconduct.[34]

Bratt's culpability in this matter is increased because he intentionally entwined a subordinate in his personal activities, who then engaged in misconduct at Bratt's behest.[35]

Lake also committed misconduct by submitting a visa application that he knew was false. While he did so at Bratt's behest in order to obtain a benefit for his supervisor, Lake knew that the application he submitted was false. His submission of that false application also constitutes egregious misconduct.

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[34] Bratt's contacts with the Russian women also raise security concerns, which we discuss in Chapter Three. We also received an allegation that Bratt's trips to Moscow were to further his relationship with Koreneva rather than to further government business. We discuss this allegation in Chapter Five.

[35] At one point during his October 1997 interview with the OIG, Lake said, "I wouldn't write that first sentence again in my life … [Bratt] took the monkey off his back and put it on my back … I tried to do the best job for him that I could."

CHAPTER THREE: FAILURE TO COMPLY WITH NATIONAL SECURITY REGULATIONS

I. BACKGROUND

The OIG received allegations that ICITAP personnel mishandled classified security documents in violation of government and Department of Justice regulations. The OIG conducted a joint investigation into these allegations with the Department of Justice Security and Emergency Planning Staff (SEPS), the Department office responsible for ensuring compliance with security regulations. The OIG and SEPS investigated allegations that ICITAP staff knowingly: (1) disclosed classified documents to unauthorized personnel, (2) failed to secure classified documents, and (3) negligently mishandled classified documents.

We found a pattern and practice of improper disclosure of classified documents; improper handling, storage, and transport of classified documents; and a failure to verify security clearances. We found that ICITAP managers were repeatedly given notice of the problems through prior security reviews[36] and from staff reports. Although managers issued written policies when informed of problems, they in fact failed to correct deficiencies.

The investigation of ICITAP security issues was initiated when Martin Andersen, OPDAT's Senior Advisor for Policy Planning and a former ICITAP contractor and employee, reported to SEPS on April 9, 1997, that Cary Hoover, Special Assistant to the Director of ICITAP, had on more than one occasion improperly disclosed classified documents to Andersen and to others. Andersen also alleged that ICITAP personnel were certifying to United States embassies that contractors had security clearances when in fact they did not.

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[36] In February 1994, SEPS had conducted a review of ICITAP security practices and informed ICITAP managers of the adverse findings. In December 1994, SEPS conducted a follow-up compliance inquiry to determine whether ICITAP had corrected the problems noted in the February 1994 review, and it found that some problems had been corrected but others remained. The Criminal Division conducted a review in March 1996, in preparation for another SEPS review that was planned for April 1996. Both the Criminal Division review and the SEPS review found continuing security problems. We discuss these reviews further in Section IIIA of this chapter.

From April 10, 1997, through April 14, 1997, SEPS interviewed ICITAP's former security officers[37] and contractors and invited the OIG to participate in the investigation. Based on these interviews, SEPS preliminarily determined that unauthorized individuals had been given access to classified documents.

SEPS also determined there was sufficient cause to warrant an unannounced after-hours search of ICITAP headquarters to assess further ICITAP's compliance with security regulations, rules, and orders. The search, or "sweep," was conducted on April 14, 1997. During the sweep, SEPS found that the entrance to ICITAP's offices had been left unsecured and 16 classified documents ranging from "Confidential" to "Secret"[38] were found on the desk or credenza of ICITAP Associate Director Joseph Trincellito in violation of the regulations governing the handling of classified information. In a follow-up search of Trincellito's office files conducted by the Criminal Division a few days after the SEPS sweep, more improperly secured classified documents were uncovered. In total, 156 classified documents (144 originals and 12 duplicates) were found unsecured in Trincellito's office.

The OIG and SEPS notified and met with representatives of the agencies whose documents were at risk of having been compromised. The agencies were informed that foreign nationals, including Russians, had previously had access to the ICITAP office space. A Russian delegation, for example, had been escorted through the ICITAP office space in February 1997 and had been given the use of the ICITAP conference room. It was not known if any of the foreign nationals saw unsecured classified documents. One agency noted that among the unsecured classified documents was a politically sensitive

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[37] Security officers are Department employees who, in addition to other duties in an office, have special responsibility to monitor their office's compliance with security regulations and to assist other employees with security-related issues.

[38] Classified information is ranked in terms of its security value: Top Secret, Secret, and Confidential. Handling requirements vary depending on the classification level. Sensitive Compartmented Information (SCI), or "Codeword," is part of the classified information system. Access to SCI is closely controlled and is afforded more stringent security protection because of its extreme sensitivity. Within the SCI program, material is classified at the Top Secret, Secret, and Confidential levels.

document that, if disclosed, could have significant adverse effects on its programs.

SEPS' initial interviews suggested that there was a continuing pattern of lax security at ICITAP. Given the security violations already confirmed, the OIG and SEPS decided to assess the extent of ICITAP's security problems and ICITAP's management's responsibility for the problems that existed. As part of the investigation, the OIG, with SEPS, interviewed present and past staff, contractors, and federal employees about ICITAP's security practices and tracked, where possible, the disposition both here and abroad of improperly secured classified documents about which we were told.

We found that the problems that were revealed in April 1997 were pervasive, recurrent, and persistent. Our investigation confirmed that unauthorized disclosures had been made to uncleared contractors; established that over the course of several years, many ICITAP personnel routinely and repeatedly violated security regulations; and showed that ICITAP management failed to enforce security regulations even when violations were brought to ICITAP managers' attention.

We describe below the problems that we found and the managerial failures and indifference to security that permitted these problems to continue. We begin our discussion for each kind of violation we found with a brief review of relevant regulations and procedures.

II. ICITAP SECURITY VIOLATIONS

A. Disclosure of Classified Information to Unauthorized Persons

1. Guidelines and Regulations

Federal regulations and rules mandate that "no person may be given access to classified information or material originated by, in the custody, or under the control of the Department, unless the person: (1) has been determined to be eligible for access … (2) has a demonstrated need-to-know and (3) has signed an approved nondisclosure agreement." Executive Order 12958, part 4.2; 28 CFR, part 17, § 17.41. In essence, a person must have an appropriate security clearance and must have a need to know the information before the person is to have access to classified information. Executive Order 12968 § 3.1-3.3. A person with a security clearance is responsible for

safeguarding classified information in his or her possession from disclosure to unauthorized personnel. Executive Order 12968 § 6.2.

Certain individuals, generally government employees, are authorized by the government to have access to classified information. Such authorization is granted after a candidate "passes" a background investigation[39] and is briefed by an office's or agency's security personnel on the rules regarding the handling of classified material. At the briefing, the duty to safeguard classified information from unauthorized disclosure is explained, as are the federal regulations that prescribe how persons with a security clearance are to handle and maintain classified information in a safe and secure manner. SEPS informed the OIG that the briefing for Department of Justice employees includes direction about how to ascertain whether and at what level another person has a security clearance.

Because authorization is based on a "need to know," a security clearance for one project does not automatically authorize disclosure to that person of classified information relating to another project, even in the same office, and a security clearance does not automatically transfer between offices. Similarly, when an individual who has a security clearance leaves federal service for more than one year, and the required investigation was conducted more than 36 months from the date of the new appointment, upon the individual's return to federal service there must be a reinvestigation and a re-certified need to know in order for the individual to gain access to classified information. As should be apparent from the regulations, relying on someone's statement that he is cleared or that he has a particular security clearance level is never an adequate means to determine another person's clearance level. The proper method is to ask SEPS or to ask an office's security officer.

In addition to the rules and the briefings that are provided to persons receiving a security clearance, ICITAP personnel were specifically instructed

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[39] Because a full background check of a new employee may take some time to complete, federal regulations permit SEPS to authorize an "interim clearance." If the employee passes a name, fingerprint, and credit check, the interim clearance allows the employee to have access to classified information while the full background check is being conducted.

that clearance levels had to be verified before classified information could be distributed to other individuals. John Shannonhouse became the ICITAP security officer in September 1995. Shortly thereafter Shannonhouse checked the security clearance of everyone in the ICITAP office – contractors and employees alike. He immediately discovered and disclosed to all ICITAP staff that no contractor had a security clearance.[40] In his September 22, 1995, e-mail to ICITAP staff alerting them, Shannonhouse expressly explained that the routine name, fingerprint, and credit check performed on contractors (and employees) before they began work did not constitute clearance to handle classified documents. Shannonhouse sent the following e-mail to all personnel:

[40] As Shannonhouse told the OIG, even he did not know who was an employee and who was a contractor. He thought Beth Truebell, an ICITAP contractor, was an employee until he asked about her clearance status.

From: SHANNONHOUSE
To: All ICITAP
Date: 9/22/95 5:23pm
Subject: ICITAP Security

There was a security violation which was reported in ICITAP. Security violations are a serious matter, and cannot be ignored. This message addresses the issues which were raised.

ICITAP employees come into contact with classified information on a regular basis. It is important that proper procedures are taken to keep classified information secure at all times. All ICITAP employees with security clearances have received training in the proper methods to use when handling classified material. These procedures are very specific about keeping classified material out of the hands of people who do not have the appropriate security clearance or need to know. A mandatory training session for everyone at ICITAP without a security clearance will be given 11:00 A.M. Thursday, September 28, in the conference room. Anyone else who wishes to attend is also invited.

None of the contractors at ICITAP have security clearances. It is also possible that new ICITAP employees may not yet have security clearances. It is everyone's duty to verify a person's security clearance before passing on any classified information. If you are not sure, please contact our security officer John Shannonhouse, who will verify the person's security clearance for you.

The current Weekly Bulletin on EAGLE includes a security article that was issued because of this problem. The text in full is printed below:

SECURITY

A routine name, fingerprint and credit check is completed on all Criminal Division employees and contractors before they are able to report for duty. While many Criminal Division employees are cleared to handle classified materials, the level of clearance varies according to the work requirements of the office, and an individual employee's "need to know." The routine background investigation done on all employees <u>does not</u> mean they are cleared to handle classified material. The background check clears an employee to handle sensitive, but not classified, information in the office. The Division must specifically request a classified clearance at the appropriate level (confidential, secret, or top secret) before an individual can work with those classified documents.

> Your Section/Office Security Officer maintains a list of the clearance levels of all employees in your office. Check with that person before handing over any classified material to an individual. It is your responsibility to ensure that the person to whom you give classified material is appropriately cleared to handle that material. NEVER ASSUME that a person is appropriately cleared. To determine the security clearance level for someone outside of your office who will need to work with classified information in your component, check with Karen Tinkham or Lorraine Butler of the Division's Security Office on 616-0610.

The e-mail made two important points:

- None of the ICITAP contractors had a clearance and some ICITAP employees might not have clearances; and
- Everyone had the duty to verify an individual's clearance level before passing on classified information – as Shannonhouse wrote, "NEVER ASSUME that a person is appropriately cleared."

In violation of the regulations and despite Shannonhouse's clear warning, ICITAP employees with security clearances gave classified documents or gave access to classified documents to individuals who were not cleared to receive them. We discuss subsequently instances in which there were unauthorized disclosures of classified information at ICITAP.

2. Violations by Cary Hoover

Cary Hoover started with ICITAP in September 1990 as a Training Coordinator and held various positions at ICITAP over the years. In August 1995 he became Special Assistant to ICITAP Director Janice Stromsem.

a. Disclosure to Martin Andersen

Andersen told investigators that, during the time he was a contractor to ICITAP,[41] Hoover provided him with classified documents knowing that Andersen did not have a security clearance. Andersen said that he and Hoover had several discussions about Andersen's lack of a clearance, so Andersen

[41] Andersen was a contractor to ICITAP intermittently from February 1993 to September 1995.

believed that the disclosures were deliberate and intentional. Andersen could not recall the dates but said that Hoover provided him with classified documents at both the "Confidential" and "Secret" level, such as cables from the State Department and the Department of Defense concerning Panama, El Salvador, and Haiti. Andersen claimed that Hoover distinguished these documents from Top Secret documents, which Andersen said Hoover would not share with Andersen because he did not have a security clearance.

Andersen described two particular occasions toward the end of his tenure as a contractor with ICITAP (i.e., the fall of 1995), when Hoover provided him with classified information. In each case, Andersen said, Hoover gave him the documents to assist Andersen to carry out his assignment. In one case, Andersen said, he was preparing a paper on Cuba. In the material that Hoover gave Andersen was a document from the State Department classified either "Confidential" or "Secret." According to Andersen, because Andersen did not have a clearance, Hoover consulted with Stromsem about giving Andersen the document before Hoover made the document available to Andersen.[42]

Anderson said that about the same time, or perhaps some weeks afterwards, he was asked to look into issues involving El Salvador. Andersen said that Hoover again provided Andersen with classified material, this time several cables classified "Confidential" or "Secret." Andersen remembered these events, he said, because after he received classified documents, he was

[42] Andersen told the OIG that he also believed that Stromsem knew he did not have a security clearance as a consultant because in an August 17, 1995, letter appointing him to a position as a government employee, Stromsem wrote that she expected that he would have an interim "Secret" clearance when he began work in his new position. We note that Andersen received a form letter. Therefore, the wording may not carry the significance that Andersen believed it did. In a response Stromsem provided in August 2000 after reviewing a draft of the chapter, Stromsem denied knowing that Andersen did not have a clearance. However, her written response to the OIG appears to address the period after Andersen became a federal employee rather than the time during which he was a consultant.

concerned that in conversation with friends in the human rights community he might inadvertently disclose classified information.[43]

b. Disclosure to Jane Rasmussen

Andersen also alleged that Hoover had improperly disclosed classified information to Jane Rasmussen, another ICITAP consultant. Rasmussen confirmed Andersen's allegation. She told investigators that in February 1997, Hoover provided her with a document classified "Secret" to assist in her research. She, too, did not have a security clearance and knew it. Rasmussen explained that while she could not be certain, she believed that Hoover knew that she was not cleared because either shortly before or after viewing the classified document, she told Hoover that she had applied for a clearance with the Agency for International Development (AID), but had not yet received it.

Rasmussen said that Hoover instructed her not to leave the document unattended and not to let other people know that she had it. Hoover told Rasmussen that she was not permitted to copy the document, but that she could take notes, which she did. Rasmussen said she returned the document to Hoover within a couple of hours but kept her notes.

Rasmussen took the notes with her when she left ICITAP. She provided the notes to investigators, and we verified that Rasmussen's notes came from a document classified "Secret."

c. Disclosure to Paul Mackowski

A third incident involving Hoover was reported by former ICITAP Security Officer Paul Frary. He told the OIG that he believed unauthorized disclosures of classified information were made to Paul Mackowski, a Medford, Massachusetts, police officer detailed to ICITAP for two years

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[43] Even after Andersen became a federal employee, he did not receive either an interim or a permanent security clearance, but he continued to have access to classified documents. ICITAP staff told the OIG that classified documents were found in a box of files Andersen turned over when he left the government at the expiration of his term of federal employment in 1997.

ending in 1996. Mackowski, too, did not have a security clearance. Frary told the OIG that sometime after Mackowski's departure from ICITAP Frary found classified "Confidential" documents among Mackowski's papers.

Frary's allegation was corroborated by Mackowski, Hoover, and other ICITAP staff. Mackowski specifically recalled reading a "Confidential" cable from the United States Embassy in Tbilisi, Georgia (former Soviet Union). Other ICITAP staff told us that they saw Mackowski handle classified documents and that Mackowski had unescorted access to the secure room.[44]

Hoover said that he confirmed that there were classified documents among the documents that Mackowski had packed at the end of his detail to be sent to him in Massachusetts. Hoover admitted responsibility for some of the classified documents given to Mackowski.

SEPS suspended Hoover's security clearance on April 15, 1997.

d. Hoover's Response

When we asked Hoover whether he had disclosed classified documents to any ICITAP consultant, at first, in a blanket denial, he said that he had not. When we reviewed his contacts with particular contractors, however, Hoover admitted that he gave Andersen, Rasmussen, and Mackowski classified documents.

Hoover said that he thought that Andersen, Rasmussen, and Mackowski all had security clearances. He said that he was confused about Rasmussen's security status because of her previous employment with AID. Hoover said that he thought Rasmussen had been a government employee at AID – not a contractor – and had a clearance. According to Hoover, Rasmussen also told him that she had a security clearance when she worked at AID and that he relied on her assertion when he provided her with the classified document.[45] Hoover said that when he gave the classified document to Rasmussen, "it didn't dawn on me that she would take notes." Hoover acknowledged that he

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[44] The secure room is where ICITAP maintained its classified documents in safes.

[45] As previously noted, Rasmussen had a different version of this conversation.

did not verify her clearance although he knew that Rasmussen was an ICITAP contractor and not a federal employee.[46]

When asked whether he had given classified information to Andersen, Hoover at first said that he was uncertain. Later he admitted that he had. Hoover said that to assist Andersen with his work, he provided Andersen with classified documents on El Salvador and Panama. Hoover said he believed that most of the documents provided to Andersen were at the "Confidential" level.

Hoover said that, although no one ever told him that Andersen had a Department security clearance, he believed that Andersen had a security clearance from the day Andersen first arrived for work at ICITAP as a consultant in 1993. Hoover said that because Andersen was a former employee of the United States Senate, he believed Andersen had a clearance and that the clearance automatically transferred with him to his new position at ICITAP. After reviewing a draft of this chapter, Hoover wrote in his response to the OIG that Andersen "aggressively encouraged" the transactions and that Andersen was in violation of the security rules as well. Hoover also blamed ICITAP's security officers for failing to issue memoranda listing the clearance status of all personnel and for failing to check to ensure that all personnel were obeying the rules.

Hoover also admitted that he provided classified documents to Mackowski and that he may have given Mackowski the classified documents that were found unsecured among papers Mackowski had boxed up and asked to have shipped to him in Massachusetts after he left ICITAP. Hoover said that he did not ask Mackowski and he did not check with SEPS to determine whether Mackowski had a clearance. Hoover stated that he believed that everyone who came to ICITAP had completed the necessary paperwork for an

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[46] Hoover also admitted that he once gave Rasmussen a key to ICITAP's office so that she could have after-hours access to the office to finish her work. Rasmussen said that although she was given the key, she did not use it. According to SEPS, contractors may not be given unescorted access to Department office space without, at a minimum, an FBI name and fingerprint check.

interim security clearance, and Hoover presumed that this was the case with Mackowski.[47]

When asked whether he recalled Shannonhouse's September 22, 1995, memorandum to all ICITAP staff that stated, "NEVER ASSUME that a person is appropriately cleared," Hoover said that he did not recall it. In another interview some months later, however, he acknowledged that he remembered it. Hoover admitted to the OIG that "nothing changed" at ICITAP after Shannonhouse sent this e-mail about security violations.[48]

e. OIG's Conclusion

Hoover's responses made clear that he did not follow basic security practice that requires the individual with the security clearance to have SEPS verify a security clearance before classified information is disclosed to another individual. Security rules and regulations place the responsibility for compliance on the individual with the security clearance, not the person receiving the information. Hoover's (and Stromsem's) blame of the administrative staff and security officers is unwarranted. Hoover was briefed on the requirements when he received his security clearance; in addition, Shannonhouse's reminder in his September 1995 e-mail was quite clear.

3. Violations by Associate Director Joseph Trincellito

Hoover was not the only ICITAP employee making unauthorized disclosures of classified information. Palmer Wilson, an ICITAP employee and former contractor who did not have a security clearance, said that Associate Director Trincellito twice tried to give him classified documents. According to Wilson, in January or February 1996 Trincellito gave him a

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[47] Stromsem also reviewed the draft and submitted a written response to the OIG. She, like Hoover, blamed Andersen for accepting classified documents and the administrative staff for failing to notify ICITAP staff that certain individuals, such as Mackowski, had no clearance.

[48] Shannonhouse recommended to the Criminal Division Security Staff in June 1996 that ICITAP implement a badge system that would show at a glance each person's security level. A color-coded badge system was adopted at ICITAP after the April 1997 sweep.

classified document. When Wilson informed Trincellito that he did not have a clearance and gave it back to Trincellito, Trincellito commented that Wilson must have a clearance because Wilson had been in the Army.[49] Wilson told Trincellito that he was retired and no longer had a clearance. In late spring 1996, Trincellito again offered a classified document to Wilson. Wilson again told Trincellito that he did not have a clearance and refused to take the document. Trincellito made a comment to the effect of "Oh yes, I remember now."

Trincellito stated to the OIG that he did not recall this incident.

4. Violation by Robert Perito

Wilson also reported to the OIG that, possibly in mid-summer of 1996, ICITAP Deputy Director Robert Perito offered him a classified document. Wilson said that when he told Perito he did not have a clearance, Perito withdrew the offer. As we discuss in the next section, Perito himself was not authorized to possess the classified document that he attempted to give to Wilson.

5. Others with Unauthorized Access to Classified Documents

We found numerous other instances in which individuals who did not have security clearances were given access to classified materials, although we could not always identify who was responsible for providing the information.

a. Beth Truebell

Beth Truebell was a contractor who came to ICITAP in the spring of 1995 from the Criminal Division's Office of Administration. She was responsible for writing, editing, and producing the ICITAP Bi-Weekly report that was distributed to various governmental agencies. To do her job, Truebell

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[49] Paul Frary, ICITAP's Security officer from August 1996 through February 1997, recalled that Wilson told him that Trincellito pressed Wilson to take the document because it was important to the program he was working on. Wilson told Frary that in spite of Trincellito's directions, Wilson refused to take the document. Frary said that he heard other personnel relate similar problems of this type but he could not recall their names.

said, she routinely reviewed classified cables and had unescorted access to ICITAP's secure room. Truebell said that everyone, including herself, believed she had a "Secret" security clearance. Truebell did not recall who told her she had a security clearance or granted her access to the secure room. In September 1995 in his routine review of the clearance status of ICITAP staff, Shannonhouse discovered that Truebell was not cleared to have access to any classified material.

According to Shannonhouse, even after he told Stromsem and Hoover that Truebell had no clearance, she remained in her position for another month and a half. According to Stromsem, Truebell did not have access to classified documents during this period.

b. Beverly Sweatman

Truebell's successor on the ICITAP Bi-Weekly newsletter was Beverly Sweatman, another contractor. Shannonhouse told the OIG that he questioned Sweatman about her security clearance in March 1996 after Sweatman asked him for the combination to the secure room. When Shannonhouse asked her if she had a security clearance, Sweatman responded that she must have one since she was given classified documents to review. Sweatman, in fact, did not have a clearance at that time and did not receive one until April 1996.

According to Sweatman, Lorraine Butler, a security specialist on the Criminal Division Security and Facilities Program Staff (Criminal Division Security Staff),[50] told her in December 1995 or January 1996 that she had a clearance. Under Sweatman's version of the incident, the problem was only one of getting "written confirmation" of the security clearance. Sweatman denied to the OIG reviewing any classified documents prior to obtaining her security clearance.

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[50] While SEPS has responsibility for security throughout the Department of Justice, each division also has an office responsible for enforcing security regulations and for providing guidance on security issues to employees. In the Criminal Division, the responsibility is in the Office of Administration. Security matters are handled by the Facilities and Security Staff section.

SEPS records show that the Defense Investigative Service Clearance Office (DISCO)[51] did not grant Sweatman a clearance until April 29, 1996. Therefore, she did not have a security clearance in December 1995 or January 1996, when she began working on the ICITAP Bi-Weekly and began her review of classified cables.

c. Shaleen Schaefer

Shaleen Schaefer, a legal intern who worked at ICITAP from October 1995 to August 1996, did not have a clearance but did have access to classified documents. Schaefer told investigators that Hoover, Perito, and Trincellito knew that she did not have a clearance because at various times when they would ask her to stay late to receive a classified fax or teletype she would tell them that she could not stay because she did not have a clearance. Nonetheless, Schaefer said that she had access to classified material because she distributed mail in the office and classified documents ended up on her desk for distribution. According to Schaefer, Perito wanted to get her a security clearance, but Hoover and Stromsem did not think it was necessary.

Stromsem wrote in her August 2000 response to the OIG that she did not believe Schaefer needed a clearance because her duties, as Stromsem understood them, did not require access to classified documents.

d. Robert Perito

Perito started working at ICITAP in October 1995 as a contractor, after retiring from the Department of State. He had a security clearance at the Department of State, but he did not have one as a contractor. Perito became an ICITAP employee in April 1996. Perito's Department of Justice security clearance was not approved until September 30, 1996.

Shortly after Perito arrived at ICITAP, Shannonhouse found classified "Confidential" documents in Perito's office. When questioned by Shannonhouse, Perito told Shannonhouse that he had a Top Secret Clearance that had carried over (presumably from his work at the State Department).

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[51] DISCO handles approval of security clearances for individuals working as contractors or consultants throughout the government.

Shannonhouse told Perito, correctly, that security clearances do not automatically transfer and, in addition, that Perito was a consultant.

Shannonhouse told the OIG that he again found classified documents unattended in Perito's office in July or August of 1996. On this occasion, Shannonhouse left a written notice of violation on Perito's desk.

Perito acknowledged to the OIG that he might have handled classified information when he did not have a Department of Justice security clearance. Perito said that he believed that his State Department security clearance was still valid when he accepted the position at ICITAP and that no one told him that he could not handle classified information until he had a Department of Justice clearance.[52] Perito claimed that at the Department of State classified documents were left on desks when individuals went out of the office. Perito also said, "there are security practices which are in general use in the government, which do not necessarily conform in strict detail to what the regulations are."[53]

B. Failure to Safeguard Classified Information

As we have already described, the April 1997 unannounced sweep of ICITAP's offices by SEPS disclosed the improper handling and storage of classified information at ICITAP Headquarters.

The problems disclosed by the sweep were part of ICITAP's continuing history of security violations in its handling, storage, and transfer of classified information, with Trincellito being the most conspicuous and continuous violator. In addition, we found that Trincellito, and possibly Stromsem, improperly handled and stored what were to have been more stringently protected Top Secret-SCI (TS-SCI) documents, and that Stromsem, Trincellito, and Hoover improperly removed classified information from their offices and reviewed it at their homes. It was also alleged and we confirmed that classified

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[52] Perito, however, was a contractor before he became a Department of Justice employee. We believe that he should have known, at a minimum, that his clearance would not automatically transfer to him as a contractor.

[53] Stromsem put Perito in charge of ICITAP security after Paul Frary was removed as the security officer in February 1997 until Paula Barclay took over in April 1997.

documents had been improperly handled and stored in ICITAP's Haiti field office.

1. Regulations

Federal rules describe how classified information must be maintained. The most significant rules include:

- Classified documents, when removed from storage for working purposes, shall be kept under constant surveillance and turned facedown or covered utilizing Department Cover Sheets when not in use. 28 CFR 17, § 17.80, para. a.
- Whenever classified material is not under the personal control of an authorized and appropriately cleared person, whether during or outside of working hours, it will be guarded or stored in a locked security container. 28 CFR 17, § 17.73 (introduction).
- Classified information may not be removed from official premises without proper authorization. Executive Order 12958, § 4.2 (c).

After ICITAP became a part of the Criminal Division, some effort was made to focus on security issues. On October 13, 1995, Shannonhouse sent a memorandum to all ICITAP staff cautioning them that because ICITAP was under the jurisdiction of the Criminal Division, more scrutiny of security issues could be expected. He advised the staff that classified documents "should never be left unattended unless they are properly locked up." He also stated that classified material should never be left in anyone's in-box. See Appendix, Exhibit 3.

In December 1995 Stromsem sent a memorandum to all ICITAP staff attaching a summary of basic security procedures (Administrative Procedure No. 9). In her memorandum, Stromsem told her staff that as part of the Criminal Division, ICITAP had to follow Criminal Division policy on security. Stromsem wrote: "the attached ICITAP Administrative Procedure emphasizes those points that are most applicable to our office, and which may be unique to our location." She concluded: "Security is an important issue for ICITAP. Please take the time to read and understand the attached administrative procedure."

The attachment to Stromsem's memorandum, Administrative Procedure No. 9, addressed the proper handling of classified documents and directed, "An ICITAP employee cannot make the decision that a classified document is not really as important as the security level implies." The Administrative Procedure No. 9 went on to state:

> Classified documents should never be dropped on a person's desk or in box. Classified material should only be passed on in person to an individual that has the proper security clearance. It is the responsibility of the person passing on the classified material to ensure that the recipient has the proper security clearance.
>
> Classified documents, when removed from storage for working purposes, must be kept under constant surveillance … under the control of an authorized person at all times.
>
> When not in use, secure documents must be locked in an authorized safe. They are not to be left on or in desks ….
>
> The secure room should be kept locked at all times, unless someone with the appropriate clearance is actually inside.
>
> * * *
>
> Anyone who violates the security regulations for classified information is subject to administrative sanctions or punishment.

In addition, Shannonhouse sent e-mails to ICITAP staff notifying them of the importance of safeguarding classified information. By e-mail dated November 29, 1995, Shannonhouse cautioned all ICITAP staff about the proper handling of classified documents:

From: SHANNONHOUSE
To: All ICITAP
Date: 11/29/95 2:52pm
Subject: ICITAP Security -- notes from your security ogre

Proper handling of classified documents is becoming a major issue. You may have read in the newspapers that the biggest disagreement between Haiti and the US is over access to and the handling of classified documents.

Since our office handles classified information on a regular basis, it is important that we handle it properly. Please *always* follow the following procedures:

1. Always put the proper cover on classified documents. If the cover is missing, your local paranoid security ogre will think you are trying to hide something.

2. *NEVER* leave classified documents unattended. They must either be in your presence at all times, or locked in a secure area, or given *IN* *PERSON* to another person with the proper security clearance. If your local security ogre finds unattended classified documents, he *will* confiscate them and secret them in an appropriately secure area. He will also be strongly tempted to closely examine your area to see if there are others which he has somehow missed.

3. *NEVER* put secure documents in another person's in box. They may never come back. But the security ogre will.

4. If your secure documents have developed legs and walked away, please contact me. Chances are I have them hidden away in some secure spot. If not, I *definitely* need to know.

5. Notes from a Security Ogre are serious business. An annoyed ogre is a dangerous ogre. Keep your Security Ogre happy and contented by following good security procedures.

Shannonhouse repeated his message that classified documents should never be left unattended in an e-mail on May 3, 1996, and again in an e-mail on August 12, 1996. See Appendix, Exhibit 4.

2. Routing Classified Documents Through Headquarters Offices

Notwithstanding these regulations and warnings, as we discuss below, our investigation revealed that classified documents were left on ICITAP employees' desks when the employees were not present and, at times, were left unsecured on desks for extended periods when staff was away from the office on business travel. The procedure used at ICITAP Headquarters to route classified material through the office materially contributed to violations of the regulations.

Before 1993, at ICITAP classified documents were stored in a secure room at ICITAP and retrieved as needed. However, in 1993 ICITAP Deputy Director John Theriault initiated a policy of circulating classified documents by means of a distribution list attached to classified documents. Under that policy, once classified documents were logged into the office, they were given to Hoover, who would determine who should receive the documents. ICITAP administrative support personnel would then hand-carry the classified documents, at least to the first person on the list. If someone on the list was out of the office, the classified documents would be left in the person's office, often for days. This method of routing classified material through ICITAP continued until the SEPS security sweep in April 1997.

According to ICITAP employees, ICITAP personnel routinely left classified documents unattended on desks. Most of the ICITAP staff we interviewed acknowledged finding or leaving classified documents sitting unsecured on their desks or in-boxes.

ICITAP employees also observed that senior ICITAP officials, including Trincellito, Hoover, and Perito, left classified documents on their desks, even when they were gone on business trips. Several senior officials acknowledged leaving classified documents unattended. ICITAP Deputy Director Perito acknowledged that he left classified documents unattended and that he might have continued to do so even after receiving a security violation notice from the security officer. ICITAP Director Stromsem said to the OIG that "everyone at ICITAP" left documents unattended during working hours. She also told the OIG that "all ICITAP personnel" assumed that classified documents that did not have coversheets had been declassified and did not need to be safeguarded. Hoover told the OIG in February 1998 that he left classified documents unattended for brief periods of time, such as when he would go to the restroom, even though he knew that ICITAP's procedures required that classified information be put away and not be left unattended. In his written response to the OIG following his review of the draft, Hoover stated that he never left classified materials on his desk when he was not present. He also stated, however, that "[d]ropping off cables on employees' desks may not have been the appropriate action, but with the volume of cable traffic and the failure by the administrative component to come up with any better system, it became the only viable method and every staff member engaged in the practice."

3. Additional Instances of Unsecured Classified Documents

We were told, as well, about discoveries at ICITAP of unsecured classified documents in areas other than offices. Shannonhouse told the OIG that in August 1995 he found a large stack of classified "Confidential" and "Secret" documents relating to Haiti apparently abandoned in an unused desk in a room primarily used to store computer equipment. According to Shannonhouse, the cleaning crew had regular unsupervised access to the room.

Hoover recalled that in late 1995 or early 1996, two staff members found classified documents among unclassified files in an unsecured location while establishing a new central filing system at ICITAP. Hoover recalled that many of the documents were copies and did not have classification cover sheets.

After the SEPS sweep in April 1997, ICITAP conducted a search of its unsecured files for classified documents. Classified documents were found mixed in with unclassified documents in the "central country files," which were stored in unlocked file cabinets in hallways and accessible to anyone walking through ICITAP.

4. Secure Room Left Open

ICITAP employees also told us about violations involving the "secure room." The ICITAP secure room contained several safes and a secure fax machine. Most of ICITAP's classified information was kept in the safes in the secure room. Because the room did not meet certain security requirements (for example, the walls did not go all the way to the ceiling), ICITAP policy required that the safes in the secure room be locked when not in use.

We learned, however, that despite this requirement, the practice at ICITAP was for the safes to be opened in the morning and stay open until the end of the day when the safes would then be locked again. While some employees said that when the safes were open the door to the secure room remained closed, others told the OIG that the secure room door was left open with the safes open and unattended. SEPS also found in its 1996 review that the secure room door was left open.

In addition, ICITAP staff and Criminal Division security staff told us that consultants, most of whom did not have security clearances, had access to the secure room.

5. SCI Documents at ICITAP

Sensitive Compartmented Information (SCI) denotes a particularly high classification level. Special provisions apply to reading, storing, and handling SCI documents. In addition to other regulations, SCI material may only be discussed or stored within a Sensitive Compartmented Information Facility (SCIF),[54] and it may not be stored in a building that does not have such a facility.

ICITAP did not have a SCIF and therefore SCI material could not be stored or even read in the ICITAP office space. Nonetheless, SEPS found TS-SCI material at ICITAP in its announced 1996 review and then again in its 1997 sweep. In its 1996 security compliance review, SEPS found two TS-SCI documents in an ICITAP office safe. In its findings to ICITAP, SEPS instructed ICITAP to ensure that all SCI information was stored, processed, or discussed only in an accredited SCIF. Despite these instructions, one year later during the 1997 security sweep, SEPS found the cover sheet of a TS-SCI document, known as document #1021, on Trincellito's desk and another TS-SCI document in Trincellito's office. Thus, in 1997 SCI material was still being taken to the ICITAP offices. The OIG investigated ICITAP's practices with respect to handling SCI material and attempted to identify who had brought the TS-SCI documents to ICITAP in 1996 and 1997.

a. SCI Material Found at ICITAP in 1996

Trincellito and Stromsem were the only ICITAP employees authorized in 1996 to receive or view TS-SCI material. Both Trincellito and Stromsem had been briefed by SEPS on the proper handling of SCI material.

Shannonhouse spent several days before the announced April 1996 SEPS review making sure that everything was in order, including sending out e-mail to ICITAP staff on March 27 and March 29 reminding them of the upcoming security review. Shannonhouse told the OIG that he examined the safes during his preparations and did not find any TS-SCI materials in the safes. However,

[54] A SCIF has added security features, such as a reinforced steel entry door with dial combination lock, floor to ceiling reinforced walls (no false ceilings), and no windows.

SEPS found the TS-SCI document the following week (April 1-3) during its review.

We determined that Trincellito picked up and signed for a TS-SCI document (control #1351) at the Justice Command Center on Wednesday, March 27, 1996. Trincellito said he did not recall the circumstances of how the document got to the ICITAP offices.

Two SEPS Security Specialists recalled that Stromsem told them when they met to discuss their findings after the 1996 security review that the State Department had mailed or "dropped off" TS-SCI material at the ICITAP offices. Stromsem told them that ICITAP personnel had not paid any attention to the markings and that she had Shannonhouse file the document in the secure room at ICITAP. Stromsem could not explain to SEPS why she accepted the TS-SCI material knowing that ICITAP did not have a SCIF. One of the SEPS Security Specialists noted to the OIG that it was highly unlikely that TS-SCI material would be "dropped off." He thought it more likely that Stromsem picked up the document at an intelligence meeting and brought it back to ICITAP.

We believe it likely that one of the TS-SCI documents found by SEPS in 1996 was brought to ICITAP by Trincellito. Trincellito removed a TS-SCI document from the Justice Command Center the week before the security review,[55] and he has a history of disregarding security rules, including, as shown conclusively by the 1997 incident that we discuss subsequently, disregard of rules concerning SCI material. We were unable to determine conclusively whether Trincellito, Stromsem, or an unknown third party was

[55] We could not identify the TS-SCI documents found by SEPS at ICITAP in 1996 because we were unable to locate them. One of the SEPS security specialists conducting the ICITAP review told the OIG that he secured the document and told an official in the Criminal Division Security Staff to take responsibility for it. The Criminal Division Security Staff official denied being told to take responsibility for the document. There was no record of what happened to the documents or whether they were shredded, as is required when SCI documents are destroyed.

responsible for the presence of the second SCI document that SEPS found was improperly secured.

Following the 1996 review, Stromsem signed a memorandum to SEPS on behalf of ICITAP responding to SEPS' findings of security violations. Stromsem stated in the September 11, 1996, memorandum that ICITAP had taken steps to ensure that TS-SCI materials were not being stored, processed, or handled on-site at ICITAP. She stated in the memorandum that employees requiring access who had an established need-to-know and were properly cleared could gain access at the Justice Command Center or in another accredited SCIF at the main Justice building. The information was then either destroyed on the spot, or left and properly secured. According to Stromsem's response, SCI documents were never removed and taken to ICITAP.

b. SCI Material Found in Trincellito's Office in 1997

Despite Stromsem's response, which set forth the correct procedures for handling TS-SCI materials, the cover sheet of another TS-SCI document, document #1021, was found on Trincellito's desk in 1997 and another SCI document was found in his office. The Justice Command Center log showed Trincellito signed for TS-SCI document #1021, on September 25, 1996. From this, we conclude that Trincellito took the SCI document from the Justice Command Center to ICITAP in violation of regulations.

Trincellito's signature, signifying that he had destroyed the document, was on the cover sheet of document #1021 found by SEPS during the sweep. Additional information on the cover sheet established that the individual who witnessed the destruction of the SCI document was not appropriately cleared, in violation of the regulations.

Trincellito initially denied having a TS-SCI document at ICITAP. When Trincellito was shown the cover sheet of document #1021 with writing on it, he acknowledged that it was his signature. Trincellito said that he could not recall the document but that based on his written comments on the remaining sheet, he must have destroyed the document.

Stromsem said that ICITAP received TS-SCI material by several means: ICITAP would be called by the Justice Command Center to come and review a document, ICITAP would receive the same document "without all the classified markings" on the classified cable machine, and sometimes ICITAP would receive the documents from the Criminal Division "front office" in an

interoffice envelope.[56] According to Stromsem, it was Trincellito who primarily handled the TS-SCI material. She said that normally, once she read a TS-SCI document, she would put it back in the safe. Stromsem claimed that she did not know that she could not store TS-SCI material at ICITAP.

These responses to the OIG, however, contradicted Stromsem's representations to SEPS after its 1996 security review in which Stromsem wrote that TS-SCI material was never brought to ICITAP. When questioned about her 1996 response to SEPS, Stromsem stated that she intended her response to SEPS to pertain only to the documents read at the Justice Command Center and not to the documents received at ICITAP. Stromsem said she failed to realize that the TS-SCI documents received at ICITAP were subject to the same regulations and restrictions as the documents read at the Justice Command Center. In her August 2000 written response to the OIG, Stromsem further explained this comment by saying that she meant that ICITAP sometimes received the same document by different media and with different classification markings. Stromsem said that there may have been misunderstandings resulting from differently labeled duplicate copies.

We do not believe that this explanation excuses Trincellito, or anyone else, for bringing SCI into ICITAP office space in 1996 and 1997. Trincellito did not claim that he had been confused about the classified markings on the documents. In addition, since the documents that SEPS found in 1996 and the cover sheet found on Trincellito's desk in 1997 were clearly marked as SCI, neither Trincellito nor Stromsem had any basis to assume that the markings were incorrect.

6. Unsecured Classified Documents in Haiti

An ICITAP manager alleged to the OIG that classified documents had been found in 1995 in an unsecured building used by ICITAP in Haiti. Based

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[56] Other than reviewing TS-SCI documents at the Justice Command Center, all the methods of handling TS-SCI material described by Stromsem – receiving TS-SCI material through interoffice mail, storing TS-SCI in the secure room, and even reading it outside of a SCIF – violated security regulations.

on interviews with ICITAP employees working in Haiti in 1995, we discovered that classified documents had been left unsecured on a bookshelf in a building in Haiti that was used by ICITAP for offices and living quarters. At least one Haitian national who did not have a security clearance, and possibly others, had access to the building.

In August 1997, SEPS and the OIG conducted an unannounced security review of the ICITAP Haiti offices to determine if we could identify the origin of the unsecured classified documents found in 1995 and whether there was an ongoing problem with handling classified documents at ICITAP Haiti. Because the documents found in 1995 had been destroyed and the origin of the documents could not be determined through the interviews, we were unable to determine the source for the classified documents. However, we did find that there were strict and tight controls of classified documents then in use at ICITAP Haiti. We found no unsecured classified documents in the ICITAP offices or the training facility. There was no evidence that any security problems that were present at the onset of the Haiti program (1994-95) represented a continuing problem.

7. Unauthorized Transportation of Classified Documents to Residences

Having a security clearance does not provide authority to take classified documents home. To take classified documents to a personal residence, the Department security officer (i.e., SEPS) must give permission. Permission will only be given if unusual operational requirements necessitate it and SEPS approves a written request. SEPS' approval of the request may require, among other safeguards, a physical survey of the residence, installation of an approved alarm system and a safe, the establishment of procedures for the proper transmission and safeguarding of the information, and other safeguards deemed necessary by SEPS. The Criminal Division's Office of Administration in its Weekly Bulletin of July 28, 1995, distributed to offices within the Criminal Division including ICITAP, noted under the title "Removal of Classified Information" that "Department of Justice policy prohibits employees from taking classified information home without prior approval from the Department Security Officer."

Senior ICITAP officials repeatedly violated these requirements. Hoover, Stromsem, and Trincellito all took classified material home without authorization in violation of security regulations.[57] Hoover and Stromsem admitted to the OIG that they took classified documents home. Hoover said that he took home only "Confidential" documents because he did not want to risk taking home documents with a higher level of classification. Hoover said he did not consider whether he was authorized to bring classified documents home. He claimed that he was overwhelmed with work and wanted to read the documents at his leisure. Hoover took the classified documents home in his briefcase, and he acknowledged that he did not have an approved safe for storing classified materials at home. After working with the documents, Hoover said, he locked them back in his briefcase and put the briefcase in his coat closet until he returned to work. Hoover did this approximately a half dozen times always, he said, when his roommate was out of town.

Stromsem also admitted to the OIG that she and Trincellito took classified documents home to review. Stromsem said she never considered that it might be a problem and that she was simply continuing the practice that was in place under other managers.[58]

Trincellito said he had no recollection of taking classified documents home. However, a former ICITAP staff member recalled that on a Friday evening in September or October 1996, Trincellito took documents with classified coversheets and placed them in his briefcase to take out of the office. According to the former staffer, Trincellito made a comment to him on his way out of the office about how he had some "reading to do over the weekend."

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[57] Andersen told the OIG that he unintentionally brought home a classified document. According to Andersen, when he was a contractor, he took home documents in order to write a paper. Andersen said that the documents stayed at his residence for six months (July/August – December 1996) until he finally sifted through them and found a Secret document. Andersen stated that he took the documents back to ICITAP and notified Stromsem.

[58] Stromsem said that she discussed the issue with Linda Cantelina, the Chief of the Criminal Division Security Staff, implying without specifically stating that Cantelina had authorized Stromsem to take the documents home.

8. Classified Information Improperly Sent by E-Mail

Special precautions must be taken when using a computer to process or send classified information. In the Justice Department, classified information can only be sent on a system that has been "accredited" by SEPS.

In mid-1998, during a review of recovered e-mail from ICITAP/OPDAT personnel, the OIG found an e-mail among Stromsem's messages from then Associate Executive Officer Joseph Lake discussing apparently classified information.[59] Lake sent the e-mail to Stromsem on July 12, 1995, on an unclassified e-mail system used in the Department of Justice. Lake began the e-mail, "I received a secure telephone call from the Defense Intelligence Agency [DIA] this morning at 11:45 a.m. …." The DIA confirmed that the e-mail was derived from a classified document and therefore that Lake had sent classified information over unsecured lines.

Lake sent this e-mail only a few months after Theresa Statuti of the Criminal Division's Management Information Staff met with Lake, Stromsem, and other ICITAP personnel to brief them regarding computer security. Stromsem said that she did not recall the e-mail from Lake and did not recall whether any steps were taken to purge the system and secure the information.[60]

C. Improper Certification of Clearance Levels to Embassies

In addition to the improper handling of classified documents, we found that ICITAP personnel violated other security regulations as well. In the

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[59] We discovered this when examining the e-mail for evidence relating to a different allegation. We did not conduct a thorough review of ICITAP's e-mail to determine if this was a recurring problem. We did note that once she became Coordinator, Mary Ellen Warlow sent an e-mail to Stromsem alerting her to take great care in the kind of information she e-mailed. In an interview, Warlow confirmed that she was concerned that Stromsem and others were not sensitive to classified sources of information when they conveyed information both in e-mail and over the telephone. She said that others had expressed this concern to her as well.

[60] Since Lake had already departed from the Department's employ and had refused further interviews with the OIG prior to the discovery of the e-mail, we could not interview him concerning this incident.

Department of Justice, SEPS is the office that verifies security clearances. When an office wants to verify whether a person has a security clearance and at what level, that office's security officer makes a written request to SEPS for clearance verifications. SEPS researches the individual's clearance level and reports back to the requesting office in writing the individual's clearance level. SEPS automated its security clearance verification system in August 1996. In July 1996, SEPS provided all security program managers and component executive officers in the Department with instructions on how to obtain security clearance verification from SEPS.

Andersen alleged to SEPS that Trincellito had improperly certified that Andersen had a "Secret" security clearance in a Country Clearance Cable [61] sent to the United States Embassy in Haiti. Furthermore, Andersen told the OIG that on two of the four trips he took to Haiti, Trincellito authorized the transmission of cables to the Embassy stating that Andersen had an interim "Secret" clearance. Andersen provided SEPS and the OIG with a copy of one of the cables and the approval sheet signed by Trincellito. In fact, Andersen did not have any security clearance.

We provided to SEPS for analysis the Justice Management System Terminal that ICITAP used to send Country Clearance Cables to United States embassies in order to assess (1) how common the practice was at ICITAP of directly verifying clearances without going through SEPS, (2) how often ICITAP "verified" clearances for individuals who did not have clearances, and (3) ICITAP personnel's motive for verifying clearances.

SEPS found messages from November 1995 through April 1997 that passed on clearance level data for Department of Justice, contractor, and other federal agency personnel to United States embassies. SEPS compared ICITAP's representations in the cables against SEPS' records. SEPS found repeated instances where ICITAP or OPDAT represented that someone had a "Secret" or "Top Secret" clearance when the individual did not have a security clearance at all or had been cleared at a lower level than that represented. SEPS found that in the cables ICITAP had incorrectly "certified" the security

[61] A Country Clearance Cable notifies an Embassy of personnel arrival dates and the purpose of the trip.

clearance for 17 individuals, in addition to Andersen. The State Department then relied on and used ICITAP's inaccurate information to allow individuals access to classified areas and information otherwise restricted from them. Trincellito, Bejarano, and Perito had approved many of these Country Clearance Cables.

Learia Williams, ICITAP's personnel security specialist, was responsible for keeping a list of security clearances and for sending requests to SEPS to verify clearances. At a minimum, Williams should have been consulted before the clearances were sent. Williams told the OIG, however, that no one checked with her before sending out the cables.

We attempted to determine why ICITAP followed this practice. Hoover, Perito, Bejarano, and Deputy Executive Officer Robin Gaige all told the OIG that ICITAP's practice to represent security clearances in the cables to embassies preceded them, and they expressed ignorance of the rules regarding verification of security clearances. According to Perito, who was a former State Department official, he did not believe he was "certifying" someone's security clearance level. Rather, he saw himself as just passing along information that had been provided to him by the traveler. Perito claimed to the OIG that it was normal practice when dealing with other government employees to ask them their clearance level and to accept what they said at face value. Perito acknowledged that he did not verify that clearance levels were accurate prior to sending the cables. He said that he would not have known where to go to verify the traveler's clearance. Trincellito told the OIG in his July 2000 written response that on one occasion Andersen told Trincellito that a cable had to be sent that night and Andersen also represented that he had a security clearance. Trincellito said that he accepted Andersen's representation and processed the cable in a manner consistent with office policy.[62]

The evidence showed that even when ICITAP personnel were explicitly told how to do things properly, they often continued to follow their old procedures. For example, on April 24, 1997, ICITAP was briefed by SEPS on

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[62] In addition to the Andersen cable, Trincellito also signed a cable for another individual with incorrect information.

the proper procedures for completing clearance cables. Yet, on April 29, 1997, Jill Hogarty, an ICITAP employee who had attended the briefing, certified incorrectly an ICITAP staff member's clearance level in a cable to an Embassy.

D. Failure to File Travel Notices

Persons with access to SCI documents or information incur a special security obligation and must be alert to the risks associated with hazardous travel, that is, travel to, through, or within countries that pose a threat to SCI or personnel with SCI clearance. Specifically, SCI cleared personnel performing official hazardous travel were required to: 1) submit an itinerary in advance of travel to SEPS, 2) receive a Defensive Security Briefing, and 3) report any unusual incidents.

SEPS requires that personnel with SCI access notify it prior to foreign travel and provide SEPS in advance with a travel itinerary. According to SEPS, this requirement is specifically covered in the initial briefing for clearance at the SCI level. Bratt, Stromsem, and Trincellito each received an SCI security briefing and therefore were on notice of the special requirements that accompany an SCI clearance.

We reviewed the business travel of Bratt, Stromsem, and Trincellito for 1995, 1996, and 1997.[63] None met the notice of travel security requirement. Although Bratt went on nine foreign trips, only four notices were on file with SEPS and those notices were all filed after the trips had been completed and after initiation of the OIG investigation. Acting Executive Officer Sandra Bright signed four notices for Bratt, all dated June 30, 1997, for trips that Bratt took to Moscow and Haiti in January, February, March, and June 1997.

Stromsem had 25 foreign business trips during the same period and gave SEPS notice of four, all after initiation of the OIG investigation. Trincellito took 15 foreign business trips during this period and filed no notice with SEPS.

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[63] SEPS is required to keep the notice forms for seven years.

E. Joseph Trincellito's Security Violations

Trincellito was one of two people at ICITAP holding an SCI clearance, and he regularly and routinely reviewed classified information. We found during the course of this investigation that Trincellito repeatedly violated the rules pertaining to the safe handling of classified material. We also found that Trincellito refused to change his conduct even when violations were brought to his attention. Because Trincellito's violations were numerous, were repeated, and were flagrant, we discuss them here in some detail. In Section III, we also discuss the failure of ICITAP managers to correct Trincellito's conduct.

Trincellito briefly served as ICITAP's security officer for approximately five months in 1995. Trincellito told the OIG that when he had been the Executive Officer at Interpol prior to coming to ICITAP, some security responsibilities fell within his purview. Notwithstanding this background, numerous ICITAP staffers we interviewed about security problems said that they had seen Trincellito leave classified information unsecured in his office. ICITAP's former Security Officer Shannonhouse and his successor Frary found Trincellito recalcitrant when they tried to get him to conform his conduct to basic security procedures for handling classified information.

a. Violations

Shannonhouse told the OIG that he repeatedly removed unattended classified documents from Trincellito's desk. The first occasion was in September 1995 shortly after Shannonhouse became the ICITAP security officer. Shannonhouse said that he talked to Trincellito about the documents and Trincellito said that he would be more careful. Shannonhouse told the OIG that he notified his supervisors, Associate Director for Administration Raquel Mann and Administrative Services Officer Robert Miller, about Trincellito's security violation. According to Shannonhouse, Mann told him that Trincellito always had this problem and that Shannonhouse should try to talk to Trincellito about it, but that she did not think Trincellito would change. Shannonhouse said that Miller told him that this was a "very sensitive issue due to Trincellito's position." Shannonhouse also said that Miller, who was Shannonhouse's direct supervisor, told him that he should take a very slow approach to this. Rather than "escalating it too quickly," Miller told Shannonhouse, he should take every possible opportunity for the problem to be corrected at the lowest possible level. Miller told Shannonhouse to talk to Trincellito about violations; if that did not work, to place warning notices in

his in-box; and if that failed to correct the problem to speak to Trincellito's supervisor.

Shannonhouse said that he again found unsecured documents in Trincellito's office in October 1995. On this occasion when Shannonhouse tried to talk to Trincellito about the problem, Shannonhouse said, Trincellito sounded irritated and told Shannonhouse that documents at ICITAP were ones that could be read any time in The Washington Post. Shannonhouse said that he told Trincellito that there could be small differences, such as a person's name, that could make all the difference but that he continued to hear that same explanation from Trincellito on other occasions. Shannonhouse told the OIG that he continued to keep his supervisors, Miller and Mann, informed of Trincellito's violations and occasionally sent out e-mail to everyone in ICITAP on proper security procedures.[64]

When verbal warnings failed, Shannonhouse created a written notice he called a "Warning of Security Violation." See Appendix, Exhibit 5. Shannonhouse said it was printed on bright pink paper with huge type so that it was impossible to overlook. Shannonhouse left the first such warning on Trincellito's desk in February or March 1996. Shannonhouse said that once he started leaving warning notices on Trincellito's desk, Trincellito stopped talking to Shannonhouse about them but instead would shift the conversation to how much Shannonhouse would not enjoy being transferred to Haiti.

Shannonhouse told the OIG that in early 1997 he told Stromsem about Trincellito's violations when she asked if there were likely to be any problems that would show up in an upcoming security audit. Stromsem said that she would talk to Trincellito and the violations would not happen again. Shannonhouse said that he stopped noticing classified documents on Trincellito's desk and initially assumed that Trincellito had straightened himself out.

However, Shannonhouse learned as a result of the April 1996 SEPS review that Trincellito continued to keep unsecured classified documents on

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[64] As previously noted, Shannonhouse sent out e-mail in November 1995, May 1996, and August 1996 that reminded employees to "*NEVER* leave classified documents unattended…." (Emphasis in original.)

his desk – only the documents no longer had classified coversheets. Shannonhouse said he learned that SEPS personnel found "Secret" and "Confidential" documents on Trincellito's desk. They also found one of Shannonhouse's warnings of a security violation still in Trincellito's "in-box."

Shannonhouse said that shortly after the SEPS review, at SEPS' recommendation, he went through the documents on Trincellito's desk, window ledges, bookcases, and floor. After spending three hours going through "readily accessible documents," Shannonhouse said he found approximately 43 classified "Confidential and "Secret" documents without coversheets scattered randomly throughout Trincellito's office. Shannonhouse said he reported his finding to ICITAP Director Stromsem, since it related directly to one of the findings in the SEPS review and since he had alerted Stromsem to the problem prior to the review. Shannonhouse told the OIG that Trincellito would not discuss the violations with him and again asked "how I would like to be transferred to Haiti."

In August 1996, Shannonhouse said that he again found classified documents left unattended on Trincellito's desk. He said he issued another written warning but Trincellito refused to discuss the violation. Shannonhouse said he moved to the "next level" and described the problem to Edward Bejarano, one of ICITAP's Deputy Directors and Trincellito's supervisor. Bejarano told Shannonhouse to ask the Criminal Division Security Staff for guidance. Shannonhouse told the OIG that he did speak to the Criminal Division Security Staff about what to do about a person who continued to violate the security rules. Shannonhouse said that while he did not identify the individual about whom he was calling, when the Criminal Division Security Staff asked if it was Trincellito, he confirmed that it was. Shannonhouse also told the OIG that the Criminal Division Security Staff gave him some advice about kinds of discipline, but that in spite of a promise to do so, the Security Staff did not send him any examples of written notices of administrative penalties. By e-mail, Shannonhouse reported his call to Bejarano.

In mid-August 1996, Shannonhouse again found unattended classified documents on Trincellito's desk. Shortly thereafter, Shannonhouse attended a Criminal Division Security Officers' Quarterly Meeting. During the meeting Shannonhouse asked how to handle serious repeat offenders, particularly when they were high-ranking individuals. Shannonhouse said he was given advice that he considered impractical, such as bringing in the marines to conduct a

raid and following Trincellito around to pick up after him, but was not otherwise told how to handle the situation.

Shortly after the meeting, in August 1996, Shannonhouse was removed as security officer and he was succeeded by Paul Frary. Frary said that initially he concentrated on physical security and did not go out of his way to look for unsecured classified documents. Yet, Frary, like Shannonhouse, found that Trincellito violated security regulations. Frary recalled that just after ICITAP relocated to new offices (in December 1996), Frary escorted a workman into Trincellito's office. When Frary entered the office, Trincellito was not there, but classified documents were on his desk. Frary escorted the workman to another room and looked for Trincellito. A short time later, Trincellito came in with his overcoat on indicating that he had been out of the building. Frary said he told Trincellito about the classified documents left unsecured on his desk. Trincellito told Frary that he was only out for a short time to attend a meeting. Frary said he told Trincellito he should have locked up the classified documents. Frary said he believed he told Miller and Deputy Executive Officer Gaige about the incident.

Frary also recalled that in mid-February 1997 a supervisor from the moving company came to the ICITAP offices to inspect furniture damaged in the move. Trincellito's desk was on the list. Frary recalled that Trincellito was on travel so he and the moving company supervisor entered Trincellito's office and inspected the desk. When Frary opened the unlocked middle drawer, he found a stack of classified documents two to three inches high with classified cover sheets. Frary said he took the documents with him. Documentation prepared by Frary at the time of the incident show that the materials found in Trincellito's office were classified "Confidential" and "Secret."

Frary told the OIG that he tried to report the security violation to Hoover. Hoover was unavailable so Frary said he told Gaige, who had administrative responsibility for ICITAP, that he had to write up a security violation. Frary wrote up the security violation in a memorandum and also made reference to the previous violation. The regulations governing the issuance of formal memoranda on a security violation mandate a disciplinary recommendation by the Security officer. Frary therefore wrote:

> As part of the security regulations covering violations, I am to recommend the administrative action that we should take

> because of this violation. I feel that Mr. Trincellito does not view the safeguarding of classified information as a high priority. Because of his lackadaisical attitude, he should have a suspension of his security clearance for a period of time or at a minimum, an official reprimand for this violation.

See Appendix, Exhibit 6.

Frary said he submitted the memorandum, dated February 28, 1997, to Gaige and told the Criminal Division Security Staff to expect his notice. As we discuss further in Section IIIB2 of this chapter, no discipline was ever imposed on Trincellito.

The ICITAP security officers were not the only ones to notice Trincellito's improper handling of classified documents; it was common knowledge throughout ICITAP. One employee noted that classified coversheets stuck out all over Trincellito's desk; another individual told us that he saw classified documents in plain view in Trincellito's office while Trincellito was away. Another employee told us that Trincellito left classified documents unsecured even after a safe was placed in his office.[65] The employee told the OIG, "You could walk into Joe Trincellito's office just about anytime and see classified documents left unattended" and that "it was a running joke that you could find classified documents left unattended in Joe T's office."

Notwithstanding the repeated warnings of violations, in April 1997, when SEPS conducted its sweep of the ICITAP offices and the Criminal Division conducted its review, they found in Trincellito's office 156 unsecured classified documents and an open safe with nothing in it but a videotape and instructions for setting the combination. On April 15, 1997, SEPS suspended Trincellito's security clearance.

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[65] The safe was placed in Trincellito's office in March 1997 to make it easier for him to properly store classified documents.

b. Trincellito's Response

Within a few days after SEPS suspended Trincellito's security clearance, Trincellito sent a written letter to Jerry Rubino, the Director of SEPS, apologizing for his inattention to security and explaining his conduct. Trincellito said that he had been overwhelmed with work, that he had not taken the time to review the materials in his files, and that an administrative mixup regarding setting the combination had prevented him from using the safe that had been put in his office. Trincellito concluded his letter by stating that he was "deeply sorry for any mistakes that I have made in handling classified material…."

The OIG interviewed Trincellito in May 1998 about his security practices. Trincellito told the OIG that he could not recall any specific instances of security violations before the SEPS sweep. Trincellito said that he did not recall Security Officers Shannonhouse or Frary talking to him about security violations. Trincellito did recall a meeting in February or March 1997 with Stromsem during which she told him that classified documents were found on his desk. Stromsem, he said, told him to be more conscientious about security. Trincellito said he did not recall receiving Shannonhouse's e-mail on security rules and the proper handling of classified documents, although he acknowledged receiving a pink notice of a security violation. Trincellito did admit that there were times when he would be called out to a meeting and probably left classified documents on his desk. He could not recall how often that may have occurred.

After reviewing a draft of this chapter, Trincellito responded in writing to the OIG. In his July 2000 response, as well as his letter to Rubino and his May 1998 OIG interview, Trincellito set out several explanations for his conduct. Trincellito said that he had been overwhelmed with work on the Haiti project. He said that he handled more documents, both classified and unclassified, than anyone else in the office; that he had no staff support; and that he was constantly on travel. Trincellito said that classified documents were left on his desk unattended because other people left them there in his absence.

With respect to the 156 documents found in his office in April 1997, Trincellito told the OIG that most of the documents predated his arrival at ICITAP. He said that he believed many of the 156 were in files he acquired when he was assigned to the Haiti project and when he assumed responsibility for various other countries. Trincellito also said that he received classified

documents from the State Department without cover sheets, mixed in with unclassified documents. Trincellito said this explained why classified documents were found unsecured in his office.

Trincellito said he did not know why a safe was placed in his office in February or March 1997. Trincellito told the OIG that he did not use the safe to store his classified documents because it was new and the combination had not been set, that he did not know how to set the combination, and that he did not have time to learn. According to Trincellito, he asked an administrative official for assistance in setting the combination, but he was told to watch a videotape for instructions.

In his July 2000 written response, Trincellito objected to the OIG's reliance on Shannonhouse for information. Trincellito stated that Shannonhouse was hostile toward Trincellito because of issues unrelated to security, such as Shannonhouse's computer-system duties. Trincellito denied that he had ever threatened to transfer Shannonhouse to Haiti and asserted that he did not have the authority to order a non-voluntary transfer. Trincellito also stated that Shannonhouse did not provide training, advice, or assistance in securing classified information and that Shannonhouse did not correct the problem of individuals leaving classified information on desks when employees were away from their offices.

c. OIG's Conclusions

Trincellito and others pointed to the Haiti project as a factor in many of the problems that arose in ICITAP. We acknowledge that the Haiti project was an immense undertaking and that Trincellito and many other ICITAP staffers were required to work extraordinary hours. Nonetheless, we believe that there were alternatives available to Trincellito other than ignoring security rules and regulations.

Trincellito's explanation that he was not responsible for most of the 156 classified documents being in his office is unpersuasive. Only 44 of the classified documents predated Trincellito's involvement in operational activities and only seven classified documents predated Trincellito's assignment to ICITAP in 1993[0]. Although we were unable to determine exactly where each of the 156 documents was found in Trincellito's office, our records show that at least 36 were found on, in, or near his desk. Even if the remaining documents had been found in program files, these were files in his

office concerning programs for which he was responsible. We believe that after approximately 18 months of receiving warnings for security violations, Trincellito should have ensured that files did not contain any classified materials.

We believe that Shannonhouse credibly reported to us his contacts with Trincellito regarding security violations. Shannonhouse's account is corroborated by the fact that Frary also found violations, that managers reported that Shannonhouse informed them of Trincellito's violations, and that other ICITAP staff members also saw unsecured classified documents in Trincellito's office. Trincellito's attempt to blame Shannonhouse is unwarranted. Shannonhouse reminded all staff, including managers, of their responsibilities to safeguard classified material. It was Trincellito's responsibility to follow the regulations. We saw no evidence that Trincellito ever asked for assistance in dealing with classified information. Rather, the evidence supports our conclusion that Trincellito did not view security as a priority and he simply ignored the security officers' efforts to make him conform to the rules.

III. MANAGERIAL FAILURES AND INDIFFERENCE REGARDING SECURITY PROCEDURES

Since at least 1994, ICITAP had been given repeated notice of and opportunities to correct security problems, yet they persisted. We therefore examined why these problems were allowed to persist. We conclude on the basis of our investigation that managerial indifference towards the security program was at the root of ICITAP's security problems.

According to an Executive Order, heads of offices that handle classified information are required to commit themselves and their managers, as well as the necessary resources, to the successful implementation of a security program. Executive Order 12968 § 5.6. Stromsem, the head of ICITAP, did not do so. ICITAP senior management failed to accept responsibility for security and failed to take real corrective action when faced with documented security violations.

A. Security Reviews of ICITAP Revealed Continuing Problems

From 1994 to the April 14, 1997, unannounced security sweep, SEPS conducted annual security compliance reviews of ICITAP and performed

follow-up reviews on maintaining proper security procedures. Once ICITAP was made part of the Criminal Division in 1995, the Criminal Division Security Staff also conducted independent security reviews. Until the April 1997 sweep, all of the reviews were announced. ICITAP was given oral and written notice after the reviews of the problems the security staffs found, yet many of the problems were still found in 1997, at the time of the sweep. We found a disturbing pattern in which SEPS would conduct an ICITAP compliance review, the review would result in findings of non-compliance, and ICITAP would respond by claiming that corrective measures had been taken to safeguard national security information. But at the next review, similar findings would be identified, and ICITAP would make similar responses. As a result, problems originally identified in 1994 and 1996 were still found in 1997.

1. SEPS Review: February 1994

In February 1994 SEPS performed an announced security compliance review of ICITAP. At the time, ICITAP was under the jurisdiction of the Deputy Attorney General. In the review SEPS found a series of improper security practices, including improper storage and handling of classified documents by ICITAP personnel. SEPS found that during business hours, ICITAP left classified material unattended in unlocked safes in the secure room, even though the secure room did not have adequate security features to permit classified material to be left unsecured while the room was unattended. SEPS also found that ICITAP did not adequately control uncleared personnel or visitors in its space. SEPS noted that janitorial personnel had unescorted access to ICITAP without the required FBI name and fingerprint checks having been completed. SEPS also found that classified material may have been left unattended and unsecured in staff in-boxes for short periods of time and that control logs[66] were not adequately maintained for safes located in offices, rather than the secure room. The review also disclosed that an individual without a need to know had access to the combination for a safe used to store classified information.

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[66] Control logs record when and by whom safes are opened and closed.

In March 1994, SEPS made written recommendations for resolving each of its 22 findings. With respect to the finding that classified material may have been left unattended, SEPS recommended:

> Brief all persons accessing [classified documents] of the proper handling and storage of such material. The briefing should emphasize that [classified documents] not under the constant surveillance of an authorized person, must be stored in [an] approved security container.

SEPS noted in the memorandum that it briefed ICITAP managers on the findings, including the ecurity officer, Trincellito.

In its response to SEPS' findings, then ICITAP Director David Kriskovich wrote in a May 1994 memorandum to SEPS that ICITAP had begun to implement SEPS' remedial recommendations.[67] He told SEPS that "[a]s part of [ICITAP's] commitment to assuring complete security compliance," it was going to include "ICITAP Security Programs and Responsibilities as a significant concern in" the required bi-annual Management Control Report to the Justice Management Division. As SEPS learned when it checked for our investigation, however, ICITAP failed to file Management Control Reports with Justice Management Division (JMD) of the Department of Justice. JMD personnel told SEPS that ICITAP claimed at one point that it was exempt from filing Management Control Reports.

2. SEPS Follow-up: December 1994

In December 1994, SEPS conducted a standard follow-up review of ICITAP concerning the findings of its February 1994 review. According to SEPS, the standard follow-up review entailed meeting with the target office's security officer, asking the security officer how the office had corrected the problems that SEPS had identified, and determining what steps had been taken

[67] Kriskovich was not interviewed for our investigation because he died in an accident in Bosnia in September 1997 while working for the United Nations.

to prevent their recurrence. SEPS does not necessarily re-inspect to verify correction.

SEPS wrote a report dated January 10, 1995, detailing its findings from the follow-up review that on the basis of its interview with ICITAP's security officer, it found that ICITAP had satisfactorily corrected the problem of improper storage of classified documents. However, it found that ICITAP had not corrected other problems. ICITAP had not, for example, created written procedures for controlling access to ICITAP's office space by uncleared personnel and visitors.

ICITAP sent a response to SEPS dated March 30, 1995, signed by Bratt, who had just been appointed Acting ICITAP Director, stating that ICITAP would correct the violations. In April 1995, SEPS held security briefings on basic security procedures for ICITAP personnel.

3. Criminal Division Review: March 1996

In March 1996 a Criminal Division security review found the same problems.[68] After being told that SEPS was planning another review, the Criminal Division Security Staff did a preliminary review of ICITAP's security practices in preparation for the SEPS review. The Criminal Division found that, among other problems, contractors had unauthorized access to computers and that contractors were allowed unescorted access to the secure room, even though security background investigations of the contractors had not been performed.[69]

As a result, the Criminal Division Security Staff spent several weeks working on ICITAP's security practices and preparing Shannonhouse for the

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[68] This was only three months after Stromsem had issued ICITAP Administrative Procedure No. 9 reminding employees of the importance of following security regulations. See Section IIB1

[69] The Criminal Division Security Staff also found a new problem – that ICITAP personnel shared passwords. The administrative procedure attached to Stromsem's December 1995 memorandum directed that, "A person should never give out his or her computer password to another person." As we discuss in Section IIIE1 of this Chapter, Shannonhouse's attempt to enforce this rule in 1996 led to him being disciplined.

upcoming SEPS review. They provided ICITAP with department-wide security policy memoranda and asked ICITAP personnel questions to see if they were security conscious. They also provided Shannonhouse with five copies of all applicable security rules, regulations, and Department policies.

4. SEPS Review: April 1996

SEPS conducted its next review in April 1996. The SEPS review showed that ICITAP still did not store classified documents in conformity with regulations. SEPS found that "Secret" and "Confidential" classified material had been left unattended and unsecured on Trincellito's desk while he was on business travel. In addition, SEPS found that two TS-SCI documents were improperly stored at ICITAP, the key to the classified telephone system was left in the machine unattended and improperly secured, and that an ICITAP employee had been given access to classified information without a security clearance.

SEPS staff told us that they discussed their 1996 findings with Stromsem, Hoover, Perito, and Shannonhouse in an exit briefing. Stromsem, who had been the ICITAP Director since August 1995, recalled that all ICITAP personnel were re-briefed by SEPS on security procedures after the 1996 review.

In response to the 1996 SEPS findings, Stromsem wrote to Rubino:

> No one is allowed access to NSI [National Security Information] until confirmation of their clearance is received. The status of all clearances are confirmed and updated on an ongoing basis…. *All ICITAP employees have been informed of the proper handling and storage requirements of NSI material. They have all been instructed that NSI must be either under constant surveillance or stored and secured in the appropriate GSA approved security container….* [Sensitive Compartmentalized Information] Materials are not being stored, processed, or handled on site at ICITAP. (Emphasis added.)

5. SEPS' Sweep: April 1997

Despite Stromsem's representations, SEPS found in its unannounced sweep of April 1997 that classified documents were left unsecured in

Trincellito's office, including TS-SCI documents. After the SEPS sweep, Bratt requested the Criminal Division Security Staff to conduct yet another security review of ICITAP and OPDAT. In a memorandum to Bratt, dated April 17, 1997, Linda Cantilena, the Chief of the Criminal Division Security Staff, identified among ICITAP's security problems: personnel did not know who the security officer was, personnel did not know how to verify clearances, cables were sent to American Embassies that included improperly verified security information, formal access controls to the ICITAP office space still did not exist, safes in people's offices did not have control logs, classified documents were taken home, and there were inconsistent procedures regarding handling of classified documents. In addition, the OIG investigation found that at least until March 1997, ICITAP was still giving uncleared contract personnel access to classified documents and unescorted access to ICITAP's offices.

B. Management's Failure to Discipline Trincellito for Security Violations

We believe that the recurrent nature of these problems can be explained by the fact that ICITAP senior managers changed little or nothing in office practice when informed of security violations. Because Trincellito was the most flagrant and well-known violator of the security rules, we examined what ICITAP management knew about his conduct and what action it took in response. As we set out below, we learned that senior managers were aware of Trincellito's repeated violations and that some effort was made to counsel Trincellito and to make it easier for him to comply with the rules. However, despite clear evidence that Trincellito continued to act in complete disregard of the rules, management did not take steps to ensure that the problem was solved.

Shannonhouse said that when he discovered documents on Trincellito's desk, he kept his own supervisors informed. He also said that he informed Stromsem and Deputy Director Bejarano, Trincellito's supervisor.

Frary told the OIG that although the fact that there were security problems was fairly well known throughout ICITAP, the prevailing management attitude about security seemed to be one of "not being concerned about things as long as the job got done." He said that there was a concern that problems be handled in house so as to not "air our dirty laundry." Frary said that after he took over the Security officer duties, Hoover told him

not to be "overzealous" in his duties "like my predecessor and something to the effect of being easy on Joe [Trincellito] or cut him some slack."

1. Managers Acknowledged That They Knew of Trincellito's Violations

We found that the failure to deal with Trincellito's violations was not because ICITAP managers were unaware of them. The managers admitted to us that they knew Trincellito violated security regulations.

Both Miller and Mann, Shannonhouse's supervisors, confirmed that Shannonhouse repeatedly told them that Trincellito was not properly handling and storing classified documents. Mann described Trincellito's office as a "rat's nest" strewn with classified as well as unclassified documents. Miller said that Trincellito was "notoriously sloppy" in handling classified documents. Miller also told the OIG that talking to Trincellito did not rectify the situation. Miller said that Trincellito simply continued the same pattern of behavior.

Miller also said that Mann continually informed Stromsem about the security violations but nothing was done. According to Miller, Stromsem did not like administrative interference with ICITAP operations. Miller commented that when Mann tried to remind Stromsem of the rules and procedures, Mann was viewed as "disloyal to Jan" and obstructing operations.

Mann said that Stromsem saw enforcement of security regulations as interfering with the office's operational initiatives. She said Stromsem would listen to her and her staff, and tell them to go ahead and issue policy to correct the problem, but without enforcement nothing changed. Mann believed that it was "symptomatic" of Stromsem's management style that Stromsem would not take responsibility for Trincellito or require corrective action or discipline.

Hoover said that as a member of the management team at ICITAP he had input into the policies and the decisions made concerning security at ICITAP. Hoover acknowledged to the OIG that he knew of several occasions that Trincellito had left classified material on his desk. In a September 1998 OIG interview Hoover said that sometime in 1995, after Shannonhouse had found a problem, Hoover counseled Trincellito. When in 1996, Shannonhouse came to him again for advice on Trincellito's repeated violations, Hoover said he recommended that Shannonhouse talk to Bejarano, and Hoover raised the problem to Stromsem. Hoover told the OIG that in

response to the February 1997 Frary notice, Trincellito was told to stop mishandling classified documents. Hoover said that he did not recall any of the managers ever making a suggestion to take administrative action against Trincellito. According to Hoover, Stromsem was aware of the security problems at ICITAP, and Hoover acknowledged that security issues were unmanaged. Hoover admitted to the OIG that he told Frary not to be overzealous in his security duties but said that he did not "necessarily" tell Frary to "go easy" on enforcing security regulations. Hoover said he did not want Frary to "target" Trincellito as Hoover believed Shannonhouse had done.

Deputy Director Bejarano, Trincellito's supervisor, was also informed of Trincellito's security problems. He said that each security officer had come to him once about Trincellito's failure to properly secure classified documents. Bejarano said he told Shannonhouse to report the incident through security channels. But Bejarano did nothing to follow up; he did not know if a memorandum was ever written memorializing the incident or if any action had been taken against Trincellito.

Deputy Director Perito knew as well that Trincellito repeatedly left classified documents unattended. Perito described Trincellito as careless in the handling of classified information, which, he said, put ICITAP as an organization at risk. Perito told the OIG, however, that he did not believe it was his responsibility to take or suggest any corrective action against Trincellito for his security violations because ICITAP was a collegial environment and Trincellito was one of the managers.

Stromsem recalled that the 1996 SEPS security review documented that Trincellito had left classified documents unattended. In response to SEPS' findings, Stromsem said she called a general meeting concerning security and, based on Shannonhouse's advice, she had a conversation with Trincellito about safeguarding classified documents. Stromsem claimed that she personally checked for a short time afterwards to see whether Trincellito left classified documents unattended and found that he did not. She acknowledged that she was told on two subsequent occasions, however, that Trincellito had left classified documents unattended. After the last incident, Stromsem said that she arranged, at Gaige's recommendation, for a safe to be placed inTrincellito's office to store classified documents. Stromsem also said that she and Hoover met with Trincellito to discuss the third incident and the reason for the safe. Stromsem denied knowing that Frary had made written

recommendations about Trincellito's security problems until after the SEPS sweep in 1997 when Gaige mentioned it to her and Bratt.

At the time that Frary submitted the security violation notice in February 1997, Bratt was the ICITAP/OPDAT Coordinator. Bratt told the OIG that Gaige and Stromsem informed him in February 1997 of a documented security violation by Trincellito. Bratt said that Stromsem told him that she had discussed the matter with Trincellito and would take care of the problem.

2. Failure to Impose Administrative Sanctions

As Stromsem noted in her December 1995 memorandum to ICITAP staff on security, government employees and contractors are subject to appropriate sanctions if they knowingly, willfully, or negligently disclose classified information to unauthorized persons or otherwise violate security regulations, such as by leaving classified documents unsecured. Sanctions may include reprimand, suspension without pay, removal, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation. Agency heads or senior agency officials are required to take "appropriate and prompt corrective action when a violation or infraction occurs." Executive Order 12958 § 5.7(e)(1). The Criminal Division Facilities and Security Manual provided to ICITAP, as well as ICITAP Administrative Policy No. 9, discuss administrative sanctions for security violations.

a. Trincellito Not Disciplined for Multiple Violations

We did not find that any discipline or other administrative sanction had ever been imposed on anyone at ICITAP, including Trincellito, for security violations. There were numerous security incidents involving Trincellito that were corroborated through interviews and documentation. Yet, Trincellito never received any type of administrative sanction for his continued pattern of behavior and reckless disregard for security.

As discussed, Frary wrote a report detailing two security violations by Trincellito and recommended that he receive some form of discipline. However, no administrative sanction or disciplinary action was taken in response to Frary's notice. Indeed, no senior manager other than Gaige admitted to having seen it, and it was never forwarded to the Criminal Division Security Staff.

Gaige said she did not forward Frary's memorandum to the Criminal Division Security Staff or talk to Stromsem about forwarding the information because she was unaware that she was required to do so. She told the OIG that she raised the problem of Trincellito at a senior staff meeting that Trincellito attended and sent out a reminder on securing classified documents to all ICITAP employees.[70] See Appendix, Exhibit 7.

Gaige recalled to the OIG that Trincellito acknowledged at the staff meeting that Frary had spoken to him about having found unsecured classified documents in Trincellito's office and acknowledged that he knew that he should not leave unsecured classified documents. Gaige said, however, that he and others at the meeting treated the problem as a nuisance – as an administrative matter – but not one of importance. The solution that was discussed at the meeting was to get Trincellito a safe for his office.

When questioned by the OIG about this incident, Trincellito denied that he was present when his violations were discussed at the staff meeting and denied knowing why he had received a safe in his office. Instead, Trincellito claimed that he was on travel at the time of the meeting. However, Gaige's notes of a March 5, 1997, staff meeting show that she discussed getting a safe for Trincellito and show that Trincellito was at the meeting, along with Stromsem, Special Assistant to the ICITAP Director Pamela Swain, Hoover, and Bejarano. Gaige told the OIG that at the same meeting they discussed the fact that Frary had found that Trincellito had left classified documents unsecured. Trincellito's travel records show that he was on travel the following week.

Hoover said that Stromsem never discussed the consequences of the failure to comply with security regulations. Given Trincellito's repeated violations, Hoover said, there was no reason to think that such verbal review of proper practices would have any effect on Trincellito. Hoover thought that

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[70] Gaige also told the OIG that when Frary reported to her that Trincellito had left classified documents unsecured in his office, she told Frary to put the documents in a safe without mentioning it to Trincellito to see if he would miss them. Later, Frary told her that Trincellito had never noticed that the documents were missing.

it would have been reasonable to impose sanctions but, he said, no one was ever sanctioned for security violations.

Stromsem wrote in her August 2000 response to the OIG that at no time did anyone from any of the various security programs – SEPS or the Criminal Division – ever recommend that she should take disciplinary action against anyone in ICITAP. "Since there were no recommendations for disciplinary action …, none was taken." Stromsem said that she had not seen Frary's memorandum although she acknowledged being told that Frary had found classified materials in Trincellito's office.

Essentially, the only action that ICITAP management took was to have an occasional talk with Trincellito and finally to provide him with a safe – a safe that Trincellito refused to use. Although we recognize that not every security violation warrants discipline, the failure to take any disciplinary action against Trincellito, with his history of repeated security violations, highlights management's failings in ensuring that the security rules were followed. We believe that Stromsem had more information than SEPS or the Criminal Division security staff about the security problems in her office. She was not required to wait until somebody else recommended appropriate action. As a manager, she was obligated to take the necessary steps to correct the problem – without waiting for others to recommend a course of action.

b. Security Not Included in Performance Appraisal Reports

Furthermore, despite Trincellito's flagrant disregard of the security rules, his annual Performance Appraisal Reports (PAR) were not affected by his persistently reckless handling of classified documents. Performance appraisals are to be done once a year for each employee in the Justice Department. Each employee is told in advance the elements of his job on which he will be evaluated. In November 1995, Bratt sent out a memorandum to all the section chiefs in the Criminal Division requiring offices to include as a "critical element" in evaluations the management of classified information for employees whose duties significantly involved the handling of classified information. Trincellito was the only ICITAP employee identified by Bratt as such an employee.

Stromsem said that during the period when she supervised Trincellito, she completed his performance evaluation. Stromsem said she did not see

security as an overriding factor in rating Trincellito and believed he received one outstanding evaluation and one outstanding or excellent evaluation over the time frame of 1995-1997.[71]

In essence, the OIG investigation revealed that Stromsem not only failed to administratively sanction Trincellito for his flagrant disregard for safeguarding classified information, she failed to note or account for his deficiencies in his performance rating.

c. Stromsem's Conflict of Interest in Disciplining Trincellito

We received information that Trincellito and Stromsem dated while they both worked at Interpol prior to their employment at ICITAP. Stromsem admitted that she continued intermittently to date Trincellito through 1994, when they were both at ICITAP.[72] Stromsem said that she stopped dating Trincellito before she became ICITAP Director in August 1995. Stromsem said that she did not view having dated Trincellito as creating a conflict of interest in making personnel decisions about him.

We believe that Stromsem's relationship with Trincellito created a conflict of interest with respect to decisions about whether and how Trincellito should have been disciplined for committing security violations. Given that ICITAP staff knew of her prior relationship with Trincellito, knew that Trincellito repeatedly violated rules and regulations regarding security without any apparent consequence, and at least one staff member knew (because Stromsem told him) of acts by Trincellito that could reasonably have been interpreted to mean that Trincellito's interest in Stromsem continued, staff could easily conclude that Trincellito was being protected by Stromsem. Stromsem should have been cognizant of the appearance problem and delegated issues involving misconduct by Trincellito to other senior managers.

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[71] Trincellito's personnel file had only one PAR and it was for the post-sweep period of April 1997 to March 1998. The PAR was written by Swain; Trincellito received an Outstanding rating.

[72] Under the time frame provided by Stromsem, she was not Trincellito's supervisor when they dated at ICITAP.

3. OIG's Conclusions

We conclude that Trincellito's pattern of violating basic security regulations was known throughout the office, including everyone involved in ICITAP's management. Stromsem, Hoover, Bejarano, Perito, Mann, Miller, and Gaige all knew that Trincellito routinely violated security regulations governing the handling of classified documents. Yet, no manager took responsibility for ensuring that Trincellito handled classified documents with the care the regulations required.

C. Lack of Reporting of Security Incidents

ICITAP management not only failed to resolve security problems, they also failed to report violations to Department security officers, thereby preventing those offices from assisting ICITAP in fixing its security problems. The Department of Justice Security Program Operating Manual directs Department employees and contractors to report "[a]ny incidents that indicate an employee knowingly or willfully violated security policies established for the protection of NSI [National Security Information]. Disclosure or compromise of classified information through negligence must also be reported. Pursuant to Department regulations, the ICITAP/OPDAT security officer or managers should have reported security violations to the Criminal Division Security Staff.

Most of the security violations that occurred at ICITAP, particularly those pertaining to Trincellito, were apparently never reported to the Criminal Division. Criminal Division Security Staff described to the OIG only two security violations at ICITAP of which they were aware. Cantilena recalled being notified of one security violation pertaining to Trincellito but was unaware of his repeated violations, and she stated that she never received the February 28, 1997, security violation report written by Frary.

D. ICITAP Practices that Contributed to Security Violations

ICITAP managers continued a number of practices that exacerbated the security problem. As we previously discussed, the practice of routing classified documents through the office by means of a distribution list contributed to the problem of leaving classified documents unattended on employees' desks. There were other problematic practices as well.

1. Increased Use of Consultants

Although ICITAP had consultants in its office as early as 1988, consultants were not involved in operational matters that required them to handle classified information, and they were not located at ICITAP Headquarters. Consequently, there was no need to obtain security clearances for them. Over the years its use of consultants changed markedly, but ICITAP's practice of not obtaining clearances for consultants did not.

In subsequent years, consultants worked closely with government employees, often sharing the same titles such as program manager. They were often indistinguishable from federal employees. Consultants worked at ICITAP Headquarters and had free and unescorted access to its premises and access to classified information without clearances.

In her August 2000 written response, Stromsem stated that she followed procedures that were put in place by ICITAP's first Director, "an FBI agent well-versed in security matters." We found, however, that procedures that may have been appropriate when ICITAP was small should have been changed when ICITAP grew and made increased use of consultants.

2. Employees' Paperwork Not Processed Properly

In addition to the problem of giving consultants unauthorized access to classified documents, federal employees also received unauthorized access. ICITAP managers and employees appeared to assume that once individuals were present at work they had an interim security clearance. This assumption was misplaced. We found that ICITAP did not ensure that an interim clearance had been granted before the new employees began work.

According to ICITAP administrative personnel, ICITAP managers did not inform them that individuals had been hired until they showed up. Miller said that there was no notification to the administrative section so that they could initiate a background investigation prior to the person starting work at ICITAP. This created a security problem for ICITAP, which it attempted to rectify by making an exception to the security rules the norm.

ICITAP would bring the individual on board quickly by requesting a "waiver of the pre-appointment investigation" from SEPS and stating that the individual hired would not be required to handle classified information. However, in some instances, shortly thereafter ICITAP would send a second

letter requesting an interim security clearance. Preliminary security background investigation questionnaires would be handed to an employee after the employee was already working at ICITAP. To further confuse matters, at times the background documentation was misplaced or lost and an individual would go months without the initiation of a background investigation. All the while the individual was already at work at ICITAP with access to classified documents.

These problems are illustrated by what happened with Martin Andersen. According to Andersen, when he was hired as a two-year term employee, he was told his report date would be delayed because ICITAP had forgotten to process his security clearance background questionnaire. Andersen received a letter from Stromsem dated August 17, 1995, that said:

> As you are aware, your security papers were submitted on August 16, 1995. We anticipate receiving an interim - secret clearance for you in time for you to enter on duty with us on September 3, 1995.

Around the same time that Stromsem sent Andersen the letter, ICITAP administrative personnel sent two memoranda to SEPS, a day apart. The first memorandum (dated August 15, 1995) requested an interim security clearance for Andersen because a Top Secret clearance was essential for his work; the second (dated August 16, 1995) requested a waiver of a pre-appointment investigation and stated that Andersen would not handle classified information until given a security clearance. SEPS initiated a background investigation on Andersen but did not initiate the interim clearance process for Andersen. SEPS told the OIG that it may have assumed the second letter withdrew the first request. Andersen therefore never received an interim security clearance. However, Andersen and others at ICITAP believed he had an interim clearance because no one actually verified Andersen's clearance with SEPS before providing Andersen with access to classified information.

E. Changes in Security Officers at ICITAP

In April 1997, the Criminal Division Security Staff found that, "there is confusion over who is responsible for security for ICITAP or OPDAT ...." Some of this confusion can be explained by the fact that Bratt and ICITAP managers removed Shannonhouse and then Frary from their security officer positions. We found that the removal of Shannonhouse and Frary created a

perception in ICITAP that they were removed because managers disliked the security officers' enforcement of security rules.

1. Removal of Shannonhouse

As can be seen from his e-mail, Shannonhouse attempted to enforce security standards and procedures, but he was replaced after only a year, in August 1996. We were told by ICITAP staff that Shannonhouse "got flack for pushing security issues" and that Shannonhouse was removed because he was "overzealous." We were also told that Shannonhouse was removed after Trincellito complained to Stromsem about him.

According to Shannonhouse, after he had again found classified documents on Trincellito's desk, he discussed the problems he was having with Trincellito in a Security Officers' Quarterly Meeting in mid-August 1996. An e-mail dated August 15, 1996, shows that Shannonhouse notified Bejarano that Shannonhouse had spoken to Cantelina of the Criminal Division Security Staff and that Cantelina would send some guidelines concerning administrative sanctions for security violations. See Appendix, Exhibit 8. A few days later, Shannonhouse was relieved of his duties as the ICITAP security officer.

We attempted to determine the reason for Shannonhouse's removal as the security officer. However, we were unable to find any manager who acknowledged making the decision to remove Shannonhouse and who would state the basis for the decision.

Stromsem said that Bratt removed Shannonhouse because of an incident between Shannonhouse and a contractor, Richard Bartsch, and not as a result of security issues with Trincellito. In her August 2000 written response to the OIG, Stromsem reiterated that Bratt made the decision to remove Shannonhouse and that she had nothing to do with it. Bratt told the OIG that he was not aware of the reasons and never discussed with Stromsem why Shannonhouse was replaced as security officer. Bratt denied wanting to suspend Shannonhouse from his position as the security officer.

In an e-mail dated August 23, 1996, Miller, Shannonhouse's supervisor, told Shannonhouse that Miller was informed of the change on August 22, 1996, at 3:30 p.m. and that he was not consulted in the matter but merely told what was going to take place.

We found that, interestingly enough, Shannonhouse was the only person who received any administrative sanction for actions related to security. Shannonhouse received a letter of instruction for failing to observe the chain of command. The letter of instruction, dated May 28, 1996, and signed by Miller, noted that Shannonhouse's actions had caused the Criminal Division Security Staff to conduct an investigation of Bartsch.[73]

Miller told the OIG that Shannonhouse notified Linda Cantilena, head of the Criminal Division Security Staff, of a security problem involving Bartsch and that Cantilena started to investigate the matter. Miller said that Stromsem and Perito became aware of the situation and were furious about it. According to Miller, Stromsem "called off" Cantilena and the investigation never occurred, but Stromsem and Perito demanded that Miller take some administrative action against Shannonhouse. Miller said he took the lowest level of action possible so as to not permanently affect Shannonhouse's career while still satisfying Stromsem and Perito.

2. Removal of Frary

Frary told the OIG that the week that he issued the security notice, he was transferred from his position as ICITAP Security officer to the Criminal Division's Security Staff with other responsibilities. As with Shannonhouse, we did not find a clear explanation for Frary's removal.[74] Although Gaige said that personnel matters were discussed at ICITAP senior staff meetings, she

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[73] Contemporaneous e-mails indicate that Shannonhouse was concerned about Bartsch's access to the computer passwords for ICITAP staff. Shannonhouse repeatedly tried to get managers, particularly Miller and Mann, to prohibit Bartsch from having routine access to computer passwords. Given that Shannonhouse received his letter of instruction in May 1996, this incident does not explain why Shannonhouse was removed in August 1996. In an OIG interview, Stromsem had also stated that Bratt removed Shannonhouse because Shannonhouse accused Bartsch of introducing a computer virus into the ICITAP system. As noted, Bratt denied having anything to do with Shannonhouse's removal.

[74] Stromsem said that it was Bratt, not she, who made the decision to move Frary to other duties.

said that Frary was removed as Security officer without any discussion at a senior staff meeting.

The evidence is not clear, however, whether the decision to move Frary to other duties was the result of Frary's report on Trincellito's violations. In a memorandum dated February 13, 1997, Bratt wrote that Frary, and other personnel, were to be moved from ICITAP and OPDAT's payrolls to the Office of Administration's payroll. Frary did not submit his memorandum until February 28, 1997, suggesting that the decision to move Frary was made before and was therefore unrelated to Frary's submission of the violation notice. However, the memorandum did not state that Frary's move also meant that Frary (or the others) would also change jobs. In addition, Frary said he told Gaige of the problem regarding Trincellito in "mid-February" before he wrote the memorandum. Therefore, we were unable to determine what nexus, if any, Frary's violation notice report had on the decision to transfer him to other duties.

We learned during our investigation of an action that Stromsem took after the SEPS security sweep in April 1997 and after Trincellito's and Hoover's clearances were suspended. Stromsem asked for and received a Card Transaction History Report, which indicated who had been in ICITAP office space on certain dates. Stromsem learned that Frary had been present at (and presumably had let SEPS into) ICITAP's offices on the evening of the SEPS sweep, April 14, 1997.[75] Paula Barclay, who replaced Frary as the security officer, asked the Criminal Division, at Stromsem's request, to "ascertain the purpose of Paul Frary's access" on April 14, 1997, the date of the sweep, and other dates and asked whether access to ICITAP's office space could be limited to "duty hours" for select individuals.

Stromsem said in her August 2000 response to the OIG that several days after the sweep, Frary was observed removing documents from ICITAP files after he had been transferred to duties not relating to ICITAP. Stromsem said she requested information about Frary's whereabouts to see if he had entered ICITAP office space on other occasions during after hours periods. Stromsem said that when she determined that the only times he had come into ICITAP

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[75] According to Frary, SEPS had requested that Frary be present during the sweep.

space after hours coincided with the times he accompanied the SEPS staff, she did not pursue the matter further.

3. OIG's Conclusions

Shannonhouse, who appeared diligent in his duties as a security officer, was first reprimanded and then removed from his position. Frary was similarly removed. Both were removed shortly after they made Trincellito's violations an issue. However, the evidence regarding the reasons for Shannonhouse's and Frary's removal was unclear and therefore insufficient to conclude that ICITAP managers retaliated against Shannonhouse and Frary. Nonetheless, the clear message the managers sent was that it did not pay to be diligent as a security officer. Indeed, that same message was given to Paula Barclay when she became the security officer after Frary. One day after announcing Barclay's assumption of the security officer duties, Stromsem e-mailed Barclay: "Pls. Don't worry about this new duty. Between us, Liberia is much more important over the immediate term."[76]

F. The Criminal Division's Responsibility for ICITAP's Security Problems

The Criminal Division acquired responsibility for oversight of ICITAP in 1994. ICITAP personnel complained to us that the Office of Administration Security Staff was often not helpful. An ICITAP administrative officer noted that, with respect to one security issue regarding contractors, it took "a year of

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[76] In her August 2000 response to the OIG, Stromsem wrote that Barclay was only assigned to assist Perito, who Stromsem said was actually the security officer, and that Barclay's duties primarily related to processing the paperwork associated with clearing contractors. Stromsem said that Barclay was concerned that her paperwork duties would sidetrack her from her operational duties and that she was making it clear to Barclay that her new security duties would not replace her responsibilities for operational programs. However, Stromsem sent an e-mail to all ICITAP staff on April 7, 1997, stating, "I have designated Paula Barclay Security Officer for ICITAP. Paula will receive training from the CRM/ADM staff on these additional responsibilities and she will advise us as to whatever steps are necessary to improve our security processes and handling of classified information." This e-mail is not consistent with Stromsem's claim that Barclay had only limited, paperwork-type duties.

e-mails" with the Security Staff before the matter was straightened out. In addition, the ICITAP security officers and others said that they did not receive specialized training to assist them in managing the security program at ICITAP. Linda Butler, a security specialist with the Criminal Division Security Staff, acknowledged that at one time there was no special training for the security officers, but she said the Criminal Division began holding quarterly security meetings with all the security officers.[77]

Although ICITAP generally failed to notify the Criminal Division Security Staff about violations, in those few instances that the Criminal Division Security Staff did know about, they failed to conduct the follow-up required by the regulations. The Division Security Officer is required to report in writing security violations to SEPS and is required to initiate a security inquiry to make an assessment of the damage incurred from a national security standpoint. Criminal Division Security Staff told the OIG that they were aware of two security violations at ICITAP before the sweep: one involving Trincellito and one concerning Truebell. However, the Criminal Division Security Staff did not have any report of security violations for these two incidents, meaning that the Security Staff had failed to notify SEPS in writing of the violations and the Security Staff had also failed to initiate a security inquiry as required by the regulations. In addition, although Frary said that he informed Cantilena that he had written a security violation report and that she would be getting a copy, Cantilena never followed up when she did not receive the report.

As the Criminal Division Executive Officer, Bratt was the senior manager in charge of security for the Criminal Division. As Acting Director of ICITAP and Coordinator, he also had direct responsibility for security at ICITAP. We received conflicting statements regarding Bratt's responsibility for security problems. A Criminal Division Security official told the OIG that Bratt had the attitude that security was not important and openly made comments to that effect at Criminal Division staff meetings. The security

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[77] Some of the advice provided during these meetings was questionable, however. According to Shannonhouse, it was at a Security Officers' Quarterly Meeting that Shannonhouse was told he could follow around and pick up after a person who was regularly leaving classified materials unsecure.

official recalled being at a Criminal Division retreat in 1995 or 1996 when Bratt told all the Office of Administration personnel present that security was not important.

On the other hand, another ICITAP administrative official said he never heard Bratt make such comments and told the OIG that Bratt and Lake had tightened security at ICITAP. Another ICITAP administrative official believed that Bratt was concerned about security when he supervised ICITAP in 1995, but once he left, it was back to "business as usual."

Based on our investigation, it appeared that Bratt did make some attempts to improve security but ultimately he failed to ensure that security problems were completely resolved. For example, Bratt said that when he received the allegation about improper disclosures of classified information by Hoover from Andersen in November or December 1995, he investigated the allegation by asking Hoover whether it was true. Hoover said "no" and Bratt made no further inquiry. Hoover, however, said that Bratt never asked him.

We saw no evidence that the Criminal Division Security Staff ever committed itself to oversee security at ICITAP. The Criminal Division Security Staff should have been aware of the compliance reviews conducted by SEPS and the security failures and violations SEPS found, but they did not actively follow up with ICITAP to ensure that corrective action was taken and sustained. In addition, no action was taken even though the Criminal Division was told, albeit informally, by Shannonhouse that someone in ICITAP was repeatedly violating security regulations. Nor did the Criminal Division notify SEPS of security violations and problems it knew about at ICITAP. In response to a question about a different issue, Criminal Division Deputy Assistant Attorney John Keeney told the OIG that the Criminal Division had tried to hold ICITAP to the same standard as the rest of the Department but because of ICITAP's uniqueness the Criminal Division was slow to impose Criminal Division standards on ICITAP.

G. Stromsem's Explanation and the OIG's Conclusions

ICITAP Director Stromsem gave several reasons for her failure to enforce security regulations: (1) she was not aware of the extent of the problem, (2) she merely permitted practices to continue that had been instituted by her predecessors, and (3) her staff had insufficient training and guidance on security issues. Stromsem said to the OIG, for example, that "it never occurred

to [me] that ICITAP's procedures needed to change," even after SEPS briefed her on problems it found in 1996. It was not until after the April 1997 SEPS sweep, she said, that she realized ICITAP's security problems were not isolated to a few individuals. Stromsem added that in light of the procedures practiced by other sections within the Criminal Division and other agencies (such as the State Department and USAID), she did not perceive the problem at ICITAP until it was brought to her attention by SEPS in 1997. Similar excuses were given by other managers.

After reviewing the draft of this chapter, Stromsem disputed the OIG's conclusion that she had failed to enforce security regulations, and she gave several additional explanations for her conduct. Stromsem stated that the information relied on by the OIG was brought to the OIG's attention by "disgruntled employees," who she identified as Andersen, Shannonhouse, Frary, Miller, and Mann. She also stated that Shannonhouse and Frary did not perform their duties adequately; that it was their responsibility to discover that classified materials had been improperly placed in program files. Stromsem wrote that the OIG erroneously concluded that managers were not concerned about security and she noted that after the 1996 SEPS review "staff were counseled, they were re-briefed by the SEPS staff, and memoranda concerning security procedures were prepared and distributed to staff on more than one occasion." Stromsem also objected to the OIG's failure to discuss the enormity of the Haiti mission and her constant travel schedule. Stromsem did not assert that these factors contributed to any failings on her part; she only noted that the report focused on "negative information gleaned from a few discredited former employees."

We believe that these excuses for failing to correct security problems – that managers were unaware of the rules, that the practices were long-standing, that others did the same thing, that ICITAP personnel had insufficient training and guidance, that appropriate action was taken, and that if the action was inappropriate others were to blame – are unpersuasive. ICITAP managers had ample opportunity to learn the correct procedures, through briefings by security officials and written procedures that were distributed to all ICITAP staff. ICITAP managers, in particular, had access to security guidance. For example:

- Shannonhouse's e-mail of September 22, 1995, warned everyone not to assume that a staff member or contractor was appropriately cleared.
- Stromsem's memorandum of December 1995 attached a basic security procedures manual that instructed staff not to drop classified documents on desks and informed staff that classified documents had to be kept under constant surveillance.
- SEPS briefed managers following the 1994 and 1996 security reviews; in 1994, Trincellito was one of the managers briefed on the finding that classified documents could not be left unattended.
- Gaige sent a security reminder on March 4, 1997, again noting basic security procedures.

These notices were all in addition to the governmental rules and regulations that persons handling classified documents were required to know and observe.

Indeed, we found that even when ICITAP personnel were specifically instructed not to follow a certain practice and then told the proper procedure, they continued the improper practice. For example, weeks after being given a briefing on computer security, Lake sent a classified message via the unclassified e-mail system; days after being briefed by SEPS that ICITAP could not "certify" a clearance level to an embassy, Hogarty did so. The problem was not with the guidance; it was with the managers' refusal to enforce the rules.

Stromsem's, Hoover's, and Trincellito's responses to the OIG all reflected a view that it was not their responsibility to correct problems. They insisted that the security officers or the administrative staff should have ensured that they were following the rules. We disagree. The security officers did not have the authority to fix the routing system in ICITAP and they certainly had no responsibility to follow staff around ensuring that classified information was not left unsecured or given to uncleared personnel. As senior managers, Stromsem, Hoover, and Trincellito had the duty to be proactive in ensuring that security regulations were followed. They should not have gone along with obvious security violations just because other managers or other agencies did not follow the rules.

ICITAP managers also failed to support the ICITAP security officers and ultimately removed two in a way that fed a perception that the security officers were being punished for their diligence. Managers communicated to the security officers that security was not an ICITAP priority. Hoover told Frary not to be "overzealous" about security, and Stromsem told Barclay that security was not something she needed to "worry about."

The failure to adequately deal with Trincellito's repeated violations is symptomatic of ICITAP managers' overall failings with respect to security. We do not believe that sending out memoranda constituted sufficient action. None of the managers took responsibility to stop what was apparent to almost everyone in ICITAP – Trincellito's flagrant and continuous violation of the security rules. The failure to enforce the rules against a senior manager had its costs. ICITAP management's own poor security practices and lack of support for the security program lent to the overall attitude that it was "okay" to bend or break the security regulations in the interest of the mission. As an example of the effect management's attitude had on other employees, Shannonhouse told the OIG that in 1996 he found an employee leaving classified documents on Hoover's desk. When Shannonhouse told the employee she could not leave classified documents unattended, the employee replied that she "did not see why she should have to worry about this when none of the upper level people do." According to Shannonhouse, the employee specifically mentioned Trincellito as leaving documents out all the time.

We conclude that Stromsem, Hoover, and Trincellito bear the greatest responsibility for the ICITAP security failings. However, other ICITAP managers – Perito, Bejarano, Mann, Miller, and Bratt – also played a part in the problem. They did little to rectify the situation. We acknowledge, however, that to the extent that any of them tried, Stromsem's unwillingness to improve security acted as an effective deterrence to her subordinate managers. Stromsem's refusal to enforce the rules against Trincellito and her own security violations sent a clear signal that security was not an ICITAP priority and security rules could be ignored without consequence.

IV. ACTIONS RESULTING FROM THE SEPS SWEEP AND OIG INVESTIGATION

In the end, the lesson of ICITAP may be how simple it was to correct ICITAP's security problem. After the SEPS sweep in April 1997, the

suspension of security clearances, and changes in managers, ICITAP finally improved its overall security posture. The Criminal Division Security Staff also assisted ICITAP to implement new, improved security procedures. New rules dealing with contractor security were issued. All ICITAP employees now wear badges that are color coded to show their clearance levels.

The Criminal Division conducted an unannounced "sweep" of ICITAP and OPDAT in August/September 1997. In September/October 1997, it conducted a compliance review of the ICITAP offices. No classified document or other security violations were found during the review. An unannounced SEPS review in March 2000 continued to show ICITAP's heightened security awareness and compliance with the rules, although an SCI document was found improperly stored in an office safe.

Given ICITAP's history, ICITAP senior management will have to rigorously enforce security policies and procedures, including taking administrative action against violators, over a sustained period and will have to be models of security compliance themselves to ensure that ICITAP does not slip back into its old ways.

V. CONTACTS WITH FOREIGN NATIONALS

When individuals with SCI clearances have continuing contacts with foreign nationals, the danger of compromise of classified information requires special procedures. To address this danger, the Department has issued regulations and directives that require individuals with SCI clearances to notify SEPS of certain contacts with foreign nationals.

Criminal Division Executive Officer Robert Bratt and OPDAT staffer Martin Andersen both had close relationships with a Russian citizen. Andersen notified the Criminal Division of his relationship with the Russian woman after the relationship had ended and also informed the Criminal Division that she had asked him to obtain classified documents for her. Bratt failed to timely notify SEPS of his relationship and also attempted to conceal the nature of the relationship.

A. Applicable Regulations

Federal regulations required that employees with SCI clearances report to the Department Security officer any close, personal, or social relationship with a foreign national, not including contacts or relationships developed

within the scope of employment and known to the employee's supervisor. Employees with SCI clearances were also required to report any contact in which a foreign national sought illegal or unauthorized access to classified or otherwise sensitive information or the employee was concerned about being the target of actual or attempted exploitation by a foreign entity.

B. Bratt's Involvement with a Russian Citizen

1. Investigation

Early in our investigation, allegations made to the OIG raised the question of whether Bratt violated government regulations with respect to his contacts with foreign nationals. As part of our investigation into whether Bratt improperly obtained visas for two female Russian nationals, we reviewed whether Bratt's conduct with these women violated security regulations. We concluded that his conduct did and that his conduct posed a risk to the security interests of the United States.

The details of Bratt's contacts and relationship with Yelena Koreneva and Ludmilla Bolgak, both of whom are Russian citizens, are set forth in Chapter Two. In summary, Bratt had frequent social contact with both women when he visited Russia in January, March, and June 1997, and he ultimately admitted to the OIG that he had a sexual relationship with Koreneva. We concluded that Bratt caused to be submitted a false statement on an official government document in order to improperly obtain visas for the women.

Bratt's judgment in his relationship with the women appeared flawed from the beginning. An examination of Bratt's conduct in Russia shows how he made himself vulnerable to blackmail or extortion. Bratt, the holder of a high-level position in the Department with an SCI clearance, met Koreneva by essentially asking his Russian tour guide in Moscow to set him up with a single Russian woman. He met Koreneva and Bolgak on his next business trip to Russia. Bratt spent much of his free time with them during his January and March trips and invited them to visit him in the United States, to see Washington, D.C., to visit his office, and to go to his beach house in

Delaware. Bratt issued these invitations despite knowing virtually nothing about either woman or their associations.[78]

Bratt made himself even more vulnerable when, told that Koreneva might have difficulty getting a visa, Bratt, with the help of Lake, got Koreneva and Bolgak visas by misrepresenting to the American Embassy that the women worked with Bratt in Moscow on official business. This misconduct alone created a significant potential for blackmail or pressure by Russian intelligence services or by Russian criminal organizations.

Bratt exacerbated the problem when, on the June 1997 trip, Bratt told the women that he had been promoted to a new, higher position[79] and further compromised himself by having a sexual relationship with Koreneva.

Bratt continued to compound the security risk by trying to hide the true nature of his relationship with Koreneva. Even though Bratt had been briefed on the requirements for holding an SCI clearance, he did not report to the Department his contact with Bolgak and Koreneva until April 1997. Bratt told the OIG that, during an April 1997 meeting with Jerry Rubino, the Director of SEPS, they discussed the fact that Andersen dated a Russian student and was delinquent in notifying SEPS about it. Bratt said he then told Rubino about his friendships with Bolgak and Koreneva and that Rubino told him to write it down in a memorandum. In the memorandum, dated April 23, 1997, Bratt described the women only as "friends," with whom he interacted with "socially." However, by his own admission, at the time he submitted the memorandum, Bratt's relationship with Koreneva had already become more involved, and he had spent time alone with her in his hotel room where, according to Bratt, "there was a little bit more hugging, a little bit more intimacy." In his notice to SEPS, Bratt did not describe the number of contacts he had with Koreneva and Bolgak or how he came to meet them. He also did not supplement the memorandum after he became sexually involved with Koreneva, which he claimed first occurred in June 1997.

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[78] Bratt told the OIG that Koreneva worked for a "car importer, a firm that brings cars into Russia." Koreneva told the OIG that she worked for a Russian law firm.

[79] According to Bolgak's business associate, Tatyana Kovalenko, Bolgak described Bratt's new position as "head of immigrations."

Bratt also tried to hide from the OIG the true nature of his relationship with Koreneva. In an October 1997 interview, Bratt expressly, and falsely, denied that he had ever become romantically involved with Koreneva. He told the OIG that his relationship with Koreneva was a social friendship and likened their friendship to one he had developed in Haiti with a driver. It was not until an OIG interview in August 1998 that Bratt admitted that he was more intimate with Koreneva in March 1997 and that he was sexually intimate with her in June 1997.

In March 1998, on the basis of the OIG's preliminary findings, SEPS suspended the security clearance of Bratt and directed that Lake's clearance be suspended.[80]

2. Vulnerabilities Created by These Contacts

Bratt should have been sensitive to the risk that his conduct could make him a target of Russian security. Bratt held an SCI clearance, one of the highest levels of clearances that can be granted, and had access to highly sensitive SCI material during his time at the Criminal Division. The United States government places the highest degree of trust in personnel granted SCI clearances. In such circumstances, close, continuing personal associations with foreign nationals present a security concern. The purpose of reporting close, continuing personal associations is to protect both SCI material and SCI personnel from the threat of compromise.

Bratt, as the highest administrative officer in the Criminal Division, was charged with distributing notice of and enforcing security practices. As part of those duties, Bratt issued a memorandum on July 26, 1996, to all Criminal Division personnel addressing foreign threats to American intelligence. With the memorandum, Bratt distributed a brochure called, "Threat Awareness for Overseas Travel." In his cover memorandum, Bratt noted: "[t]he brochure offers readers a brief overview of the foreign intelligence threat – including why U.S. officials may become a target, methods frequently used by foreign

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[80] At that time, Lake was no longer a federal employee but was working for Gaige as a contractor at the National Drug Information Center. His clearance was granted through DISCO.

intelligence and security services, and security tips to adopt while traveling abroad." The brochure itself notes that, "Usually, any intelligence activities directed against you will be conducted in an unobtrusive and non-threatening fashion... [often] without the target's awareness." This includes, the brochure warns, seemingly normal conversation contrived to extract information about individuals, their work, and their colleagues. The brochure warns that concealed devices may be planted in hotel rooms and recommends such common sense practices as not divulging any "personal information about yourself or colleagues." In addition, the General Accounting Office issued a report in June 2000 that identified numerous incidents of foreign spies targeting United States nuclear scientists traveling abroad by bugging their hotel rooms, searching their personal belongings, and offering them sexual favors. Despite the advice that he provided to other Criminal Division personnel, Bratt gave personal information to Koreneva and Bolgak, invited Koreneva to his hotel room, invited both women to tour his office in Washington, D.C., and became romantically involved with Koreneva.

Bonner, the OPDAT Resident Legal Attache in Moscow, told the OIG that on Bratt's first visit to Moscow in November 1996, Bonner told Bratt of the American Embassy policy requiring the reporting of all contact with Russian female nationals to the Regional Security officer. Bonner said that he also told Bratt about an espionage incident a few years before involving Russian women and the United States Embassy Marine Security detail. Bonner said he explained to Bratt that the Regional Security officer required a report from "us" if they had a date, a romantic date, or more with a non-American. To Bonner, the term "us" included Bratt. Bratt said that he recalled that Bonner told him a story about a marine, but he did not understand the point. Bratt said that no one briefed him about any additional security restrictions, reporting requirements, special actions he should take, or things to avoid doing during his travels to Russia.[81] American Embassy records disclose that Bratt failed to file any foreign contact report in Moscow.

[81] There is no evidence that the Embassy took any steps to brief foreign visitors such as Bratt, who were temporarily at the Embassy, of this requirement.

Bratt's compromising actions in Moscow made him susceptible to blackmail or extortion by Russian foreign intelligence services, or other individuals, to obtain sensitive information. The visit of Koreneva and Bolgak represented real risks to the United States government since Bratt invited the women to visit his office in the Department of Justice and other sights in Washington, D.C. In the last year, it was reported that a Russian official was arrested when he was found gathering information from a listening device planted in a State Department conference room.

C. Andersen's Involvement With a Russian Citizen

1. Investigation

On April 8, 1997, the day before he made a series of allegations to SEPS about ICITAP, Andersen disclosed to government officials that he had a two-month sexual relationship with a Russian woman named Svetlana Baugadinova in April and May 1996. Andersen had reported contact with Baugadinova to the Criminal Division in August 1996. Andersen told the Criminal Division that Baugadinova had requested that he disclose classified information to her on three occasions. Andersen placed the relationship with Baugadinova in April and May 1996.

Andersen explained to investigators that Baugadinova visited him at his office in OPDAT on several occasions. Normally, Baugadinova would sign in at the reception desk and wait for Andersen. Once, however, she was allowed into his office when he was not there. When he returned to his office, Andersen said, he found Baugadinova rummaging through his desk. She said that she was looking for a pencil. Andersen said that Baugaudinova asked for classified documents after Andersen pressured her to complete her research on money-laundering and organized crime. Baugaudinova's response to Andersen was that he should get her some classified documents so she could finish the dissertation. Andersen told investigators that given the context of the requests, he felt that she made them in a joking manner. Andersen said that he did not give her any documents. A subsequent investigation of Baugadinova revealed no other requests for classified material from other people.

In an August 2000 letter to the OIG, Andersen stated that Baugaudinova had a pass from the National Institute of Justice and had access through her work to various parts of the Department, including some parts of OPDAT.

Andersen stated that he was not responsible for her being permitted to enter OPDAT. Andersen also said that he reported the information about Baugadinova seeking information from him immediately after he received guidance from an expert in intelligence matters in OPDAT about what he should do about her request.

2. Vulnerabilities Created by the Contacts

Andersen said that he notified his supervisor before beginning the relationship and that he raised concerns about a possible security breach, thereby thwarting a possible threat to national security. We note, however, that according to the time frame that Andersen provided to the OIG, he did not report Baugadinova's request for classified information to the Criminal Division or other appropriate authorities for several months. We believe that this was an inappropriate delay.

CHAPTER FOUR: BUSINESS CLASS TRAVEL

I. INTRODUCTION

In the course of our investigation, we were told that Robert Bratt, while Coordinator of ICITAP and OPDAT, apparently traveled business class to Europe at government expense. We sought to determine whether Bratt traveled business class, as alleged, whether Bratt was reimbursed by the government for business class travel and, if so, whether such reimbursement was proper under the government's Travel Regulations.

To assess the allegation, we reviewed Bratt's European travel vouchers during his tenure as Coordinator, as well as the European travel vouchers for those who traveled with Bratt. We also reviewed the federal Travel Regulations governing long-distance flights, airline travel records, travel vouchers, and other records maintained by Omega World Travel (the Department of Justice's contract travel agency) and the Criminal Division's Office of Administration relating to these trips.

In addition, we interviewed people inside and outside the Department who we believed had relevant information, including Bratt, Associate Executive Officer Joseph R. Lake, Jr. and Bratt's Executive Assistant Denise Turcotte. We also interviewed key personnel from Omega Travel and employees of the Justice Management Division's (JMD) Finance Staff. JMD is the administrative support division of the Department of Justice; its Finance Staff is responsible for reviewing Department travel vouchers and authorizing the payment of approved travel expenses.

Our investigation disclosed that Bratt flew and was reimbursed for business class travel on each of his four government business trips to Europe. We concluded that Bratt and various Department employees who accompanied him on the trips violated the Travel Regulations regarding business class travel as well as other Travel Regulations. We also found that JMD approved payment of travel vouchers for Bratt and his traveling companions even though the vouchers were audited and showed irregularities on the face of the vouchers.

II. GOVERNMENT TRAVEL REGULATIONS

We describe here the government regulations, procedures, and contracts that govern official travel. Official travel is regulated by the General Services Administration (GSA). GSA regulations set out the minimum standards that all government travelers must meet. Department of Justice employees' travel is also governed by supplemental Travel Regulations issued by the Department that interpret and in some cases are more restrictive than GSA regulations. The GSA and Department supplemental regulations are published and distributed to all offices in the Justice Department in a large binder called "DOJ Travel Regulations." Periodically, the Criminal Division or JMD supplements the Department's Travel Regulations with further directives and memoranda clarifying Department travel policy. (We refer to these GSA and Department regulations, directives, and memoranda collectively as the "Travel Regulations" and cite them as TR or TR Supp.)[82]

The Travel Regulations embody two guiding principles: 1) the traveler is responsible for adhering to the Travel Regulations; and 2) employees on official business trips are held to the "prudent traveler" rule. Under that rule,

> An employee traveling on official business is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business. Excess costs, circuitous routes, delays, or luxury accommodations and services unnecessary or unjustified in the performance of official business are not acceptable under this standard. Employees will be responsible for excess costs and any additional expenses incurred for personal preference or convenience.

TR 301-1.3(a); see also TR 301-7.2(a). Together, the principles mean that each traveler who is sent on official travel is personally responsible for acting as a prudent traveler would if traveling on personal business and expending his own funds. As a senior JMD official succinctly expressed it, "The prudent

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[82] Unless otherwise noted, all federal travel regulations cited herein refer to regulations in force as of July 1996. (See 41 C.F.R. Chapter 301, July 1, 1996.)

traveler rule is that … when you are … traveling on official business, spend the government's money as you would spend your own."

A. Business Class Travel

The Travel Regulations recognize that multiple classes of service are often available on official travel routes. The Travel Regulations provide that on official travel, government employees must travel coach class, except in limited circumstances. TR 301-3.3(d).

A Department employee may ask to travel business class when, as can happen, it costs no more than coach class travel.[83] In addition, when the scheduled flight time for a trip is in excess of 14 hours, the government traveler may request permission to fly business class (the "14-hour rule").[84] TR 301–3.3(d)(5)(ix). In essence, the Travel Regulations provide that coach class travel is *always* authorized, while business class and first class travel are authorized only in extremely limited circumstances.[85] TR 301-3.3.

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[83] Business class entitles the traveler to various airline perquisites, including more spacious seating. Depending on the airline, the passenger may also receive other amenities, such as better food, free movies, and free alcoholic beverages.

[84] There are certain additional circumstances in which business class travel may be authorized, such as when the traveler has a physical disability. However, since none of those circumstances was present or invoked to justify the travel we examined, we do not discuss them here.

[85] In a July 2, 1993, memorandum dealing with the use of frequent flyer miles, the Attorney General referred to a Presidential directive prohibiting the use of first class travel, except under extremely limited circumstances. The Attorney General stated in the memorandum that "I applaud the President's directive and we should be reminded to travel by coach class." In the same memorandum, the Attorney General also reminded employees that, "We all have a responsibility to utilize the Department's scarce resources as efficiently and effectively as possible." In regulations effective October 29, 1993, the Department (and all other government agencies) were required to report each year to GSA all first class travel, including the name of the traveler and both the costs of the travel incurred and the coach class fare for the same trip. TR 301-3.3(e).

B. Authorization and Approval of Travel

The regulations require that all official travel be requested and authorized in advance, and that the authorization form must include an explanation of the purpose of the trip, a projected itinerary, and an estimate of costs. TR Supp p.301-1.101, 1.102; TR Supp 301-1.5; TR Supp Figure 1-1.2 Form DOJ-501. The Travel Regulations require that notice of official government travel and its approval be memorialized on a standard government form – the Travel Request and Authorization form. This form is illustrated in the Department of Justice Travel Regulations binder and in the booklet JMD published that is a synopsis of official Travel Regulations. We show the form and an enlargement of the premium class authorization section at Exhibit 9 in the Appendix. If the proposed trip includes premium class travel,[86] the premium class travel must be authorized by the appropriate agency official in advance, absent emergencies. TR 301-3.3(d)(3). The justification for the non-coach class fare must be shown on the Authorization form or on an attachment. TR Supp Figure 1-1.2, Form DOJ-501.

The Travel Regulations state that the official who authorizes the travel must be in a position to know whether the travel requested best serves the needs of the Department. "The failure of authorizing officials to authorize only that which is absolutely essential to the accomplishment of the objectives of Department programs or missions constitutes inefficient management of travel and waste of Department resources." TR Supp 301-1.3(d).

C. Reimbursement

Actual costs incurred for official travel are reimbursed after the travel has been completed. To be reimbursed for expenses incurred on official travel, federal regulations require that the government traveler submit certain documents to a supervisor in his own office. These documents include a voucher signed by the traveler and a supervisor showing reimbursable travel expenses, the original Travel Request and Authorization form, and supporting bills and receipts. TR 301-11. The Travel Regulations set forth what costs and expenses are reimbursable. TR 301-7, 8, 9. Essentially the Travel Regulations

[86] Premium class travel includes both first class and business class.

provide that the traveler will be reimbursed for the pre-approved costs of travel, certain travel-related expenses (e.g., airport parking fees), hotel room costs and, usually, a fixed fee for meals and incidental expenses. Additions, deletions, and modifications to the pre-approved travel authorization are common, such as when the traveler's itinerary changes suddenly, and there are standard ways to show the costs of such modifications. TR Supp 301-11.2; TR § 301-11.5(c)(1). As with the authorization form, the traveler must show on the reimbursement voucher the class of fare that was used to travel. TR Supp. p. 301-11-8, Figure 1-11-2, DOJ Form 534. We show the form and an enlargement of the class of travel section at Exhibit 10 in the Appendix.

The Travel Regulations also set forth the approving official's responsibility. The approving official is required to make "such determinations and inquiries" as are necessary to assure the legitimacy of the items claimed on the voucher, as well as the reasonableness of the amounts and their overall compliance with the Travel Regulations. TR Supp 301-1.3(e).

D. Personal Travel

Official travelers may add personal travel to their official itineraries. The Travel Regulations regulate how to account for the cost of personal travel taken in connection with a business trip. TR 301-7.15, TR Supp 301-11.5 (a)(2-3); TR 301-2.5(b). Any costs for personal travel above those that would have been incurred for official travel are the responsibility of the traveler, not the government. TR 301-2.2(c); 301-1.3(a); 301-7.2(a).

E. Omega Travel Agency

In 1995 the Department of Justice contracted with the Omega Travel Agency to book the official travel of Department employees. While Omega Travel is contractually obligated to act in accordance with the Travel Regulations, it is not a branch of the government and does not enforce the regulations. Omega advises travelers of Travel Regulations when it believes it prudent, but it books travel in accordance with the express wishes of the traveler.

1. Contract Carriers and Government Fares

Absent any special directions, Omega books flights coach class at the contract government rate or any cheaper available fare. The contract

government fare or rate is negotiated each year by the government with the airline carriers. Usually, it is a rate that is significantly reduced from the standard fare. Government fares are established for all commonly traveled points of departure and destination. Different carriers contract for different routes, but between any two cities there is only one contract carrier. Airlines that have not won the contract between two cities may, however, offer an equivalent fare to federal travelers. Omega may book on a non-contract carrier, as long as the cost is no greater to the government than on the contract carrier.

In addition to booking contract carriers at the government rate, Omega is also required to book travel in accordance with the Fly America Act. Under that statute, government employees traveling on government business are to use only American carriers, or if an American carrier is not available to the final destination, they are to use American carriers to the furthest possible point in their trip. TR 301-3.6(b); see also 49 U.S.C. App. § 1517.

2. Booking at the Most Economical Fare Compatible with the Business Purposes of the Trip

When booking a flight for a government employee on an official trip, the first itinerary Omega offers the traveler is one that uses the contract carrier to the traveler's destination. If there is no such carrier, if there is no space available on the contract carrier, if the traveler requests a different schedule because the original schedule interferes with the mission of the traveler, or if there are cheaper flights available, then Omega may book on alternative carriers. Thus, while there are alternatives, under the Travel Regulations the traveler must use the method of transportation "which will result in the greatest advantage to the Government, cost and other factors considered." TR 301-2.2(b).

III. TRAVEL TO EUROPE

Bratt traveled business class on each of his trips to Europe in November 1996, January 1997, March 1997, and June 1997. In summary, we found that Bratt and the ICITAP/OPDAT managers who accompanied him did not qualify for business class travel. We also found that they violated various other Travel Regulations, such as not receiving authorization for business class travel and receiving reimbursement for the costs of personal travel. The chart on pp. 194-195 shows the dates and class of travel for each segment of Bratt's four trips.

A. The First Trip: November 1996

In November 1996, Bratt decided to take an orientation tour of OPDAT's European operations in Moscow and Warsaw, Poland. Bratt had been appointed Coordinator of ICITAP and OPDAT in mid-September 1996, but he had little experience with OPDAT's operations and had not met the Department lawyers working for OPDAT abroad. He decided to go to Moscow and Warsaw to see OPDAT's operations. Bratt also decided to visit Budapest, Hungary, on this trip, since the Department of State was urging OPDAT to use the International Law Enforcement Academy facility in Budapest. Accompanying Bratt on the trip were Lake, who was in charge of coordinating OPDAT and ICITAP's programs for the Newly Independent States, and Thomas Snow, the Acting Director of OPDAT.

On this November 1996 trip, Bratt, Lake, and Snow flew from Washington, D.C., to Budapest, Hungary, to Frankfurt, Germany, to Moscow, Russia, to Warsaw, Poland, and returned to Washington, D.C. We found that the travel costs for this trip were improperly increased because the travelers' itinerary and airline selection were based on personal considerations rather than business reasons. The costs of the trip were improperly increased by at least $6,447.

1. Booking the November 1996 Trip

a. Initial Request

Bratt gave Lake primary responsibility for planning the November 1996 trip to Budapest, Moscow, and Warsaw. Planning began in late October 1996. The plan for the trip included four days of work: two days in Budapest and one full day each in Moscow and Warsaw. To accomplish these four days of work, Lake, in consultation with Bratt, planned a nine-day trip.

To book the planned trip, Lake worked with Denise Turcotte, Bratt's Executive Assistant. Turcotte, in turn, worked with Carlos Lora, an Omega Travel agent. Turcotte was relatively new to the government, having come to the Department of Justice from the private sector in 1994. She had no formal training on the Travel Regulations and had herself only made two official business trips.

Even before the November trip, Turcotte and Lora had worked together scheduling Bratt's business trips. In 1996, Lora was a 10-year veteran of

Omega Travel and the third travel agent in charge among the Omega agents dedicated to booking Department of Justice travel.

On October 30, 1996, Turcotte faxed Lora a request to book Bratt, Lake, and Snow on the November European trip as Lake had scheduled it (the "Requested Itinerary"). She detailed in the fax the destinations, the days of travel, the airlines and flights, and the hotels Lake told her to book.

At Lake's direction, Turcotte requested that all travel be on United or Lufthansa Airlines. Turcotte told the OIG that she assumed this was to accrue frequent flyer miles. Bratt had a United frequent flyer account; Lake had one with Lufthansa; and United and Lufthansa had a reciprocal program so that miles traveled on one carrier were credited to accounts with the other. Turcotte specifically noted the shared frequent flyer arrangement on the fax to Omega.[87]

Turcotte requested that the travelers depart on Tuesday, November 12, 1996, and stop in Frankfurt at 7 a.m. on Wednesday on the way to Budapest. She also requested a flight from Frankfurt to Budapest on Lufthansa, departing in the afternoon that would land them in Budapest in the evening. Turcotte requested that the group travel back to Frankfurt or Vienna on Lufthansa for the weekend occurring during their trip. The group would proceed to Moscow on Sunday night, November 17. On Tuesday, November 19, the group would travel from Moscow to Warsaw. The group would travel back to Frankfurt on Thursday, November 21, and make their own hotel arrangements in Würzburg, Germany. They would fly home on Friday, November 22. We show the Requested Itinerary on p. 158. See Appendix, Exhibit 11 for a calendar for the years 1996 and 1997.

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[87] On the fax, Turcotte reminded Lora to "please make sure that the frequent flyer information is listed for Bob Bratt's ticket." Government travelers may collect frequent flyer miles. However, miles that come from official travel belong to the government. Moreover, the Travel Regulations dictate that collecting frequent flyer miles may not come at the price of using a more expensive carrier. TR 301-1.103(f)(4). We discuss frequent flyer miles in Chapter Five. In addition, the direction to use Lufthansa was a violation of the Fly America Act. See Chapter Five.

b. Omega's Response

In response, on October 30, 1996, Lora developed and faxed an itinerary to Turcotte (the "Omega Itinerary"). Based on our understanding of the Travel Regulations and Omega's contractual responsibilities, the itinerary proposed by Omega met the travelers' claimed business schedule, complied with the Fly America Act, and minimized the cost of the trip. The Omega Itinerary proposed the following route: Washington, D.C., to Budapest with a standard layover (2 ½ hours) in Frankfurt; Budapest to Moscow; Moscow to Warsaw; Warsaw to Frankfurt; Frankfurt to Washington, D.C. That itinerary is set forth on p. 158.

The Omega Itinerary satisfied some but not all of Turcotte's requests. With Omega's contract routing obligations in mind, however, the rationale behind each of Lora's proposed changes is clear. Turcotte's requested extended stop in Frankfurt on November 13, 1996, would have increased the cost of the trip because it was longer than necessary to catch the connecting flight. Lora proposed instead a standard layover, which qualified the travelers for a cheaper fare to Budapest. Turcotte's request that the men leave Budapest and stay in Frankfurt or Vienna for the weekend added another destination that would have also increased the fare. When Turcotte first discussed the trip with Lora, she told him that the weekend was for the travelers' rest and pleasure, not official business. Lora eliminated the personal excursion to Frankfurt or Vienna for the weekend. He proposed that the travelers stay in Budapest for the weekend and fly to Moscow from there Sunday night. Finally, since there were no contract fares with American carriers for flights between Budapest and Moscow and between Moscow and Warsaw, Lora was free to book on any carrier. He proposed foreign carriers other than Lufthansa. These carriers had nonstop flights between those travel points.[88] He also used the contract carrier, Delta, for the flights from Warsaw to Frankfurt and from Frankfurt to Washington, D.C. He booked all travel coach class.

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[88] Lora was apparently unaware that there was no business purpose to the final 24-hour stop in Frankfurt. He therefore left that in his alternative itinerary. Lora also used a non-contract carrier, United, for the Washington, D.C., to Budapest leg of the trip. This likely was because of Turcotte's request to use United and Lufthansa. Lora claimed not to recall any conversation with Turcotte about business class travel.

With the Omega Itinerary, Lora satisfied Omega's obligation to the government to find the least expensive route that met the regulations and the travelers' business needs. At the time he faxed the Omega Itinerary, Lora noted on the fax that the cost of the proposed itinerary was approximately $2100, that is, $1350 per person *less* than the estimated cost of Lake's Requested Itinerary.

c. Final Planned Itinerary

The day after receiving it, Turcotte gave Lora's proposal to Lake. She told him that Lora's Omega Itinerary would cost approximately $1350 less per person. Nonetheless, according to Turcotte, Lake told Turcotte to book the trip as he had originally planned it. On October 31, 1996, Lora faxed a new itinerary to Turcotte reflecting Lake's original itinerary with a few changes apparently reflecting requests by Turcotte. The travelers were scheduled to leave Washington, D.C., on November 13 instead of November 12, 1996, and they had a standard layover (2 ½ hours) in Frankfurt on the way to Budapest. The travelers were confirmed to fly from Budapest to Frankfurt to spend the weekend. After that, they were scheduled to fly to Moscow. From Moscow, they were scheduled to fly to Warsaw, with a five-hour stop in Frankfurt on the way.[89] This itinerary is shown on p. 159. We show a map of this itinerary on p. 160. Turcotte distributed the itinerary to each of the travelers the next day. On that itinerary, the European legs of the trip were business class. Lora printed on the computer-generated Omega Itinerary that "business class used at no extra cost to US govt …. approx cost ....[$]3450 USD." On November 12, Omega faxed another itinerary. The only significant change was that the Washington, D.C., to Frankfurt and Frankfurt to Budapest legs of the trip had been changed from economy to business class.

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[89] This stop probably entered into the itinerary because Lake insisted on flying Lufthansa, which routed flights through Frankfurt. We were informed that Lake frequently visited Germany on personal travel and Lake told the OIG that he had close friends in Frankfurt and traveled there four times a year. We do not know if the stop in Frankfurt was caused by social reasons, because of frequent flyer considerations, or because of other reasons. However, there appears to be no business reason that would have necessitated the stop in Frankfurt.

The itinerary created by Omega provided that Bratt would return to Washington, D.C. economy class. According to Turcotte, the day the travelers landed in Budapest (November 14, 1996), Lake or Bratt called Turcotte and asked her to change the return flight to business class for all of them. Turcotte immediately faxed the travel agent. "Carlos," she wrote, "Bob Bratt LOVED the arrangements you made for business class for him. Can you please make the SAME (business class) arrangements for Bob, Joe Lake and Tom Snow for their return?" (Emphasis in original.)

Turcotte told the OIG that she believed Lora made the requested arrangements and that Bratt and Lake returned business class.[90]

The ultimate cost to the government of the airfare for the entire November trip for Bratt and Lake was $4,253.35 per person and $4240.75 for Snow.

The Requested Itinerary, the Omega Itinerary, and the Final Planned Itinerary for the November trip are shown on the following pages.

[90] Turcotte noted that she believed she would have heard if the travelers had been unable to obtain business class travel, and she did not recall being informed of any such problem. However, the available records do not show what class Bratt actually flew on the return portion of the trip. Bratt changed his flight to return a day earlier than planned but did not submit an amended version of his ticket receipt. The receipt he submitted with his voucher shows his originally scheduled return on November 22, 1996, coach class. The airline was also unable to determine what class of service Bratt actually flew on the return portion of his flight, and the travelers were not certain. We therefore do not know for sure whether Bratt returned from Moscow on business class and, if so, how the upgrade was paid for.

November 1996: Requested Itinerary

Travel Day	Departure	Arrival	Length of Stay	Travel Class	Airline
11/12 (Tue)/ 11/13 (Wed)	Washington, D.C.	Frankfurt	Extended stop, morning to afternoon	(not specified)	Lufthansa or United
11/13 (Wed)	Frankfurt	Budapest	1 ½ days, 2 nights		Lufthansa
11/15 (Fri)	Budapest	Vienna or Frankfurt	Weekend		Lufthansa
11/17 (Sun)	Vienna or Frankfurt	Moscow	1 ½ days, 2 nights		Lufthansa, only
11/19 (Tue)	Moscow	Warsaw	1 day, 2 nights		Lufthansa
11/21 (Thu)	Warsaw	Frankfurt (travelers to continue to Würzburg)	Overnight		Lufthansa
11/22 (Fri)	Frankfurt	Washington, D.C.			Lufthansa or United

November 1996: Omega's Itinerary

Travel Day	Departure	Arrival	Length of Stay	Travel Class	Airline
11/12(Tue)/ 11/13(Wed)	Washington, D.C.	Frankfurt	Connecting	Economy	United
11/13 (Wed)	Frankfurt	Budapest	4 days, 4 nights (including weekend)	Economy	United
11/17 (Sun)	Budapest	Moscow	2 days, 2 nights	Economy	Malev
11/19 (Tue)	Moscow	Warsaw	2 days, 2 nights	Business	Lot
11/21 (Thu)	Warsaw	Frankfurt (travelers to continue to Würzburg)	1 day, 1 night	Coach	Delta
11/22 (Fri)	Frankfurt	Washington, D.C.		Coach	Delta

November 1996: Final Planned Itinerary

Travel Day	Departure	Arrival	Length of Stay	Travel Class	Airline
11/13 (Wed)/ 11/14 (Thu)	Washington, D.C.	Frankfurt	Connecting	Business	United
11/14/ (Thu)	Frankfurt	Budapest	1 ½ days, 1 night	Business	United
11/15 (Fri)	Budapest	Frankfurt	Weekend	Business	Lufthansa
11/17 (Sun)	Frankfurt	Moscow	1 ½ days, 2 nights	Business	Lufthansa
11/19 (Tue)	Moscow	Frankfurt	5 hours	Business	Lufthansa
11/19 (Tue)	Frankfurt	Warsaw	1 day, 2 nights	Business	Lufthansa
11/21 (Thu)	Warsaw	Frankfurt (travelers to continue to Würzburg)	1 day, 1 night	Business	Lufthansa
11/22 (Fri)	Frankfurt	Washington, D.C.		Economy	United

2. Violations of Travel Regulations

a. The Travel Cost the Government in Excess of Amount Required for Business Purposes

We determined that Bratt's, Lake's, and Snow's business class travel violated the Travel Regulations. Lora's notation that "business class used at no extra cost to US govt" should have meant that the cost of the trip, as booked using business class, did not exceed the cost of traveling to all destinations required for business purposes at the government rate. But it did cost more because the weekend stop in Frankfurt (between Budapest and Moscow) that led Omega to book business class travel rather than coach class had no business purpose. The cost of the ticket was also increased because of the scheduled stop in Frankfurt at the end of the trip, a stop that also had no business purpose.

Generally, Omega will not book business class unless the government traveler requests it. An exception arises when business class travel costs less than traveling at the government rate. Usually the cost of a trip is the sum of the cost of each leg of a trip, the "point-to-point fare." Trips that involve stops at many different destinations or points, that is, stops that are longer than a layover to catch a connecting flight, can become quite expensive. Lora told us that because Bratt was traveling to several European cities (Frankfurt and Budapest), it was cheaper for him to fly business class. Lora said a business class ticket allows a passenger to break the trip up into multiple stops for the price of a single trip, whereas a coach class ticket would cost the full ticket price for each leg of the trip.[91] In light of Lake's requested stops, Lora used a mileage fare for the outgoing part of the trip, from Washington, D.C., to Budapest to Frankfurt to Moscow. The fare was less than the point-to-point coach class fare only because of the number of extended stops.

Yet, the stop in Frankfurt for the weekend, which led to the use of business class, was for personal reasons and had no business purpose. As Turcotte described the Frankfurt weekend, it was to be "a pleasure chunk."

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[91] According to Omega's manager, the business class fare was a "mileage" fare based on distance traveled.

Bratt, Lake, and Snow's weekend stop in Frankfurt between Budapest and Moscow was a personal side-trip; it was a city in which they chose to spend the weekend. The government does not pay for an employee to take a weekend excursion. If the employee is on an official trip and there is no official business scheduled for the weekend, the employee may stay where he is or may go to his next destination for the weekend. The government will pay the per diem allowance for either location. The government will not pay, however, for the cost of any side-trip to a third location, unless it does not exceed the cost of going directly from the first to the second location. In this case, the travelers could have stayed in Budapest for the weekend or gone on to Moscow. They were not entitled to travel to Frankfurt at government expense.

The cost of the ticket increased for other personal reasons as well. The return ticket was calculated on a point-to-point fare. As Phillip Downs, Omega's manager, read the return ticket, it was for travel between Moscow and Washington, D.C., with a connection in Frankfurt, a stop in Warsaw, and a final stop in Frankfurt. Travel from one city to another by means of a connection through a third city does not increase the fare between two cities.[92] A stop, however, does. According to Downs, on the return ticket there were two stops, one in Warsaw and one in Frankfurt. The stop in Frankfurt had no business purpose.

The purpose Turcotte listed in her travel notes for the group's last stop in Frankfurt (and Würzburg) was for the travelers to discuss with each other the meetings in which they had just participated and to work on recommendations arising out of their trip.[93] Snow, seeking permission to return early in order to

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[92] Fares for travel between two cities when the traveler has to go through a third city (flights using the first available connecting flight) are based on what is called the "through fare." When travelers stop in a city for longer than is necessary to make the first available connection, there is a "break" in the flight and the traveler will no longer qualify for the through fare. When travel is "broken," the traveler will still get a government rate, but, according to Downs, it will be "guaranteed' to be more expensive than the through fare.

[93] Würzburg is a tourist destination known, in particular, for a local palace. In a memorandum to Bratt, Snow, and Lake, dated November 1, 1996, Turcotte wrote that the hotel in which they would be staying in Würzburg "looks like an old castle; in the baroque style which dates back to 1408 AD."

teach a law school class, wrote in a November 3, 1996, e-mail to Turcotte prior to leaving on the trip, "Looks to me like I could easily skip the night in Würzburg and fly home from Frankfurt on Thursday, Nov 21 instead of Friday, Nov 22." Bratt agreed and gave permission to Snow to return early. While on the trip, Bratt also changed his schedule to return to the United States on Thursday, a day earlier than originally scheduled. His flight from Warsaw to Washington still connected in Frankfurt, although he did not stay in Frankfurt overnight as planned. Lake stopped in Frankfurt on the way home and stayed in Germany through the weekend (although he did not charge the government for any expense after Friday, November 21, 1996). Nonetheless, the extra cost of Lake's stop in Frankfurt and Bratt's planned stop in Frankfurt was included in the price of the tickets that Omega issued, and we saw no evidence that Bratt's change in plans reduced the cost of the airfare.

We also know that the use of Lufthansa, which led to the five-hour stop in Frankfurt on November 19 on the travelers' convoluted route between Moscow and Warsaw, also likely increased the cost of the airfare and had no business purpose.

In sum, the personal factors driving the scheduling decisions cost the government extra money. As is shown by Lora's October 30, 1996, proposed itinerary, fewer stops and the use of different airlines would have resulted in a cheaper fare. Lora's October 30, 1996, proposed itinerary reflected almost no personal travel and cost $2100.[94] The itinerary used by Bratt and Lake cost

[94] In fact, the cost of Lora's initial proposed itinerary could have and should have been further reduced, since the final stop in Frankfurt that was requested by Lake and included in Lora's itinerary had no business purpose. The fare would have been less if it had been based on a through fare from Warsaw to Washington rather than the sum of fares from Warsaw to Frankfurt and Frankfurt to Washington, D.C. Omega's travel manager said that through fares are always the cheapest fares. The fare might also have been reduced if Lora had used the contract carrier, Northwest, rather than United to fly from Washington, D.C., to Budapest and if he had used Delta to fly from Warsaw to Washington, D.C. We could not tell exactly how much the fare would have been reduced. Omega's manager for Department travel said that airlines do not keep fare information for more than 60 days. Therefore, he could not in 1998 calculate the exact cost of alternative routes or carriers for this November 1996 trip. However, we know that, at a minimum, Bratt and Lake overcharged the government by $2153 per traveler and Snow by $2140 based upon a comparison of their actual fares and the fares in Omega's initial itinerary.

$4,253 and only slightly less for Snow. The $2153 difference in price between the October 30, 1996, estimated fare and the actual fare should not have been charged to or reimbursed by the Department of Justice. We chart the unauthorized costs of each trip on p. 196.

b. Authorizations and Reimbursement Vouchers

As previously discussed, travel authorizations and reimbursement vouchers both require that the class of travel be shown if it is anything other than coach. Travel authorizations have a box to be checked when using premium class travel and a second box to be checked when the use of premium class is at no extra cost. See Appendix, Exhibit 9. Reimbursement vouchers require the traveler to show the mode, class of service, and accommodations. See Appendix, Exhibit 10.

The travel authorizations submitted by Bratt, Snow, and Lake did not reflect the use of business class travel, as is required. The reimbursement vouchers Bratt, Snow, and Lake signed and submitted misrepresented their class of service as "Y," an airline code meaning economy class. We chart whether premium class travel was reflected on the travelers' authorizations and vouchers at p.197.

3. Travelers' Explanations

Bratt claimed that he relied on Lake to adhere to the Travel Regulations. Bratt admitted that he knew that on a domestic trip there was no rule allowing an extra day's stop at the end of the trip. He also knew that the government did not pay extra costs of personal stops. When asked whether any government travel regulations permit a stop in an intermediate city like Frankfurt when traveling, Bratt said, "No, I don't know. I always assumed that somebody would have checked it before they gave us that itinerary." Asked whether he had checked the rule himself, he said, "No, I did not." Bratt said that he was only familiar with the rules governing domestic travel, not international travel. For the international rules, Bratt said he relied on Lake. Bratt also claimed that he never looked at or saw the travel itinerary for the November trip before he got to the airport on the afternoon of his departure.

Snow stated that he did not know they were scheduled to fly business class until he was on the trip. He remembered raising the issue to either Bratt or Lake "on the trip" and Lake explained that the upgrade was due to an

affiliation between United Airlines and Lufthansa. Snow said he believed, based on Lake's explanation, that the United-Lufthansa affiliation resulted in business class seating for the cost of coach fare. After reviewing a draft of the chapter, Snow wrote a response to the OIG in which he stated that he was not responsible for planning the itinerary for the trip or for acquiring the airline tickets. Snow stated that he had joined OPDAT just prior to the trip, and he was asked by his new supervisor, Bratt, to accompany him.

Lake denied using business class except for "free" upgrades provided by the airlines.[95] After reviewing a draft of the chapter, Lake said in his written response that "in order to get from Budapest to Moscow … the employee must go through the Frankfurt hub to position his/herself for the next leg of the journey on the next workday. Frankfurt, therefore, is an automatic destination listed on the traveler's ticket."

4. OIG's Conclusions on November 1996 Trip

Bratt, Snow, and Lake violated the Travel Regulations on the November 1996 trip.

- They traveled business class when they did not qualify for that class of travel.
- The government was charged for flights to Frankfurt that had no business purpose, that were more expensive than alternative flights, and that materially increased the cost of the trip.
- Bratt's, Snow's, and Lake's authorizations and vouchers did not show or account for the business class travel.

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[95] After his May 1998 interview, Lake refused to submit to any further interviews unless the OIG agreed to certain conditions as set forth by Lake's attorney. Because the OIG did not agree to the conditions, Lake refused to cooperate further with the investigation, and we were unable to ask him about Bratt's claim that he consulted with Lake about the propriety of the stops. We were also unable to obtain any additional information from Lake as to why the trip was planned as it was.

Because Department rules hold each traveler responsible for knowing and following the Travel Regulations, Bratt, Lake, and Snow are responsible for the violations and should repay the government the excess costs.

We attempted to determine whether the travelers willfully violated the Travel Regulations. Lake, as the trip planner, knew from his conversation with Turcotte that Omega could satisfy the travelers' business needs at a cheaper cost but he chose the more expensive itinerary for personal reasons. We find his actions with respect to these scheduling decisions to have been willfully improper.

With respect to Bratt and Snow, we do not believe that they traveled business class knowing that it was improper. The rule that allowed them to obtain business class travel – the mileage rate versus the point-to-point fare – is complex. Given that the itinerary stated that business class was at no extra cost, we do not believe that a reasonable traveler would necessarily have known that the fare was based on an erroneous premise – the improper use of the mileage rate.

Nonetheless, we believe that they, like Lake, should have known that the government stops in and around Frankfurt cost the government more money than was necessary to accomplish the business purposes of the trip. We believe a reasonable traveler should have expected that flying from Budapest to Frankfurt, staying the weekend, and then flying from Frankfurt to Moscow would cost more than flying directly from Budapest to Moscow. Lake's explanation that the travelers had to be in "position" for the next leg of their journey is not persuasive. A connecting flight through Frankfurt, or a direct flight on a different airline as proposed by the travel agency, would have "positioned" them as effectively as the more expensive weekend stop. Similarly, the travelers should have expected that spending a night in Frankfurt would be more costly than flying directly from Warsaw to Washington, D.C. Yet, neither Bratt nor Snow made any effort, beyond asking Lake, to determine whether these stops were permissible before asking the government to compensate them.

We are unpersuaded by Bratt's claim that he did not look at the itinerary until shortly before leaving on the trip. It would be surprising that a traveler leaving on a complex, multi-stop European trip would not look at the itinerary until shortly before leaving. Contrary to his claim, the evidence shows that, at

a minimum, Bratt was aware during the planning stages of the trip that the travelers would be making an intermediate stop for the weekend.[96]

The rule regarding travel over a weekend is not complex – the traveler can stay where he is or go to his next business destination. Bratt did not claim to be confused about this rule as it pertained to domestic travel. He excused his failure by stating that he relied on his staff, particularly Lake, to ensure that the stop was proper for international travel. There is no logical reason why the rule regarding weekend travel would be any different for international travel than it is for domestic travel, and in fact the rules are the same: when an employee chooses for non-business reasons to travel to a different destination, he is responsible for the excess costs.

Even if Lake did tell Bratt that the stop was proper, Bratt had no reason to rely on the answer. Lake was not a travel expert and was not known as one by reputation. When confronted with a situation that was questionable on its face, Bratt should have made inquiries with the Department's travel experts rather than relying on the opinion of a colleague who had a motive to ignore the Travel Regulations. We believe that Bratt failed to make the inquiries expected of a reasonable traveler because it was more convenient not to. We also believe that Snow was not diligent in determining the appropriateness of his travel.

We conclude, therefore, that Bratt, Lake, and Snow violated the Travel Regulations and sought reimbursement for expenses for which they were not entitled.

B. The Second Trip: January 1997

When Bratt returned from his first trip, he told Turcotte that he expected to return to Moscow two or three times over the next year. A trip to Moscow

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[96] According to Turcotte, Bratt was aware as they were planning the trip that the travelers would be making an intermediate stop for the weekend. She said because of Lake's familiarity with Germany, Bratt asked Lake to recommend an appropriate location. By memorandum dated November 1, 1996, Turcotte sent all of the travelers a detailed itinerary that included a weekend stop. She sent another itinerary, which also included the weekend stop, on November 12, 1996, three days before the trip began.

was scheduled for January 1997 that Bratt was in charge of planning. Bratt flew business class round-trip to Moscow in January. The rationale for flying business class was the "14-hour rule," which permits travelers to fly business class if their flight time exceeds 14 hours.

We reviewed the documents that we found in Bratt's files and those of his staff to determine how business class travel was arranged for Bratt's second trip to Moscow. We also spoke to Turcotte, former JMD staffer Steven Parent, and Omega Travel about their knowledge of Bratt's business class travel. The evidence shows that Bratt's flights were purposefully manipulated to make them "qualify" for business class travel under the 14-hour rule when the flights, if booked in compliance with the Travel Regulations, would not have qualified. We found that Bratt deliberately chose flights that made his total travel time exceed 14 hours even though shorter, and vastly more economical, flights were available.

1. The 14-Hour Rule

Department Travel Regulations provide that a supervisor may approve business class travel, when a) the scheduled time using nonstop or direct flights from an authorized origin to an authorized destination is in excess of 14 hours, b) the origin and destination are separated by several times zones, and c) the travel starts or ends outside the continental United States. TR 301-3.3(d)(5)(ix). The time is calculated from "wheels-up" at the point of origin to "wheels down" at the destination. Layovers that are part of the scheduled flight time are included when calculating whether a trip qualifies for consideration for business class travel under the 14-hour rule. TR 301-3.3(d)(5)(ix).

2. Planning the Second Trip

On November 26, 1996, Turcotte contacted Omega Travel and made reservations for Bratt and Snow to fly to Moscow in January 1997.[97] Through

[97] The dates of the trip changed three times over the next month. Initial reservations were for January 6, 1997, through January 10, 1997. The final travel itinerary was for Wednesday, January 15, 1997, through Wednesday, January 22, 1997. None of the changes are material to the discussion that follows and so we do not discuss them.

Turcotte, Bratt gave specific directions about the travel, including the days he wanted to travel and the routes he wished to consider. Also on November 26, Lora sent Turcotte a fax showing that he had booked Bratt's trip. Bratt was booked with the contract carrier, Delta, coach class. Bratt was scheduled to arrive in Moscow on January 7, 1997, at 11:10 a.m. As scheduled, the flight to Moscow was 11 hours and 20 minutes long. The return flight was 13 hours and 38 minutes.[98] Thus, as originally booked, neither leg of Bratt's journey qualified for business class travel under the 14-hour rule.

Turcotte said Bratt asked her to speak to Lora about business class travel. When she did, Lora explained the 14-hour rule to Turcotte and told her the trip did not qualify. Turcotte, in turn, told Bratt.

Turcotte told the OIG that Bratt told her to confirm Lora's information with Eugene "Buddy" Frye. Frye was the Chief of the Budget and Fiscal Section of the Criminal Division's Office of Administration and a friend of Bratt's. On December 4, 1997, Turcotte wrote to Frye, "You told Bob that [he] might consider traveling business class because of the long flight, but that you needed to look into it further." Turcotte noted to Frye that the government rate was $1079 and the cost of business class was $2525 – more than double the government rate. According to Turcotte, Frye told her in response that the trip did not qualify for business class under the 14-hour rule. Turcotte believed that Frye also directly told Bratt that the trip did not qualify.

Despite having received the information from Frye that Bratt asked for, Turcotte also called Steven Parent, who then oversaw the JMD staff responsible for enforcing the Travel Regulations, to discuss whether Bratt's trip would qualify under the 14-hour rule. Turcotte believed she called Parent at either Bratt's or Frye's request. Turcotte said that Parent explained the rule to her and she informed Bratt.

By the end of December, however, Turcotte, at Bratt's request, had resumed her efforts to find a way Bratt could travel business class. According to Turcotte, Bratt told her he wanted to travel business class.

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[98] For all of Bratt's flights, Moscow was eight hours ahead of Washington, D.C.

Q: And so the question I have is, Mr. Bratt understood that – what you were doing for him.

A: Yes.

Q: And why do you know that he understood that?

A: Uh, he communicated it to me.

Q: What did he say?

A: Um, do what you can to get me on business class.

Turcotte told the OIG that in response to Bratt's continued requests to book business class she continued to look for a way for Bratt to travel business class. She telephoned Lora and they discussed how to extend the trip between Washington, D.C. and Moscow to make Bratt qualify for business class.

On December 30, Turcotte faxed Omega Travel new travel dates[99] and, at Bratt's direction, asked Omega to break out the cost difference between the government's contract fare and the business class fare. She also requested United flights because "Bob has United Frequent Flyer." As Turcotte noted on the fax, Hoover was going on the trip instead of Snow.

On December 30, 1996, Turcotte received a revised travel itinerary from Omega. The revised Omega Travel itinerary was nearly, but not quite, what Bratt had been after for a month. Bratt was booked on a trip to Moscow that left Washington, D.C., at 7:35 p.m. and arrived in Moscow at 5:15 p.m. the following day. The new flight took 13 hours and 40 minutes, which is 21 minutes short of qualifying under the 14-hour rule for business class travel. However, the flight took 2 hours and 20 minutes longer than his original flights. On the return, Bratt was booked on a flight that left Moscow at 8:20 a.m. and arrived in Washington, D.C. at 2:25 p.m., a flight of 14 hours and 5 minutes, a half-hour longer than provided for in his original travel itinerary. The itinerary, however, still shows Bratt flying coach class.

The next day, December 31, 1996, Turcotte sent a fax to Omega Travel in which she stated that Bratt was not satisfied with the revised itinerary that

[99] The original travel dates fell near Russian holidays.

had him landing in Moscow at 5:15 p.m. He wanted to arrive in Moscow at 11:30 a.m. She asked Omega Travel to see whether they could book Bratt on the flight that arrived in Moscow in the morning.

Notwithstanding his expressed interest in an earlier arrival time, Bratt did not change his flights. He stayed with the longer flights. Even when, on January 2, 1997, he decided, again, to change the dates of his travel, Turcotte emphasized to Omega, Bratt wanted to preserve the same long flight schedule. Turcotte noted, "I know that business-class will be MORE, but Bob wants to know how much more." (Emphasis in original.) Omega Travel rebooked the same flights on the new travel dates. They faxed the new itinerary at 1:15 p.m. Omega again had Bratt traveling coach class.

Still on January 2, 1997, Turcotte specifically instructed Omega Travel to book Bratt business class for the January trip. At 2:55 p.m., Turcotte received a confirming fax from Omega Travel with business class bookings on the longer schedule. Attached to the itinerary that shows business class travel is a note that Turcotte wrote. The note reads:

> Hold for now
> Attached are Bob + Cary's Moscow travel profiles.
> Bob wants to talk to Steve Parent about this Business-class issue.

Another handwritten note by Turcotte has Steven Parent's name and phone number along with the costs of the business class and government-rate tickets.

At 3:27 p.m. on January 2, Turcotte faxed Hoover: "Yes, you and Bob are booked business class – call me …."

On January 13, 1997, Turcotte updated a travel notebook she prepared for Bratt. On Turcotte's outline of the trip, she showed business class travel and attached Omega's itinerary that also showed business class travel to and from Moscow. Turcotte gave the travel notebook to Bratt. Bratt wrote: "Book (This). Excellent."

Starting on January 9, 1997, the last line of Omega Travel's itineraries for Bratt's January trip to Russia say, "Business-class requested by passenger." The cost of Bratt's and Hoover's business class tickets was $2547.95 each. The government's contract rate for a coach class seat was $1073.95. The unauthorized cost of the trip was $1474.00 per person.

3. Authorizations and Reimbursement Vouchers

Neither Bratt's nor Hoover's authorization for travel requested permission to use business class and the authorizations do not show a written justification for the use of business class travel as is required. Bratt's reimbursement voucher misrepresented the travel as coach class. Hoover's voucher showed "D" as the class of service. In the airline industry, "D" is one of the letters used to show business class travel.

4. Bratt's Discussion with Steven Parent

When we interviewed Steven Parent in September 1998, he was six months into a new job working as a Deputy Executive Officer in the Criminal Division Office of Administration, overseeing budget, management, and finance.[100] Prior to his move to the Criminal Division, Parent was the Assistant Director of Financial Operations Services of JMD's Finance Staff. In January 1997, the JMD staff in charge of travel policy, review, and analysis of the Department's Travel Regulations and Department staff who processed travel vouchers reported to him.

Parent explained to the OIG that in his job with JMD he was constantly asked questions about the Travel Regulations. He would do his best to answer them, he said, and frequently referred his colleagues to the Travel Regulations, usually to specific sections. He also said that after he answered questions, he would invariably double check his answers with Mark Rodeffer, one of Parent's subordinates, who, Parent said, is the expert on the regulations.

Parent clearly recalled discussing two different travel-related topics with Bratt and Turcotte: the contents of the annual "premium class" report to GSA

[100] Bratt had offered him that position in September 1996, but Parent turned him down because the timing was inopportune. Bratt told Parent that he would make the offer again, which Bratt did in March 1997. Parent accepted the job then. Parent told the OIG that he and Bratt started work at the Department of Justice at about the same time and have known each other ever since – approximately 20 years.

and the 14-hour rule.[101] Parent recalled that one day (Parent thought it was in January 1997), Bratt ran into Parent in the gym and asked him whether JMD reported all premium class travel in its annual report to the Attorney General.[102] Parent answered that all premium class travel is reported and then explained to Bratt that the report goes to GSA, not to the Attorney General.

Parent said that later that day, after talking to Rodeffer, Parent called Bratt to correct his answer. Only first class travel is reported by JMD to GSA in an annual report. Business class travel, Parent told Bratt, was not reported. Parent also recalled that Bratt took the occasion of Parent's return call to ask Parent some questions relating to whether Bratt was eligible for business class travel on a foreign trip. The questions centered, Parent recalled, on how time is calculated for purposes of the 14-hour rule, including questions relating to layovers.[103]

Parent's recollection was that during his call to Bratt, both Bratt and Turcotte were on the phone and Rodeffer was in Parent's office.[104] Although Parent could not recall the specifics, Bratt asked whether certain facts supported the use of premium class travel. Parent said that he did not recall whether Bratt was asking about business or first class travel.

Parent recalled discussing with Bratt and Turcotte layovers and the fact that JMD could not necessarily determine whether a flight was artificially extended. Parent said that he recalled telling Bratt that it was difficult to enforce the 14-hour rule. He said that he told Bratt that if JMD was tipped off

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[101] At the time he had these conversations with Bratt, Parent had an open job offer from Bratt for the position he eventually accepted. Parent said that this did not influence his answers to Bratt.

[102] Under the Travel Regulations, the Justice Department is to report annually all first-class travel to GSA. TR 301-3.3(e). Omega Travel generates and sends to JMD once a month a list of all Justice employees who have traveled that month "premium class," that is, either business class or first class.

[103] Parent thought the questions were in January about a March trip. He did not believe that Bratt had consulted him about a trip in January.

[104] Rodeffer had only a vague recollection that he might have participated in a conference call with Parent and perhaps Turcotte about travel to Moscow.

or had reason to believe that abuse was going on, JMD would have a duty to review the vouchers involved.

Parent said Bratt asked whether a certain "scenario" met the 14-hour rule. At the time Parent thought that the situation, whatever it was, did meet the rule. Parent reiterated that he stated that the terms he uses are "usual and customary," "government contract airfare," and "government contract carrier." Parent was adamant that he did not and would not tell Bratt how to structure travel to get the benefit of the 14-hour rule.

Parent recalled a second telephone call with Turcotte alone, when she called back to ensure that she got the information correct during the first call.

Parent denied ever telling anyone that anything less than 14 hours was close enough to qualify a trip for business class travel. Had he been asked, he said, he would have said, "No," because "14 hours is 14 hours." Parent claimed that there was no way anything he said could have been misconstrued on this point. He said he never would have and never did tell anyone that JMD had discretion in applying this rule. Parent said that he would not imply or say that a traveler could "gerrymander" a trip to meet the 14-hour rule.

5. Turcotte's Statement

Turcotte recalled overhearing a telephone conversation between Bratt and Parent that she believed occurred in connection with the January trip to Moscow.[105] Turcotte said she was outside Bratt's office one day and heard part of a telephone conversation between Bratt and Parent. Although she could hear only one side of the conversation, the subject of the conversation as well as Bratt's reactions both during and after the call made her believe that Parent was on the line and that they were talking about the Travel Regulations. She said that from the pieces of the conversation she heard, she understood Bratt to have been discussing the question of traveling business class when the trip was just shy of 14 hours. Turcotte recalled Bratt asking Parent, "So if it is 15

[105] At first she said that she could not remember when the call occurred. Then she recalled that there were Christmas decorations around the office at the time of this conversation.

minutes either side of the 14 hour rule, nobody is going to come down on me" or words to that effect.

We interviewed Turcotte about the apparent structuring of Bratt's European trips reflected in documents we obtained from her files. We believe that Turcotte was torn between her loyalty to Bratt and her stated desire to tell the truth. She said she was proud that she was one of those who had earned Bratt's trust, but she worried about what action Bratt might take against her for telling us the truth about his business class travel. What she told us was the same story that the travel documents told: with Bratt's knowledge and approval, she deliberately structured Bratt's January, March, and June trips to Russia to make the trips qualify or come close to qualifying for business class travel under the 14-hour rule.

Turcotte told the OIG that she worked with Lora to artificially extend the flight schedule because she believed she essentially had been instructed to do so by Bratt. For several weeks preceding December 30, 1996, Turcotte had repeatedly told Bratt that he could not fly business class at government expense under the Travel Regulations. Despite this information, Bratt told Turcotte that he wanted to fly business class. Turcotte said she knew that the trip did not qualify for business class and that Bratt also knew it. Turcotte understood Bratt to be telling her to find a way to "make it happen."

As Turcotte stated during the OIG interview:

Q: I asked you whether anybody directed you to lengthen the layovers, extend the flight in some way, to get flights that were –

A: That would bump it up to 14.

Q: Bump it up to 14 hours.

A: Yeah.

Q: Did anybody ask you to do that?

A: Bob said to do whatever I could to have it happen for business class. He didn't want to go outside department policy, but he really wanted to make it work.

Q: But you have told him three times it doesn't work?

A: Correct.

* * *

Q: -- and he says to you, do what you can to make it happen, what did you understand?

A: Make it happen.

Q: Well, what does that mean?

A: Book it.

Q: You found different flights that took more time.

A: Right.

* * *

Q: Was that entirely of your own doing?

A: No. As I said, Bob said he wanted to fly business class, do whatever I could to make that happen, talk to Carlos which I took to mean, you know, extend it ....

Turcotte knew when she did it that structuring Bratt's trips (and those of his colleagues) violated the Travel Regulations. She admitted that the flights were not within the rules for business class travel.[106] According to Turcotte, Bratt was aware that the trip was lengthened so he would appear to qualify for business class. Turcotte told the OIG that the decision to book business class for this trip was made by Bratt. She said that she never made decisions for Bratt; she gave him the information and followed his directions.[107]

6. Lora's Statement

Carlos Lora of Omega Travel Agency was interviewed twice by the OIG. At the first interview on May 18, 1998, he stated that he could not recall having

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[106] After reviewing the documents sent between Turcotte and Omega, Omega's manager acknowledged that they appeared to show improper conduct.

[107] Sandra Bright, Acting Executive Officer, confirmed that it is Turcotte's practice to check every step of an assignment with the person for whom she is working. This fastidiousness about checking with her supervisor was a trait that Bright thought Turcotte had almost to a fault.

any conversation with Turcotte about business class travel. He further noted that he only remembered one ICITAP contract employee flying to Moscow on business class, and he could not remember the name of the person. He claimed not to recall Bratt or anyone else in ICITAP traveling business class.

In his next interview on May 20, Lora was shown various travel documents and asked to explain how Bratt qualified for business class travel for the January trip. Lora stated that it was probably because of the 14-hour rule, although he could not explain how a flight that departed at 7:35 p.m. from Washington, D.C., and arrived at 5:15 p.m. in Moscow, a 13 hour and 40 minute flight, met the 14-hour rule.

7. Hoover's Explanation

Hoover told the OIG he made his own travel arrangements for the January trip. He said that after Bratt and Turcotte told him that he would travel with Bratt, he called Lora and asked for the same arrangements as Bratt. He claimed he did not know before he received the ticket that he would be traveling business class. Hoover said he was aware of the 14-hour rule because ICITAP had been researching it since 1992. He said that when he saw the ticket, he assumed the trip took over 14 hours, but he never made any calculation to confirm it. Hoover also said that he thought that traveling business class with Bratt in January was "like a tip or bonus." He said that he thought, "If this is what the boss was doing and he was supposed to travel with the boss, this is how it always went."

Hoover told the OIG that while he believed he was responsible for the accuracy of the forms he submitted, he assumed it was the Office of Administration that was ultimately responsible for ensuring that all Criminal Division personnel comply with the Travel Regulations. After reviewing the draft, Hoover reiterated in his response to the OIG that it was the Office of Administration, the Travel Agency, and JMD's responsibility to ensure that his travel arrangements were within the rules.

8. Bratt's Explanation

Bratt told the OIG that "because of the sensitivity of business class … all my authorizations were signed off by Mr. Keeney ... Clearly describing business class in the front. He was aware that we were using business class."

Bratt also stated that he told Turcotte to work with JMD to ensure the trips were an appropriate length. "So my general direction was make sure that my boss knows that I am spending the money and make sure that business class is okay with JMD."

Bratt stated that he did not know why the January flights were changed from an 11:00 a.m. to 5:00 p.m. arrival time or what effect that had on his ability to fly business class. Bratt denied that he directed Turcotte to arrange for him to fly business class and he denied manipulating schedules to fly business class. He explained that he relied on his staff to book the trips and to conform to the regulations.

After reviewing a draft of the chapter, Bratt reiterated in his written response to the OIG that Turcotte was responsible for making the travel arrangements and that he expected her to stay within government policy. With respect to all of his Moscow trips, Bratt stated that he "was not just seeking business class travel for himself, but rather for his entire traveling party. He was attempting to make the long trip more comfortable so that staff could be more productive in Moscow." Bratt described it as "at worst rule bending for the comfort of others."

9. OIG's Conclusions on January 1997 Trip to Moscow

The evidence shows that Bratt and Hoover violated the Travel Regulations during the January trip to Moscow.

- Bratt and Hoover flew business class when they were not entitled to that class of service.
- Bratt's and Hoover's travel authorizations did not reflect, as required, the business class travel, and Bratt's reimbursement voucher incorrectly showed economy class accommodations.

The evidence shows that Bratt repeatedly sought a way to fly business class at government expense. When it was apparent that the original flight schedule would not qualify him for business class travel, Bratt manipulated his flight schedule so that it would appear that he qualified under Department rules. It is highly unusual for any traveler to voluntarily *lengthen* his flight; yet Bratt extended one part of the trip by over two hours and his return by approximately 30 minutes. We have seen no documentary evidence suggesting any legitimate business reason for such a change. Indeed, Turcotte's faxes

indicate that Bratt preferred arriving in Moscow in the morning, rather than in the evening, presumably for business reasons. Yet, he stuck with longer flights with the less desirable arrival time. The evidence leads us to conclude that Bratt did so because traveling business class had become his chief priority.

Yet, the trip to Moscow did not qualify for business class because, despite the manipulation of the flight schedule, the flight time was still less than 14 hours. The 14-hour rule is not particularly complex and any reasonable traveler can calculate the flight time based on information provided by Omega or the airlines. Parent denied making the statement that the flight time was "close enough." Even if he had, Bratt should not have relied on such a statement as a reflection of Department policy regarding the applicability of the 14-hour rule.

The return trip from Moscow to Washington, D.C., violated the Travel Regulations even though the flight was, in fact, over 14 hours. The schedule was not based on business requirements but on Bratt's desire to obtain a flight that would permit him to receive business class at government expense. Omega had found a shorter flight that would have saved the government money. Neither Bratt nor Turcotte provided us with a business reason to reject the flight. Rather, Turcotte's recollection and the documentary evidence lead to the inescapable conclusion that the driving force behind the scheduling decision was the desire to obtain business class travel.

We asked the Department of State's travel agent how travel to and from Moscow was handled by their travelers. We were told that upgrades to business class were not permitted when flying to Moscow, even though flights through Frankfurt took just over 14 hours, because options were available that were under 14 hours.[108]

Parent told us that he did not tell Bratt to structure his travel. At the same time, we believe, given Parent's recollection of the substance of the

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[108] OPDAT no longer permits business class travel for long flights. Rather, if the traveler wishes, he may break up the trips and rest en route. In March 1998, OPDAT's Director announced this change of policy noting "business-class seats are a luxury OPDAT no longer can afford."

conversation with Bratt, that Parent indicated to Bratt that no one at JMD would question Bratt's schedule.

While it is likely true that Bratt did not expressly tell Turcotte or other staff to violate Department rules, the evidence shows that he put his staff in a position where following his instructions left them with no other option. He had familiarized himself with the basic parameters of the 14-hour rule and had been repeatedly told that the schedule Omega recommended did not meet the rule. Yet, he continued to insist that Turcotte schedule business class for his travel. Bratt was in charge of planning the trip and was apprised of all schedule changes. Furthermore, the evidence shows that Bratt directed Turcotte to make several inquiries to Omega Travel to find out the cost of business class versus coach class. Bratt was in a position to understand the manipulation of flight schedules to try to meet the 14-hour rule and to put a stop to it if he so desired. He cannot now place the blame on his staff for the violation of the Travel Regulations.

In sum, in planning the January trip Bratt investigated for a month whether there were legitimate means of traveling business class, and he was repeatedly told there were none. Nonetheless, Bratt remained interested in traveling business class and continued to push his staff to obtain that result for him. After finally receiving information that the Attorney General would not be informed of his business class travel and that JMD would be unlikely to check its validity, Bratt permitted his staff and Omega Travel to improperly lengthen his trip to accommodate his desire for business class travel.

Although Bratt stated in his OIG interview that his authorization to Keeney "clearly describ[ed] business class," the authorization does not, in fact, show Bratt's intent to use business class. The authorization form has specific boxes to be checked when business class is used; neither Bratt nor Hoover checked the appropriate box. Nor did they provide a written justification for the use of business class as is required. Furthermore, Bratt's travel reimbursement voucher also failed to show, as required, that he had traveled business class. We conclude that Bratt knowingly violated the Travel Regulations.

Hoover was an experienced government traveler. He admitted that he viewed traveling business class as a "tip" or "bonus." There is no evidence that Hoover ever raised a question as to this benefit. Turcotte's January 2, 1997, fax to Hoover, specifically noting the business class accommodations

and requesting that he call her about the issue contradicts Hoover's claim that he was only belatedly informed about the business class arrangements. We believe that Turcotte told Hoover that Bratt wanted to fly business class and Hoover decided he would accept the benefit Bratt was apparently offering. We conclude that Hoover violated the Travel Regulations.

C. The Third Trip: March 1997

Bratt returned to Moscow in March 1997. This trip took Bratt and ICITAP Director Janice Stromsem first to Lyons, France (via Paris), to visit INTERPOL, and then to Moscow. Hoover joined them in Paris, and Lake joined the group in Moscow.

We concluded that the flight schedules for Bratt, Hoover, and Stromsem for their return from Moscow were selected because of business class considerations. We also found that Bratt and Stromsem were improperly reimbursed for a first class train trip between Paris and Lyons, France.

1. Arrangement of Business Class Travel

On March 4, 1997, Turcotte faxed Lora a detailed requested itinerary for Bratt, Stromsem, and Hoover. The group would leave Washington, D.C., on Wednesday, March 19 for Paris.[109] After visiting INTERPOL in Lyons, France, the group would return to Paris and travel on to Moscow. Stromsem and Hoover would leave Moscow to return to Washington, D.C., on Thursday, March 27, and Bratt would return on Friday, March 28, from Moscow. Turcotte wrote in the fax, "Carlos – Please try to get him business-class for his return, as he will qualify for it-thanks."

The itinerary faxed from Lora to Turcotte on March 4 shows Bratt, Hoover, and Stromsem on a United economy class flight to Paris, arriving on Thursday, March 20. On Saturday, March 22, they were scheduled to fly Air France to Moscow. Bratt was scheduled to fly home on Friday, March 28, on Delta, leaving Moscow at 8:20 a.m. and arriving in Washington, D.C., at 2:25 p.m., a 14 hour and 5 minute flight. The itinerary notes that the flight home

[109] Bratt and Stromsem were to travel by train from Paris to Lyons, France, to visit INTERPOL.

was business class. This was the same flight used in Bratt's January Moscow trip. Hoover and Stromsem, however, were scheduled to fly back on Thursday, March 27, a Delta flight, leaving Moscow at 1:30 p.m., and arriving in Washington, D.C., at 7:08 p.m. They were booked to fly coach class.

Lora alerted Turcotte to the fact that with a Thursday return, the travelers had to go through New York. On the fax that she received from Lora, Turcotte wrote, "Carlos [Lora] called me on 3/4/97 for their return from Moscow (Jan & C) [Stromsem and Hoover]... total flying time with layover = 13 hr. 38 min, just 21 minutes shy of qualifying for business class." Unlike the flight that connected through Frankfurt, which took 14 hours and 5 minutes, the flight through New York only took 13 hours and 38 minutes, not enough to justify a request to fly business class on Stromsem and Hoover's return flight.

Turcotte told the OIG that Bratt said to her, "How is this going to look if I travel business class and they don't?" Turcotte changed the reservations of Stromsem and Hoover. The next itinerary that we have is dated March 19, 1997, and shows that Hoover and Stromsem's trip was extended by one day. Since business class apparently was filled at the time they left for Moscow, they held reservations to return coach class on the Friday flight, but they were wait-listed for business class. According to Hoover, while he and Stromsem were in Moscow, business class seats became available. Bratt, Stromsem, and Hoover all returned together on Friday, March 28, 1997, business class.

While in France, Bratt and Stromsem traveled by bullet train from Paris to Lyons. The tickets were for first class seats.[110] The Travel Regulations specifically preclude first class train travel with limited exceptions such as security or scheduling. The regulations also provide that first class train travel must be authorized in advance absent an emergency situation.

Bratt's and Stromsem's airplane tickets cost $2718.85 each. Hoover's ticket cost $2685.85.[111] The unauthorized cost for Bratt and Stromsem's

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[110] The only record we could get of the difference between the cost of first class and coach class train tickets showed that in 1998 the difference was less than $20.

[111] We were unable to calculate the contract fare for March 1997 for a flight from Washington, D.C., to Paris to Moscow to Washington, D.C. We did determine that in

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tickets was $842.00 per person. The unauthorized cost for Hoover's ticket was $742.00.

2. Authorizations and Vouchers

Bratt did not show on his travel authorization that he was traveling by business class from Moscow to Washington, D.C., nor did he show that he was traveling first class on the train from Paris to Lyons and back. He listed on his reimbursement voucher "Y" as the class of service, meaning economy class. Hoover's and Stromsem's authorizations also failed to indicate their intention to return business class. On Stromsem's reimbursement voucher, she hand-wrote that she had traveled "coach." There is a hand-written "Y" on Hoover's reimbursement voucher.

3. Hoover's and Stromsem's Explanations

We talked to both Hoover and Stromsem about their business class trips with Bratt. Hoover denied that the trips were lengthened for the purpose of obtaining business class travel and denied that he knew that the trips were lengthened. Hoover said that he did not know how he and Stromsem ended up with premium class tickets on the March trip. In his August 2000 response to the OIG, Hoover stated that he was working on a report during the afternoon of Thursday, March 27, 1997.[112] He also stated that authorization for business travel was not required since business class travel only became available during the trip.

Stromsem said that Bratt authorized the use of business class accommodations for the Moscow to Washington trip. Stromsem told her secretary to follow Bratt's secretary's lead in making reservations, since Bratt's

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March 1997, the contract fare for one-way travel between Moscow and Washington, D.C., was $523.

[112] Hoover also asserted in his August 2000 response that he had previously accounted to the OIG for his activities while in Russia. At our request, Hoover had previously provided us with an accounting of the travelers' social activities with Bolgak and Koreneva during the March 1997 trip but not a daily accounting of the travelers' work activities.

office was arranging the trip. Stromsem said that she discussed traveling business class with Bratt. Bratt told her that he was flying business class and that she and Hoover were on standby for business class seats on the Friday flight. After reviewing the draft, Stromsem reiterated in her response to the OIG that Turcotte was responsible for making the travel arrangements. Stromsem's response stated that "It was deemed that she and Mr. Hoover should remain in Moscow with Mr. Bratt to complete their work." Stromsem also stated in the response that a day-long strike in Moscow on Wednesday (March 26) made the extension of the trip to Friday all the more necessary.

4. OIG's Conclusions on March Trip

For this trip, Turcotte, acting on Bratt's behalf, specifically requested business class travel rather than the least expensive flight that would meet the business needs of the traveler. This is evidence that, like the January trip, the focus was on Bratt's desire to obtain business class accommodations rather than following the requirements of the prudent traveler rule.

The scheduling of Hoover's and Stromsem's return flights shows the manipulations being used. The initial plan had them leaving Moscow on Thursday. None of the travelers provided us with any business reason explaining why they needed to stay in Moscow until Friday morning. Furthermore, the documentary record does not show any business reason for the extra night in Moscow.[113] The record does show that Stromsem and

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[113] Stromsem's notes show that she had one meeting on Monday, March 24, and one on Tuesday, March 25, 1997. The last date in Hoover's notes is also March 25, 1997. An undated document titled "Tentative Schedule for Russia Trip" lists the travelers' daily plans. For Thursday, March 27, the schedule lists the day's plan as "Any other meetings[;] Spend time at Embassy[;] Meet with anyone necessary[;] Write up proposal if necessary." Two daily schedules prepared by Turcotte for Bratt, dated March 13 and March 16, 1997, have nothing scheduled for Bratt on Thursday, March 27, 1997. The schedule prepared on March 16 for Stromsem shows Stromsem's departure from Russia as the only activity for Thursday, March 27. While Hoover may have worked on a report on Thursday afternoon, there is no evidence that he needed to stay in Moscow an extra day in order to do so. With respect to Stromsem's explanation about a nationwide strike, the strike could not have been a justification for the change to a Friday itinerary since the change occurred before the travelers left the United States. Furthermore, the day that Stromsem said a nationwide strike occurred, Wednesday, was also the day that Hoover told us that he and Stromsem went to a

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Hoover changed their schedules and were wait-listed for business class only after Turcotte was informed that the Thursday flight was too short to qualify them for business class. Mark Rodeffer, a JMD official with 25 years experience in dealing with the Travel Regulations, told the OIG that while in some cases it might be in the government's economic interest to have a traveler stay an extra day or two at a location, a traveler could not stay longer at a location just to book a flight over 14 hours and thereby qualify for business class travel. The decision to wait until Friday to catch a flight that made business class travel possible cost the government the price of the business class ticket as well as the extra night's lodging and per diem costs.

Although we believe all of the travelers' extended stay to Friday violated the Travel Regulations, we hold Bratt, rather than Hoover and Stromsem, accountable for the misconduct. Hoover and Stromsem said that Bratt directed them to extend their stay, and we have no evidence that they were aware that Bratt's decision to stay until Friday was because of his desire to obtain a business class flight. However, the evidence is strong that Bratt's original decision to stay in Moscow until Friday was driven by his desire to obtain business class travel and that his decision to have Hoover and Stromsem stay until Friday was because Bratt determined that it would not look good if he flew business class and his subordinates did not.

D. The Fourth Trip: June 1997

Bratt's fourth trip to Moscow was in June 1997, while Bratt was working at the INS. Bratt traveled to Moscow business class and returned to Miami, also traveling business class. We concluded that the trip to Moscow violated the Travel Regulations because the flight was deliberately lengthened to make it over 14 hours. We also concluded that the schedule for the Miami leg of the trip was inappropriately influenced by business class considerations.

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Russian police training academy. In all of our previous discussions with each of the travelers, no one mentioned a nationwide strike as having interfered with his ability to conduct business.

1. Scheduling

In May 1997, Turcotte, who had transferred with Bratt to the Immigration and Naturalization Service (INS), began planning for another trip by Bratt to Moscow. On May 13, 1997, Turcotte faxed Lora at Omega Travel instructions to book the trip. The trip was to take place between Wednesday, June 4, 1997, and Wednesday, June 11, 1997. Turcotte directed Lora to "please work in the business-class travel, wherever you can."

Also on May 13, Omega sent back an itinerary that had Bratt traveling to Moscow business class. Omega scheduled Bratt to leave Washington, D.C., on Northwest Airlines at 6:00 p.m., travel through Amsterdam to Moscow, arriving at 2:15 p.m. The trip to Moscow as scheduled lasted 12 hours and 15 minutes. The return trip on Delta departed at 2:00 p.m. on June 11, flew through New York, and arrived in Washington, D.C., at 7:05 p.m. It was 13 hours and 5 minutes long. The fare was $2,488.85.

On May 14, 1997, Turcotte faxed Omega further instructions. "Why," she asked, "is he [Bratt] travelling through Amsterdam? Can we book him trhough [*sic*] Frankfurt instead?" She also specified American Airlines.

We do not have any record of a response from Omega. On May 19, 1997, Turcotte sent a memorandum to Bratt telling him that he was booked business class on the flight to Moscow, but she also told him, "You do not qualify for it coming back ...." She offered an alternative – a rest stop. Turcotte wrote to Bratt that Lora had suggested that Bratt break up the flight by leaving Moscow late on June 10 (at 9:55 p.m.), spending the night in Amsterdam, and then flying nonstop from Amsterdam to Washington the next day. Bratt would be home by 1:25 p.m. Bratt did not choose that alternative and Turcotte did not recall why not.

After informing Bratt that he did not qualify for business class on the return trip, Turcotte noted in a memorandum dated May 19 that she would discuss with Omega adding a flight to Jacksonville, Florida, following the Moscow trip. On the same day Turcotte noted in a fax to Omega that Bratt wanted to get back to Washington, D.C., earlier than the 7:00 p.m. scheduled return on June 11, 1997, since he wanted to attend an INS program at Jekyll Island, Georgia, the following day, June 12, 1997, by late morning.

On May 22, Omega sent a revised itinerary. The flight to Moscow was still on Northwest Airlines, business class, and took 12 hours and 15 minutes.

On the June 11 return, Bratt was scheduled to fly from Moscow to Miami, a flight of 15 hours and 5 minutes. The schedule then had Bratt flying from Miami to Jacksonville on June 12 where he would drive on to Jekyll Island. Turcotte's handwritten note on the Omega fax to Bratt states, "I spoke to Carlos today at 10:40 am. He said that the business class was met by the 14 hr. rule, given the length of the flight." With these changes, the estimated cost of the trip rose from $2488.85 to $4126.56.

A day later, on May 23, Turcotte faxed Lora that Bratt "reconsidered flying business-class roundtrip to Russia. He would now like to change his flight OVER to not reflect ... please keep his return flight as a business-class reservation for his flight from Moscow to Miami International."

As indicated by a fax sent by Turcotte on May 27, this reconsideration may have been caused by the realization that the flight to Moscow did not qualify for business class travel. Whatever the reason for the decision to reconsider the use of business class travel, the reconsideration did not last long. On May 27, Turcotte sent a fax to Lora:

> CARLOS:
>
> We have checked with our Budget & Fiscal Group and they have informed me that, at least for the trip over to Moscow, Bob is short 1.45 hours of the cut-off to be eligible to fly business class. His return flight is fine and well within the flying hour guidelines, but it is the flight over that has them concerned. *Can you rebook him with a slightly longer layover in Amsterdam (perhaps?) or through another city? So that at least two extra hours is added onto the trip? ….* (Emphasis added.)

On May 28, Lora scheduled a 12:45 p.m. flight from Washington, D.C., arriving in New York at 2:05 p.m. to catch a 6:05 p.m. plane to Moscow, for a total flight time of 14 hours and 40 minutes. Bratt's flight from New York to Moscow was business class.

The flight schedule changed two more times. On the morning of June 3, Omega faxed an itinerary that had Bratt leaving Washington, D.C., at 2:59 p.m., arriving in New York at 4:07 p.m., to catch the 6:05 p.m. flight to Moscow. He was listed as traveling coach class. But by the afternoon of June 3, Bratt was scheduled on the 12:45 p.m. flight, traveling business class. This

was the flight he took, and his ticket shows that he did travel business class. Turcotte said that Bratt saw all the paperwork from Omega and that her actions were based on his requests. She said, "I wouldn't know what to do as the next step if I didn't get feedback."

With respect to Bratt's return to the United States through Miami, Bratt's travel request and authorization, dated May 20, 1997, justified the trip to Miami by representing that Bratt would be meeting there with Robert Lockwood, an OPDAT grantee.[114] Bratt did not recall, however, without OIG prompting, that he scheduled the return through Miami for a meeting with Lockwood.[115] Lockwood had documents indicating that he had met with Bratt in March 1997. Documents also showed that a meeting had been planned at the airport for April 1997. Lockwood did not recall the April meeting taking place. Lockwood had no recollection of meeting with Bratt in June and he had no record that such a meeting had ever been scheduled.

For all his prior trips, Turcotte put together a detailed travel notebook for Bratt with his itinerary and a day-by-day meeting schedule, to the extent that it was known in advance. She also anticipated whom Bratt might want or need to talk to and listed home and business phone numbers of all the people she knew he might want to contact on the trip. While Bratt was in Moscow, on June 10, 1997, Turcotte faxed Bratt an updated travel notebook with schedules and information about the upcoming Florida portion of his trip. Turcotte has no reference to any meeting with Lockwood and no listing for Lockwood in the June 10, 1997, travel notebook or any earlier edition.

When pressed on the matter by the OIG, Bratt said that his arrangements to fly business class on his return from Moscow was a separate issue from his meeting with Lockwood. The only other possible justification for the trip through Miami – Bratt's participation in an INS conference at Jekyll Island, Georgia – does not justify the use of business class travel.

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[114] We discuss the grant Lockwood received from OPDAT in Chapter Ten.

[115] Bratt recalled meeting with Lockwood once at the Miami airport and once in Fort Lauderdale. Bratt stated, however, that he was "drawing a little bit of a blank" as to whether he met or scheduled a meeting with Lockwood on the June trip.

Bratt was originally scheduled to fly from Moscow to Washington on June 11, 1997, and then from Washington to Jacksonville, Florida (the closest airport to Jekyll Island, Georgia) the next day, June 12, 1997. Had he followed his original itinerary, the flight from Moscow to Washington, D.C., would not have been over 14 hours. If he had followed Lora's suggestion of spending the night in Amsterdam, he would have arrived in Washington, D.C., on June 11, 1997, at 1:25 p.m. Both the original itinerary and Lora's suggested itinerary would have permitted Bratt to arrive in Jacksonville for the conference for a substantially less expensive fare. Bratt's ticket cost $4126.56. The authorized fare was $1364.18 (based on contract fare to Russia and Jacksonville). The unauthorized cost was $2762.38.

2. Authorizations and Reimbursement Vouchers

Bratt's authorization for the June trip failed to note that Bratt was traveling business class. The reimbursement voucher did not identify the class of service used.

3. OIG's Conclusions on June Trip

We conclude that Bratt's June trip to Moscow violated the Travel Regulations. The Washington, D.C., to Moscow part of the trip is particularly significant because it starkly shows how Bratt's scheduling was dictated by business class concerns rather than for business purposes.

After learning that the flight was almost two hours short of qualifying for business class travel, Turcotte made a specific request to Omega, in writing, to lengthen the trip by two hours. We know of no business reason for why a flight should be made longer than necessary. The fax Turcotte sent to Omega on May 27, 1997, specifically requesting that two hours be added to the trip expressly shows the manipulations being used to obtain business class travel for Bratt. The flight schedule itself tends to corroborate Turcotte's statement that Bratt was aware of and condoned the scheme. The business class itinerary shows a 4-hour layover in New York before catching the Moscow flight. Given that the flight time between Washington, D.C., and New York is approximately an hour, any reasonable traveler should have questioned the necessity for taking a 12:45 p.m. flight to New York to catch a 6:00 p.m. flight

out of New York.[116] Omega had sent an itinerary confirming that a later flight was available. Bratt, however, took the 12:45 p.m. extended flight and received reimbursement for his business class travel.

We also do not believe that traveling business class on the Moscow to Miami leg of the trip was appropriate. The explanation Bratt gave on his travel authorization for flying to Miami was to meet with Lockwood; the evidence shows, however, that he did not have such a meeting. The other possible justification, so that Bratt could attend an INS conference, also does not justify the use of business class travel. Bratt had two proposed flight schedules that would have permitted him to arrive in Jacksonville for the conference, yet he chose a third itinerary that substantially raised the cost of the trip.

In addition, Bratt failed to properly note on his authorization and reimbursement voucher that he flew business class.

IV. OIG's CONCLUSIONS

A. Bratt

We conclude that Bratt violated the Travel Regulations on each of his four trips to Moscow.

- Bratt traveled business class when he was not entitled to do so.
- Bratt failed to account for more expensive travel that was caused by personal convenience, rather than business reasons, such as particular airlines being chosen for non-business reasons and weekend travel to non-official destinations.
- Bratt authorized subordinates to take trips that violated the Travel Regulations.
- Bratt failed to identify on government forms that he was traveling business class and he failed to obtain a supervisor's approval for that class of travel.

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[116] There is nothing wrong, Rodeffer said, with an anxious traveler who wants to ensure his connections leaving an unusually large amount of time between his fights. However, the traveler may not use that additional time to justify business class travel.

The evidence shows that Bratt was aware of and approved a scheme used by his subordinate, Denise Turcotte, to obtain business class travel for him. The scheme consisted of scheduling longer flights that would qualify, or come close to qualifying, for the 14-hour rule even though shorter, less expensive flights were available. These manipulations violated the spirit of the 14-hour rule and the letter of the prudent traveler rule.

The evidence shows that Bratt became enamored with business class travel after his November 1996 flight to Moscow. As Turcotte's fax to Omega noted, "Bob Bratt LOVED the arrangements you made for business class for him." The documentary evidence demonstrates that a substantial amount of his staff's time, and Omega Travel's time, was focused on business class issues rather than simply meeting the travelers' official business needs.

We found that in each of his trips, Bratt failed to properly identify his use of business class travel and failed to obtain a supervisor's approval to fly business class even though he was required to do so by Department regulations. Even under the 14-hour rule, a traveler is not automatically entitled to upgrade to business class. A supervisor may choose not to approve the upgrade for any number of reasons, such as budgetary restraints or a concern about the appearance of wasteful spending.[117] Bratt did not divulge the use of business class on his travel authorizations and therefore his supervisor, Keeney, was never given the opportunity to evaluate whether Bratt should or should not have been allowed to travel business class.

Bratt excused his conduct by blaming any violations on the failures of his staff. Yet, staff errors do not excuse an employee's failure to account for travel. In response to an OIG question as to who is responsible for the travel voucher, JMD's travel expert, Mark Rodeffer stated,

> The traveler. The traveler is ultimately responsible for everything with respect to travel. The arrangements, whether or not he's properly reimbursed, all of that is the traveler's responsibility, not his secretary's. And we tell them. That's the first thing – occasionally I go around and I

[117] In fact, in the middle of our investigation, OPDAT adopted a no business class travel rule.

> do talk to groups and I talk to the staff and I always start off with two things: the prudent traveler rule and the next thing is you, the traveler, are responsible.

We are particularly unpersuaded by Bratt's attempted justification under the facts of this case. Bratt's staff did not fail him; his staff followed his directions. Bratt's refusal to abide by the Department's rules and regulations pressed one of his closest assistants to break the rules on his behalf. He also allowed other subordinates to violate the Travel Regulations. With respect to the March trip involving Hoover and Stromsem, he initiated their business class travel so as not to highlight his own improper use of business class.

We conclude that Bratt committed misconduct by willfully and knowingly violating the Travel Regulations on business class travel.

B. Others

We conclude that Lake, Snow, and Hoover also violated the Travel Regulations. We believe that Snow's and Hoover's conduct is mitigated by the fact that they did not initiate the violation; they followed the travel arrangements made by their supervisor. While this does not excuse their conduct, we believe that the violation is of a different, and significantly lesser, order of magnitude than Bratt's. Lake, on the other hand, planned the November trip and we hold him accountable for the decisions that led to the use of the more expensive travel.

C. JMD

We were told that JMD audits all vouchers concerning foreign travel. We observed violations of the Travel Regulations that should have been apparent by examining the submitted documents. Mark Rodeffer stated that JMD auditors look at airline tickets, are familiar with the airline codes indicating whether the traveler used something other than the contract airfare, and should check to see whether an alternative class of travel was authorized. Yet, Bratt's January, March, and June trips were never questioned even though the individual airline tickets submitted with the voucher indicated that Bratt traveled business class and his authorization form did not specify that he was authorized to do so. In some instances, the auditors should have been alerted to the potential problem even if they did not recognize the airline codes. For example, Bratt's train ticket between Paris and Lyons, France, specifically says

"first class" but there is no indication that the auditor questioned the justification for that class of travel. In March 1997, Hoover submitted an itinerary with his reimbursement package and the itinerary specifically notes that business class travel is booked. The senior JMD official, when shown paperwork indicating that Bratt had traveled business class but had failed to indicate that business class was authorized, stated that the voucher should not have been paid.

A JMD official in the Travel Services Section told the OIG that the auditors deal with a lot of "VIP's" and "know who Bob Bratt [is]." The official added that, consequently, the auditors process VIP vouchers as quickly as possible to avoid inquiring phone calls to the auditors' supervisors.

Despite their own audit policy, the JMD auditors who review travel vouchers failed to question various travel violations that should have been apparent simply by looking at the paperwork. We do not know whether the auditors failed because it was Bratt's vouchers or whether there is a more systemic problem involving the audit process.

DESTINATIONS AND CLASS OF SERVICE

NOVEMBER 1996 TRIP

Day	Date	From	To	Class
Wednesday/ Thursday	Nov. 13/14, 1996	Washington, D.C.	Budapest	**Business**
Friday	Nov. 15, 1996	Budapest	Frankfurt	**Business**
Sunday	Nov. 17, 1996	Frankfurt	Moscow	**Business**
Tuesday	Nov. 19, 1996	Moscow	Warsaw	**Business**
Thursday	Nov. 21, 1996	Warsaw	Frankfurt	**Business**
		Frankfurt	D.C.	**Bus. Requested**

JANUARY 1997 TRIP

Day	Date	From	To	Class
Wednesday/ Thursday	Jan. 15/16, 1997	Washington, D.C.	Moscow	**Business**
Wednesday	Jan. 22, 1997	Moscow	Washington, D.C.	**Business**

MARCH 1997 TRIP

Day	Date	From	To	Class
Wednesday	March 19, 1997	Washington, D.C.	Paris	Economy
Thursday	March 20, 1997	Paris	Lyons	**1st Class Train**
Friday	March 21, 1997	Lyons	Paris	**1st Class Train**
Saturday	March 22, 1997	Paris	Moscow	Economy
Friday	March 28, 1997	Moscow	Washington, D.C.	**Business**

JUNE 1997 TRIP

Day	Date	From	To	Class
Wednesday	June 4, 1997	Washington, D.C.	New York	Economy
	June 4, 1997	New York	Moscow	**Business**
Wednesday	June 11, 1997	Moscow	Miami	**Business**
Thursday	June 12, 1997	Miami	Jacksonville	Economy
Friday	June 13, 1997	Jacksonville	Washington, D.C.	Economy

Unauthorized Cost of Business Class Air Travel

Per Flight

Trip	Authorized Fare	Actual Fare	Unauthorized Cost
November (Bratt and Lake)	$2,100.00	$4,253.55	$2,153.55
November (Snow)	$2,100.00	$4,240.75	$2,140.75
January 1997 (Bratt and Hoover)	$1,073.95	$2,547.95	$1,474.00
March 1997 (Bratt and Stromsem)	$1,876.85	$2,718.85	$842.00
March 1997 (Hoover)	$1,943.85	$2,685.85	$742.00
June 1997 (Bratt)	$1,364.18	$4,126.56	$2,762.38

Unauthorized Cost of Business Class Air Travel

Per Passenger

	Nov 1996	Jan 1997	Mar 1997	June 1997	Total
Bratt	$2,153.55	$1,474.00	$842.00	$2,762.38	**$ 7,231.93**
Lake	$2,153.55				**$ 2,153.55**
Stromsem			$842.00		**$ 842.00**
Hoover		$1,474.00	$742.00		**$ 2,216.00**
Snow	$2,140.75				**$ 2,140.75**
Trip Total	$6,447.85	$2,948.00	$2,426.00	$1,637.71	
Grand Total					**$14,584.23**

CLASS OF SERVICE SHOWN AND USED

	Business Class Authorized and Approved on Form DOJ-501	Class of Service Declared on Travel Voucher Form DOJ-534	Class of Service Used
Robert Bratt			
November 1996	No	Coach*	Coach, Business
January 1997	No	Coach	Business
March 1997	No	Coach	Coach, Business
June 1997	No	No Entry	Business
Joseph Lake			
November 1996	No	Coach	Coach, Business
Janice Stromsem			
March 1997	No	Coach	Coach, Business
Cary Hoover			
January 1997	No	Business**	Business
March 1997	No	Coach	Coach, Business
Thomas Snow			
November 1996	No	Coach	Business

* Coach Class indicated by "Y" on voucher
** Business Class indicated by "D" on voucher

V. BRATT'S ATTEMPTS TO INFLUENCE WITNESSES

A. Allegation

We were told that after Bratt learned that we were investigating his business class travel to Europe he attempted to influence Turcotte to misrepresent that the decision that he should travel business class was Turcotte's and not Bratt's.

B. Turcotte's Statement

At the time that Bratt traveled to Russia, Denise Turcotte worked for him. As we have just discussed, Bratt and Turcotte told us that she was charged with booking Bratt's travel. When we first interviewed Bratt in October 1997, we asked him, as we did other witnesses, not to discuss the information of the interview with anyone else, except, if he so desired, with a personal attorney. Bratt acknowledged that he understood.

When we interviewed Turcotte in an October 1998 interview, we asked her whether Bratt had directly or indirectly suggested to her that she not be forthcoming or honest in answers to OIG questions. She told us that he had not. In February 1999, at the request of Turcotte's attorney, we interviewed her again. Turcotte told us that she had not been forthcoming in her previous interview, and she told us about a conversation that she had with Bratt in the summer of 1998.

Turcotte told the OIG that one day in the summer of 1998, Bratt called her and asked to meet with her. They were then working in separate buildings. She said that she went to Bratt's office but that Bratt did not want to talk there. At Bratt's suggestion, the two walked to the Old Post Office Pavilion where they stopped for coffee and bagels.

Turcotte then described how Bratt told her that she could expect to be called to be interviewed by the OIG and how he discussed his business class travel with her in such a way that she believed he was coaching her to answer questions in a way that would make her solely responsible for the decisions leading to Bratt's business class travel.

According to Turcotte, Bratt told her that he had just been extensively interviewed by the OIG about his business class travel and that he expected that she would be called by the OIG and interviewed on the same topic.

According to Turcotte, Bratt did not directly ask her to lie. Rather, she believed that he was showing her how to lie when he made a series of statements and posed a series of rhetorical questions, all of which were false. For example, Turcotte said that Bratt asked her, "I never asked you to juggle my travel hours that that I could qualify for business class, did I?" or words to that effect. She said that Bratt's series of false statements and rhetorical questions had the effect of falsely shifting from Bratt to her the decision to book business class for Bratt's travel to and from Moscow. Turcotte said:

> A: He said that he had had like a full day of talking with [the OIG] about travel and that he wanted to talk to me about it, and could we go for a walk, so we went for a walk. We went, he got a bagel and I was very uncomfortable. He started talking about, you know, basically, ['']I turned all the travel over to you…you made the final decisions…If I made any preference, you had the final decision.'
>
> Q: This is Mr. Bratt saying this to you?
>
> A: This is Mr. Bratt saying this. And I am going – I am in shock, first of all, and I just continued to listen to him because I couldn't quite tell where he was going with it. But he also said that, first of all, he didn't want anyone to know about this conversation. He made that very clear, we never had this conversation. And again, I didn't say yes or no about keeping any, you know.
>
> He said that – something to the effect, and I can't recall the exact words, but 'I never asked you to juggle my travel hours that I could qualify for business class, did I?'
>
> * * *
>
> Q: Did Mr. Bratt go over with you the particulars of the kinds of questions you might expect to be asked?
>
> A: He did. But, honestly, I can't remember what they were. He said things like, now, they will probably ask you about – like I just revealed, the extension of hours to fulfill the requirement for business class. And I can't

remember other things, but they were bits and pieces of things I know you [OIG] and I have talked about, but I can't be more specific than that. I just – I was in shell-shock.

She characterized the thrust of Bratt's statements to her as "we didn't do anything wrong." We asked Turcotte whether she believed that Bratt was being honest in his statements to her. She said, "No, from other conversations that we have had, and going through his travel, he knew that wasn't true, but I did not confront him with that."

Turcotte reiterated what she had told the OIG in other interviews: the decision to travel business class and to take steps to make it appear that he qualified for business class under the Travel Regulations was Bratt's.

[Turcotte]: [H]e said he wanted to fly business class, do what we can do. I never made decisions about making him qualify, you know. I can't put it any other way, I followed his instruction.

Q: And now in this conversation that he is having with you in August [1998], after he has spoken to [the OIG], he is telling you he didn't give you any instructions?

A: Correct.

Q: And you know that is a lie?

A: I know that is a lie.

Q: And he is telling you that he didn't do anything that was wrong?

A: Uh-huh.

Q: And you know that is a lie?

A: Right.

* * *

A: He didn't so much request, but what he did was, you know, restate, you know, [']I never extended an[y] trips … I never asked you to book any trips that were outside

the guidelines and rules of – that exist for business travel, did I.[’] I remember that one.

Q: And what would have been a truthful answer to that question?

A: Well, yeah, Bob, you did.

We asked Turcotte to explain why she had not answered truthfully the first time we asked whether Bratt had attempted to influence her statements to the OIG, but had waited over four months to volunteer the information. Turcotte said that she had been afraid to tell us about the meeting. Her disclosure, she believed, would be “a nail in the coffin” of her career with Bratt and because of his stature, in the Department of Justice. She believed that to disclose the conversation in which Bratt tried to induce her to give false statements to the OIG would put at risk her career in the Department of Justice.

Turcotte said that Bratt did not stop talking to her about her testimony about his travel after their conversation at the Old Post Office Pavilion. Turcotte said that notwithstanding that she told Bratt that she would not discuss with him the substance of her interview with the OIG, he continued to contact her, first asking whether she had been called by the OIG, then asking what she had said and finally asking whether she had been called back. After it was clear, she said, that she would not discuss it:

> He would say – he asked, [‘]now, I know you won’t talk about it,[’] you know, he already knew where I was coming from, but he kept – it was like he was thinking out loud to himself. [‘]What can they possibly be asking? You know, you probably set them all straight,[’] in other words, meaning telling what [he] wanted them to hear.

Turcotte said that to quiet Bratt, she would agree with him that there had been no wrongdoing, leading him to believe that she had testified to the OIG as he had asked her to on their walk to the Old Post Office Pavilion. She said that they had had such a conversation as recently as the week before another interview of Turcotte by the OIG, in February 1999, when she and Bratt met for lunch. Again Bratt asserted about his travel, “we didn’t do anything wrong, what do they keep looking into?”

We sought to corroborate the conversation that she reported to the OIG. Turcotte said that just before she was to be interviewed by the OIG for the first

time, she told Sandra Bright that Bratt did not want her to tell the OIG that Bratt had extended his travel layovers to appear to qualify for business class travel and that "some of the travel arrangements I had made for [Bratt] weren't the way he saw it." Turcotte said that she chose to talk to Bright about her conversation with Bratt because "I needed to talk to somebody who had worked with Bob and who knew that he very often [bent] the rules."

Bright confirmed to the OIG that Turcotte had come to her with concerns that "based on her conversation with Bob" that "this is going to look like it was my fault...." Similar to Turcotte's version of the timing, Bright placed her conversation with Turcotte to a time just before Turcotte had come into the OIG for an interview. Bright also recalled that Turcotte was concerned "about something falling on her that looked like it was going to be made her responsibility...." When asked further specifics, Bright recalled that Turcotte was "concerned, she was real nervous about this, she had some concerns that, you know, this was over travel issues, and that it was going to be – it was going to be looking like she made decisions for him [Bratt] that he didn't have any input into."[118]

In another characterization of the discussion, Bright said:

> I had the impression that she felt that she was going to be – that this was something that had been laid at her feet, that she had said – Bob had said, Denise, go do the travel and then she made all the arrangements and he didn't have anything to do with it. And she didn't – and she felt uncomfortable with that, that that was not her decision[], and I said, well, then you have to say that.
>
> * * *
>
> I got the impression from her that she was feeling uncomfortable because Bob [Bratt] must have said something to her that made her feel like this is the way this

[118] During the same interview, the OIG asked Bright whether Turcotte worked independently or checked her work with the people for whom she worked. Bright said that she checked everything that she did, "To a fault, almost."

> conversation had gone with your office, and therefore she was feeling, you know, nervous that she was going to get – going to be made – try to be made responsible for something that wasn't her responsibility, which she didn't feel was her responsibility.... [S]he didn't come out and say Bob told me to say this, you know, or Bob told me to – you know, that I should say X. You know, she didn't say that, she just said, you know, ['']I'm … I'm going in, I'm nervous about the interview, I don't know what kind of questions they are going to ask me. I know they are going to ask me about his travel stuff, you know, about his travel plans and things like that, and you know – you know, I'm feeling like it's – it's going to be made like I made all the decisions on the planning and things like that, and that wasn't the way it worked.['']

While Bright denied that Turcotte expressly said that Bratt had told her what to say or what he had told the OIG, Bright noted,

> [I]n my mind, I'm thinking, well, nobody would be able to think that she planned it [travel irregularities] in isolation unless somebody told somebody else that it was in isolation, so therefore maybe that's Bob [Bratt] saying that to her.

C. Bratt's Denial

Bratt repeatedly denied that he had coached Turcotte – or anyone else – to answer falsely questions about his business class travel. When we asked Bratt whether he remembered talking to Turcotte at the Old Post Office Pavillion, he answered, "That doesn't come to mind, no."

We also asked Bratt whether, after the investigation began, he ever talked to Turcotte about whether she booked his trips in accordance with Department of Justice Travel Regulations. He answered, "Maybe, I just don't recall sitting down and talking to her about this travel stuff."

> [Bratt]: But, you know, did we sit down at the Pavilion and talk about travel? I don't remember. But Denise and [I] talked about different things all the time.

It's possible that we talked about travel one time at the Pavilion. Was it – were we sitting there trying to prep her or something? No. I don't – not at all.

We asked the question in many different ways. The answer was always the same:

Q: Did you ever ruminate out loud in the presence of ... Denise Turcotte what you might expect the IG's office to talk to her about?

A: I don't recall. You know, this is ancient history right now. I don't recall any conversation. I don't recall talking or ruminating or prepping or doing any of that stuff. No, I did not do it.

Q: Did you ever tell Denise Turcotte that you never knew whether your trips were lengthened in any way to qualify for business class travel under the 14-hour rule?

A: I don't remember when we talked about business class. My recollection, you know, is melted.

* * *

A: I don't recall specifically talking to her and prepping her for any particular questions.

* * *

A: No, I don't – about my business class? No. I haven't talked to anybody about that.

Bratt also denied continuing to press Turcotte about what she had said after her the OIG interviews and denied having had lunch with Turcotte only a few weeks before.

Bratt denied in general that he told witnesses that they would be called by the OIG or that he discussed with them substantive areas of the investigation. This denial was contrary not only to Turcotte's evidence, but also to the testimony of others we interviewed. Ludmilla Bolgak and Scott McAdoo, for example, told the OIG that Bratt called to alert them that an OIG interview was imminent. Bratt also telephoned McAdoo during the OIG investigation and asked him about visa referrals. We know that after his call to Bolgak, Helen

Koreneva did not tell the truth to the OIG about her intimate relationship with Bratt, although, of course, we do not know whether Bratt influenced her testimony in any way.

We were told, as well, that Bratt talked to witnesses about subjects that were central to the OIG investigation in a way that they perceived as intended to garner support and to present himself as someone who had done nothing wrong. For example, Steven Parent said that he understood Bratt's call to him in July 1998 to discuss travel policies to be Bratt asking Parent to "bless" what Bratt had done. Bratt also telephoned Hoover and said that he (Bratt) had done nothing wrong when he helped Koreneva and Bolgak get tourist visas. Hoover said that he did not correct Bratt or remind him of the misrepresentations Bratt had made or the true state of the facts because he had no doubt that Bratt remembered them. Rather, Hoover said, he understood the point of the conversation was not to review the facts, but for Bratt to reach out to Hoover for support.

D. OIG's Conclusion

We credit Turcotte's account of her conversations with Bratt, both at the Old Post Office Pavilion and his subsequent attempts to find out what she had told the OIG. Given her account of the conversation at the Old Post Office Pavilion, we believe that Bratt was attempting to provide her with a false scenario that she would then provide to the OIG. We conclude from the consistency of the representations of witnesses that, contrary to Bratt's statements to the OIG, throughout the investigation he was engaged in an effort to alert and probe witnesses, to dissemble to them that he had never knowingly done anything wrong, and to seek reassurance from them that they would not say otherwise.

CHAPTER FIVE: FAILURE TO FOLLOW TRAVEL REGULATIONS

I. INVESTIGATION

As a result of an allegation that Criminal Division Executive Officer Robert Bratt had flown business class to Russia, we reviewed travel vouchers of some of the managers of ICITAP, OPDAT, and the Criminal Division Office of Administration. Our investigation revealed that senior managers in these offices failed to comply with many Department of Justice Travel Regulations. We discuss below the problems that we investigated and some of the failures that we saw in connection with Travel Regulations.

II. FREQUENT FLYER PROGRAMS

We discovered during the course of our investigation that some managers were accruing frequent flyer miles or other frequent traveler benefits on government travel. We also found evidence that decisions regarding airline selection may have been based on frequent flyer programs. Because we had not seen any voucher in which frequent flyer miles had been used for government travel, we investigated further to determine whether the Travel Regulations concerning the use of frequent flyer miles acquired on government travel were being violated.

A. Department of Justice Regulations Governing Use of Frequent Flyer Miles

Airlines permit passengers to use accrued frequent flyer miles to buy tickets without additional cost. The Department of Justice encourages employees to collect frequent flyer miles but limits the circumstances in which a Department employee may purchase tickets with such miles.

The rules and related principles that govern employees' use of frequent flyer miles are contained in the General Services Administration (GSA) Travel Regulations, in Department of Justice Travel Supplements to the GSA Travel Regulations, and in Justice Management Division (JMD) memoranda on travel (collectively referred to hereafter as the "Travel Regulations" and cited as TR or TR Supp).

1. No Personal Use of Benefits Accrued on Business Travel; Accumulation of Miles May Not Affect Travel Decisions

All frequent flyer miles or benefits earned by a federal employee on official travel belong to the government and cannot be used for personal travel.

As the Travel Regulations set forth:

> Frequent traveler benefits earned in connection with official travel, such as mileage credits, points, etc., may be used only for official travel. Employees may not retain and use such benefits for personal travel. Since the Comptroller General has ruled that a frequent traveler benefit is the property of the Government if any part of it is earned through official travel, employees should maintain separate frequent traveler accounts for official and personal travel.

TR § 301-1.103(f).

A second principle set forth in the Travel Regulations is that the opportunity to earn frequent flyer miles should not affect the traveler's selection of an airline, hotel, rental car company, or other vendor.

> Use of mandatory or preferred vendors, such as contract air and rail carriers, lowest cost car rental companies, etc., shall be observed fully without regard to whether such vendors offer frequent traveler programs. No deviations from mandatory or preferred use requirements will be permitted solely for the purpose of accumulating frequent traveler benefits.

TR § 301-1.103(f)(4).

These rules have been repeatedly published to Department employees. Assistant Attorney General (AAG) for Administration Stephen Colgate issued both explanatory and supplemental memoranda on frequent flyer programs and benefits. A September 1995 memorandum issued by AAG Colgate noted:

> Employees of the DOJ may not accept for personal use any gift, or other benefit of substantial value from a private source in connection with the performance of official duties. Frequent traveler or frequent flyer benefits fall within this prohibition. Thus, employees may not use miles or other

> credits accumulated on government travel for free or discounted personal transportation, lodging or other benefits.

Colgate Memorandum of September 15, 1995, "'Gain-Sharing' – Travel Savings Award Program."

Four months later, in January 1996, AAG Colgate repeated this prohibition:

> Federal and Justice policy clearly state that employees may not use miles or other credits accumulated on government travel for free or discounted personal transportation, lodging or other benefits.

Colgate Memorandum, January 16, 1996, "Travel Gain-Sharing Program—Policy Clarifications."

2. Commingled Accounts

Most airlines do not permit a traveler to keep separate frequent flyer accounts for business and personal travel. "Commingled" accounts are those frequent flyer accounts in which a federal employee has frequent flyer miles accrued from both personal and government travel. Colgate Memorandum, September 15, 1995, "'Gain – Sharing' – Travel Savings Award Program. The general rule which applies to commingled accounts is that if *any* frequent flyer miles in an account were earned on official government business, then *all* frequent flyer miles in that account belong to the government. That is, miles in commingled accounts belong to the government. A 1987 JMD travel bulletin stated:

> Employees who have a frequent flyer account with an airline are cautioned that mileage accumulation into this account from official travel contaminates all – repeat all – the mileage in the account, including mileage credited from strictly personal travel. The General Accounting Office has held that all mileage in an account into which some or all mileage was credited from official travel is considered government mileage.

JMD Finance Staff Bulletin, No. T 88 – 01, October 27, 1987 "Use of Frequent Flyer Bonus Points, Mileage Awards and Coupon."

However, in 1994, the Comptroller General issued an opinion creating a limited exception to the rule of commingled accounts. The Comptroller General ruled that if an employee maintained records for a commingled account adequate to show which frequent flyer miles were earned on personal travel and which on government travel, the employee could use personal miles accrued in a commingled account for the employee's personal benefit. In re: Panama Canal Commission, 1994 Comp. Gen. LEXIS 911 (1994). When the employee kept no such records, however, the general rule governed. In other words, the presumption is that all miles in commingled accounts belong to the government. The presumption can be overcome by adequate records. Absent any records, however, the use of benefits from commingled accounts for anything other than government travel is improper.

In 1995, Colgate issued a memorandum cautioning Department employees that "if employees commingle credits from official travel with credits from personal travel, the employees are solely responsible for clearly tracking all credits to ensure that credits from official travel are not used for personal benefit." Colgate Memorandum, "'Gain - Sharing' – Travel Savings Award Program," September 15, 1995. The Travel Regulations explain how to do this:

> You must be able to account for every credit and debit in your frequent flyer account, and submit an accounting to your agency upon request. The accounting must specify:
>
> (a) The date and amount of all credits you receive for both personal and official travel, including credits (e.g. credits from a travel service vendor card).
>
> (b) The date and amount of any debit to your account from both personal and official travel.

TR § 301-53.8 (41 CFR § 301-53.8).

3. Prohibition on Upgrading Travel with Frequent Flyer Miles

Airlines also permit frequent flyer program participants to use accrued frequent flyer miles to upgrade tickets from economy class to business or first class (collectively referred to in the Travel Regulations as "premium class" travel). TR § 301-3.3(d)(2)(ii). The Travel Regulations permitted the use of frequent flyer benefits to upgrade. TR § 301-3.3(d)(5)(vii). In July 1993,

however, the Attorney General directed that in the Department of Justice frequent flyer miles accrued on business could not be used to upgrade government travel. They were to be used exclusively to reduce government costs. Memorandum from Attorney General, "Travel Management," July 2, 1993. The Attorney General's policy was reiterated by Colgate in memoranda issued in February and June 1996.

4. Hotel and Other Frequent Traveler Benefit Programs

Hotels and rental car companies, among others, also have frequent traveler benefit programs that entitle the participant to free accommodations after the accrual of a certain number of "points." Points are earned by use of the company product, for example, hotel stays. Some companies have relationships with airline frequent flyer programs so that a traveler may accrue airline frequent flyer miles with hotel stays and car rentals. The Travel Regulations provide that when these benefits are acquired on government travel, they are the property of the government and the rules applicable to frequent flyer miles are applicable to these benefits. TR § 301-1.103(b).

B. Bratt and Other Travelers Used Government Frequent Traveler Benefits for Personal Travel

Bratt had commingled frequent flyer accounts with United and Delta Airlines. Bratt said his American Airlines account included only miles accrued on government travel. Airline records, and his own admissions, establish that Bratt used benefits from some of his frequent flyer accounts for personal travel.

1. Bratt's Use of Frequent Flyer Miles for Personal Travel

a. Record of Bratt's Travel

At his request, we gave Bratt prior notice that we wanted to discuss his frequent flyer accounts. Bratt admitted that he used frequent flyer benefits from his United commingled account for personal travel. While the records we obtained from United Airlines do not show the details of every flight taken with frequent flyer benefits, its partial records show that Bratt used accrued frequent traveler benefits to purchase coach class tickets for himself and two different women. Because the regulations permit travelers to use frequent flyer miles from a commingled account if the traveler keeps adequate records, we asked Bratt for his records of his frequent flyer accounts. Bratt told the OIG

that he had none. Bratt said that his personal use of benefits in this account was based on his memory of the mileage in his accounts he accrued on personal and on government travel.[119]

On the basis of United's records and Bratt's recollections, we calculated that Bratt used, at a minimum, 380,000 miles for personal travel.[120] We next determined whether Bratt accrued the 380,000 miles he used for personal travel on personal or government travel. Because United's records did not itemize trips before 1991, we offered Bratt the opportunity to calculate the mileage he earned from personal travel, based on his memory or any other record.

Bratt estimated to the OIG that in the United frequent flyer account, he had accrued approximately 150,000 frequent flyer miles from personal use, most before 1994, and 350,000 to 400,000 frequent flyer miles on government business travel.[121] We gave Bratt the benefit of his personal recollection. Even

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[119] His Executive Assistant, Denise Turcotte, told us that Bratt would ask her from time to time to call United to find out what his frequent flyer balance was, which she did. She said he never asked her, however, to keep a record of his business and personal travel on United.

[120] We calculated this based on United's records that Bratt was awarded 23 coupons between 1989 and 1998, three for 10,000 miles each and the remainder for 20,000 miles or more (510,000 miles). The records showed that 90,000 miles expired or were not used. Bratt recalled that he let three or four coupons expire, used two coupons for government travel, and used the rest for himself. Bratt said that he used the two coupons for frequent flyer miles on government travel in 1992 or 1993. We found two vouchers, one in 1992 and one in 1994, for which Bratt did not seek reimbursement for airfare, and we gave him 40,000 miles total credit for those two trips. Therefore, after subtracting the mileage that United's records showed had expired and giving Bratt the benefit of the use of 40,000 miles (two coupons) for government travel, we calculated that Bratt used 380,000 miles for personal use to purchase tickets for himself or others: 90,000 (miles expired based on United records) + 40,000 (business travel) = 130,000; 510,000 - 130,000 = 380,000.

[121] The records provided by United listed Bratt's flights on United from January 11, 1991, through April 7, 1998. The records also listed flights in which frequent flyer miles had been used. The OIG compared government travel records with Bratt's frequent flyer account and on that basis found that Bratt took five personal trips for which he earned frequent flyer miles. In that seven-year period, a total of 77,373 miles were earned on these personal trips. Airline records also show that between 1987 and 1994, Bratt earned approximately 74,000 miles from the use of a United credit card and "bonus" miles. In his

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so, Bratt used more frequent flyer miles for personal travel (380,000) miles than he had available to him (150,000 to 224,000) in his United commingled account. He therefore used approximately 156,000 to 230,000 government miles for his personal benefit.

b. Bratt's Explanation

Bratt claimed limited knowledge of the government's policies governing frequent traveler programs. He told the OIG he was aware that "miles accrued by the government are property of the government and to be used for government travel." Bratt claimed not to know the rules regarding commingled accounts or the consequences of failing to keep records regarding commingled accounts. Bratt stated that he had no records to distinguish his personal from his business miles. According to Bratt, at one time he kept track of the miles attributable to his business and personal travel on the back of an envelope. However, Bratt said, beginning in 1994, just after he learned that United would not separate his business and personal travel into two accounts and United went to a new system of keeping frequent flyer accounts, Bratt threw out that record and stopped keeping any further record. Bratt also said he kept no records regarding his commingled frequent traveler accounts at hotels. He said he did not know they were covered by the Travel Regulations.

In his written response submitted in August 2000, Bratt wrote that the OIG did not present sufficient evidence to prove that he used frequent flyer miles earned on government travel for personal travel. Bratt also argued that before 1995 the rules were not clear.

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interview with us, Bratt seemed to estimate the total personal miles in his account at 150,000, including the credit card miles. In his August 2000 written response to the OIG, Bratt stated that we had not accounted for his credit card use. Therefore, we calculated that he had between 150,000 and 224,000 personal miles available for his use. (The 224,000 miles would include approximately 75,000 travel miles for which we have no record. We also note that the 74,000 credit card/bonus miles may include miles related to government travel).

Bratt's excuse that he did not know the travel rules is unpersuasive and his claim that the rules were unclear is incorrect. Comptroller General decisions, the Federal Travel Regulations issued by the General Services Administration, the Department's supplemental Travel Regulations, and various Department Travel bulletins and memoranda have stated unambiguously for many years that Department employees are not permitted to use frequent flyer miles earned through government travel for personal uses. In addition, a Department of Justice Supplement on Travel requires that Department travelers be familiar with the regulations governing travel. TR Supp § 301-1.3(a)(1). The same supplement notes that administrative officials are available to assist travelers in complying with the Travel Regulations. At the time that he was using the government miles for personal travel, Bratt was the chief administrative officer of the Criminal Division.[122] TR Supp. § 301-1.3(a). When asked whether it was reasonable for Bratt to be ignorant of certain Travel Regulations, Mark Rodeffer, a senior JMD official who supervises the auditing of travel vouchers and who has 25 years experience dealing with travel, stated:

> Bob Bratt should know better, better than the head of the component. The head of the component is not concerned with that. He's concerned with whatever lofty legal issues he deals with, whereas Bob Bratt is the administrative person, he should know these things. And I'm not trying to stick it to Bob Bratt but he's the head administrative guy; he has to know all this stuff.

We agree. We also did not credit Bratt's explanation for his lack of records. Under Bratt's version, he threw out his records the very year that a change in the Travel Regulations made it essential to keep accurate records if he was going to use any miles from the commingled accounts for personal

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[122] In addition, we found that Bratt was apparently familiar with much more obscure parts of the Travel Regulations, such as JMD's duty to keep a record of all first-class Department travel. We also found that Bratt had previously been responsible for conducting an investigation into a violation of the Travel Regulations by an attorney in the Criminal Division.

travel. In addition, although Bratt regularly inquired about his frequent flyer balance, he did not bother to keep track of how these miles were being accrued.

2. Stromsem's Upgrade

ICITAP Director Janice Stromsem said that all accrued miles in her frequent flyer accounts were earned on government travel. Stromsem admitted that she upgraded her travel from time to time, but claimed to have upgraded in conformity with Department regulations. The Department permits employees to upgrade when the upgrade is at no cost, is obtained without redemption of any frequent traveler miles, and is not offered because of the employee's position with the Department of Justice. Stromsem told us that she would upgrade her travel with "stickers" that airlines provided at no cost, and American Airlines confirmed that it sent stickers to customers that permitted an upgrade as a "promotional" item. Stromsem, however, did not limit herself to the "promotional" upgrades.

Delta Airlines' records show that in February 1996, after the Attorney General had prohibited the use of frequent flyer miles for upgrades, Stromsem used 20,000 frequent flyer miles to upgrade on a flight from Washington, D.C., to Frankfurt, Germany. American's records show that Stromsem used frequent flyer benefits on government travel to upgrade two flights in September and October 1996. The September 1996 upgrade "cost" 25,000 miles; the October 1996 upgrade "cost" 15,000 miles. In addition, on December 5, 1997, Stromsem obtained from American a package of 16 stickers for upgrades at a "cost" of 40,000 frequent flyer miles.

In her August 2000 response to the OIG, Stromsem acknowledged that the September and October 1996 upgrades were improper. Stromsem said in her response that she did not knowingly violate the regulations, that upgrades had been permitted in the job she held before coming to ICITAP, and that she was not aware that her understanding was incorrect until some time later when a staff member mentioned that the regulations had changed. With respect to the purchase of the 16 stickers, Stromsem said that she was told by a staff member that some of her mileage might expire and she tried to buy a ticket but was told by the airline that it was too late. The airline suggested that she buy upgrade stickers. Stromsem said she did so with the intent of only using them for flights over 14 hours. Stromsem also wrote in her response that the February 1996 upgrade occurred on a flight from Bosnia that was in excess of 14 hours and therefore her use of the upgrade was permitted under the rules.

We believe Stromsem violated the Travel Regulations by using frequent flyer miles accrued on government travel to upgrade travel after such use was prohibited. We interviewed Stromsem in July 1998 about her use of frequent flyer miles. Although the interview was only six months after her purchase of the 16 stickers, Stromsem failed to mention the purchase, and her explanation about calling the airline concerning expiring miles was somewhat different than her August 2000 explanation. She stated during the July 1998 interview that when she was told that her miles were about to expire she called the airline to purchase a ticket to South Africa and was told that the foreign carrier would not accept them. Her only reference to upgrade stickers during the interview was to the use of certain stickers that did not subtract from her frequent flyer balances. With respect to Stromsem's explanation regarding her use of an upgrade in February 1996, our records show that the use of the upgrade was on a trip from Washington, D.C., to Croatia, which was less than 14 hours in travel time.

In addition, premium class travel (even if obtained at no cost to the government) required prior supervisory notice and approval and must be shown on travel requests. See Appendix, Exhibit 9. Stromsem did not comply with these requirements.

3. Hoover's Travel

Cary Hoover, Special Assistant to the ICITAP Director, told the OIG that from the time he began his work at ICITAP in September 1990, his frequent flyer accounts were commingled. Hoover said that he had commingled accounts at American, United, and Delta Airlines. According to Hoover and airline records, Hoover's commingled accounts included miles earned not only on air travel, but also from the use of personal credit cards and miles that he received as gifts. When we showed him our reconstruction of the travel on which he accrued frequent flyer miles, Hoover identified which trips were personal and which business. However, because of the other mechanisms that added miles to his accounts, Hoover could not say how many miles in his commingled accounts were personal and how many were business.

Hoover said that he used American awards from his commingled account for airline tickets for his mother and for a charitable donation. The airline's records show that awards were used to upgrade tickets, to purchase airline tickets for himself, to purchase airline tickets (two coach and one first class) for Hoover's mother and rent hotel rooms and cars for his mother, and to make a

charitable donation. In all, American's records showed 18 separate transactions in which Hoover received awards using frequent flyer miles. American's records did not reflect how many miles Hoover used with each award, however. Therefore, we were unable to calculate how many miles Hoover needed to have accumulated from personal travel to cover his use of awards.

Hoover said that he did not know the government's policy with respect to the use of frequent flyer miles for business travel. He said he did not know whether the rules had changed during the time he maintained commingled accounts or the consequence of failing to maintain any records for his commingled accounts. Hoover also stated that our reconstructed records of his frequent flyer accounts were incomplete, but, he said, he had no way to estimate how to complete them. In his August 2000 written response to the OIG, Hoover stated that the OIG had failed to ask him for records and that the OIG did not have sufficient information to support our conclusion that government owned miles had been used by Hoover for personal travel. Hoover also said in this response that he had records pertaining to his frequent flyer travel.

We found Hoover's answers to our questions about his use of frequent flyer miles narrow and not forthcoming, and his claim that he did not know the travel rules was unpersuasive. For example, in response to questions about whether he had used frequent flyer miles in his commingled accounts, Hoover said that he had not. Only when we expressly asked whether he had given frequent flyer benefits to anyone else did Hoover admit that he had. Hoover justified his prior answer by saying that he bought tickets and rented cars and hotel rooms for his mother, but *he* did not use them. Hoover is incorrect regarding his claim that we failed to ask him for records during his OIG interviews. In his August and October 1998 interviews we specifically asked him for any records that he possessed relating to his use of frequent flyer miles. The only records he provided were his account numbers.

Nonetheless, following receipt of Hoover's August 2000 response asserting that he had relevant records, we again asked him to provide the records. After initially asserting that certain conditions had to be met before he would provide any records, Hoover later sent a letter summarizing his use of frequent flyer miles. Hoover wrote that he used 150,000 miles, which he said were based on the purchase of four domestic airline tickets, a companion ticket,

and an upgrade. Hoover calculated that he had 206,953 miles accumulated from personal travel in his account.

Given that Hoover apparently reviewed records that we did not possess, we were unable to verify Hoover's assertion that he had accumulated over 200,000 miles from personal travel by the time this report was finalized. Nonetheless, we gave him the benefit of his estimate of his personal miles. However, the records we received from the airline showed that Hoover used at least an additional 140,000 miles that were not reflected in his letter to us. Therefore, we believe Hoover used approximately 83,000 miles belonging to the government for his personal benefit.

4. Frequent Flyer Miles Accumulated by ICITAP Managers

ICITAP and Office of Administration managers accumulated significant frequent flyer benefits through their government travel but almost never used the miles for government travel. In 1997, Bratt, Stromsem, ICITAP Associate Director Joseph Trincellito, and Hoover were each enrolled in the frequent flyer programs of American, Delta, and United Airlines. Associate Executive Officer Joseph Lake was enrolled in Lufthansa's. Nonetheless, for the period we reviewed or could review with preserved government records, Trincellito, Stromsem, and Hoover acknowledged that they did not use their miles for government travel.[123] Bratt recalled using miles for business travel on two occasions. In addition, we found that when Lake retired in March 1997, he did not relinquish any benefits, but took with him all benefits in his commingled frequent flyer account.

We set out on the following page, the status of each of their accounts. The first column under each name reflects the number of miles remaining in each account. [124] The second column under each name reflects the total

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[123] Trincellito said that in 1989 he had once or twice used or tried to use benefits when he was with Interpol or the DEA, but not since working for ICITAP. Hoover and Stromsem said that they had never bought tickets with frequent flyer miles.

[124] The data is as of 1998, except for Stromsem's American data and Lake's Lufthansa data, which are from 1999 and 2000 respectively.

number of miles accrued in the account since it was opened. Available frequent flyer miles may be less than the total number accrued because benefits were used by the account holder, the benefits were given by the account holder to a third party to use, or the benefits expired.

REMAINING AND ACCUMULATED (ACC) FREQUENT FLYER MILES										
	Bratt		**Lake**		**Stromsem**		**Trincellito**		**Hoover**	
	Remain	*Acc.*	*Remain*	*Acc*	*Remain*	*Acc*	*Remain*	*Acc*	*Remain*	*Acc*
United	108,807	488,807			46,420	66,420	13,744	13,744	63,524	63,524
Delta	45,790	45,790			118,523	138,523	80,522	80,522	44,727	44,727
American	84,425	84,425			147,170	306,217	90,951	222,571	45,161	430,161
Lufthansa			7,186	57,802						
Totals:	**239,022**	**619,022**	**7,186**	**57,802**	**312,113**	**511,163**	**185,217**	**316,571**	**153,412**	**538,412**

5. OIG's Conclusions

The Travel Regulations are unambiguous in their requirements regarding the use of frequent flyer miles from commingled accounts. If the traveler uses miles from a commingled account, the traveler has the responsibility to ensure that he or she has sufficient miles accrued from personal travel to cover the miles used on personal travel. The traveler can do that by keeping adequate records. Although both Bratt and Hoover asserted that it was the government's burden to prove that they had used frequent flyer miles improperly, the rules are clear that burden of proof lies with the traveler. See In re Panama Canal Commission, Comp. General Opinion (Nov. 30, 1994) ("The burden of proof is on the employee to show that credits used for personal reasons do not exceed those earned through personal travel.").

Bratt and Hoover used frequent flyer miles for personal travel but kept no records that would show that the miles were accrued only from personal travel. Furthermore, the records that we have of Bratt's travel on United Airlines show

that he used miles accrued through government travel to purchase tickets for personal travel. Stromsem used miles accrued through government travel to upgrade to business class after such use of government miles was prohibited. She also failed to obtain authorization for the upgrades. The use of miles from Bratt and Hoover's accounts for personal use and from Stromsem's account to upgrade was improper.

C. Travelers Failed to Use Contract Carriers

The Travel Regulations state that a government employee may not choose an airline on the basis of frequent flyer membership. TR §301-1.103(f)(4). The evidence that we reviewed indicates that Bratt and Lake may have chosen airlines on the basis of their frequent flyer memberships.

As discussed in the previous chapter on Business Class Travel, Denise Turcotte, Bratt's Executive Assistant who booked Bratt's trips, sent faxes to Omega Travel while planning Bratt's trips to Russia that show that attention was being paid to collecting frequent flyer miles. Bratt and Lake flew to Moscow and other European cities in November 1996. Turcotte requested that Omega Travel schedule all travel on United Airlines or Lufthansa Airlines. Turcotte told the OIG that Lufthansa and United were Lake's preferred carriers. The fax that she sent to Omega stated, "please make sure that the frequent flyer information is noted for Bob Bratt's ticket." Turcotte noted on the fax that Lake had a frequent flyer account with Lufthansa; Bratt had one with United; and United and Lufthansa had a reciprocal program, so that miles traveled on one carrier were credited to accounts with the other. The travelers took Lufthansa to Europe although it was not the contract carrier for the trip destinations.[125] Turcotte told the OIG that she believed Lufthansa was a preferred carrier for Lake at least in part because of the frequent flyer miles and the shared arrangement with United. As we describe in Chapter Four on business class travel, this trip cost the government more than it should have.

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[125] The government has negotiated contracts with airlines to provide reduced rates for specific routes. Different carriers contract for different routes but between any two cities, there is only one contract carrier. Generally, the contract carrier is the least expensive alternative.

However, we are unable to determine how much of the excess cost can be apportioned to the use of Lufthansa rather than the contract carrier.[126]

D. Fly America Act

The decision to choose Lufthansa on the November 1996 trip was a violation of the Fly America Act. By statute, incorporated into the Travel Regulations, government employees are to fly American carrier airlines.[127] Fly America Act, TR §301-3.6(b). In addition to the November 1996 trip on which Bratt and Lake flew Lufthansa instead of American carriers, Lake again flew Lufthansa to Budapest in February 1997.

To the OIG, Bratt justified his travel on a foreign carrier by reference to airline "partnerships." The "partnerships" to which Bratt seemed to be

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[126] We found other references to frequent flyer considerations relating to Bratt's European trips. While scheduling a January trip to Moscow for Bratt, Turcotte faxed to Omega Travel a request for United flights because "Bob has United Frequent Flyer." On the same fax, Turcotte wrote, "Returning on Jan. 17th -- If you have a Delta Flight out of Moscow at 8:20 a.m., connecting through Frankfurt to Dulles Airport, that would be great. Even though he doesn't have Delta Frequent Flyer, the directness of this flight is worth it." In fact, Bratt did have a Delta Frequent Flyer account, and Delta was used for both legs of the trip.

[127] We also asked Philip Downs, manager of the Department's contract travel agency, Omega Travel, to explain the significance of the Fly America Act. According to Downs, government travelers must use an American flagged carrier to the furthermost point possible. Under Omega's contract with GSA, Omega is obligated to offer American flagged carriers. Downs claimed, incorrectly, that if asked to book Lufthansa, "We won't book it." He stated that if, for example, there is no vacancy on an American flagged carrier for travel from Washington, D.C., to Paris the traveler is told the contract carrier is not available. Omega would then utilize connecting American cities to enable the traveler to fly on an American flagged carrier. However, contrary to what Downs said, at Lake's request, forwarded by Bratt's Executive Assistant Turcotte, Omega did book European travel, including between Washington, D.C., and Budapest and between Warsaw and Washington, D.C., on Lufthansa, on Bratt and Lake's November 1996 trip. There were American carriers that covered those routes. In January 1997, on the other hand, Omega faxed to Turcotte an itinerary for Bratt's January trip to Russia and at the bottom of the itinerary Omega stated, "Delta used because United Airlines routing with Lufthansa does not meet U.S. Fly America Act Restrictions."

referring were partnerships that apply for purposes of the accrual of frequent flyer miles. However, a foreign carrier's partnership with a domestic carrier for frequent flyer purposes does not satisfy the "Fly America" rule.

III. FAILURE TO FOLLOW OTHER TRAVEL REGULATIONS

As we reviewed the travel vouchers of Bratt and others in leadership positions in the Office of Administration and ICITAP, we saw that the Travel Regulations on frequent flyer accounts were not the only regulations Bratt and others failed to follow. The violations of the Travel Regulations we discuss below are examples of the problems we found; they do not represent every instance in which we found of a particular kind of problem or every kind of problem that we found.

A. Excess Expenses Caused by Personal Travel

The Travel Regulations permit employees to take personal travel in conjunction with a business trip. Travelers can only claim, and be reimbursed for, the cost of official travel. Any increase in costs caused by an employee's personal travel must be borne by the employee. TR §301-2.5 (b); 301-11.5(a)(2), (3); TR Supp §301-11.5(a)(3). However, we found that Lake repeatedly increased the costs of his business trips to Europe because of personal travel. He sought and received reimbursement from the government for these excess costs.

Lake, we were told by several ICITAP and OPDAT employees, had a close friend in Frankfurt, Germany. In February 1997, Lake traveled through Frankfurt to Budapest for a conference and stopped in Frankfurt for three nights on the way back. According to Omega's manager for Department of Justice travel, stopping for longer than is necessary to catch a connecting flight is "guaranteed" to increase the cost of air travel. Lake did not show the additional cost of adding his personal travel to the ILEA conference trip; rather, he sought and received reimbursement for his entire airfare even though, according to the Omega manager, his ticket would have been more expensive because of the stop in Frankfurt. Lake also was reimbursed $288 for a hotel in Frankfurt for February 21, 1997, the night before he went on personal leave.

Lake also received reimbursement for personal travel in connection with a March 1997 trip to Moscow. He stopped for two days in Frankfurt on his

way to Moscow and for two days on his return to the United States. Lake left Washington, D.C., on Thursday, March 20, 1997, and spent Friday and Saturday in Frankfurt. He charged the government $228 for his hotel in Frankfurt. Lake claimed to the OIG that after his trip had begun, Bratt called him in Frankfurt and asked him to stop for a few days so that Bratt could meet alone with Mark Bonner, the OPDAT Resident Legal Advisor, in Moscow. However, Bratt said that it was always the plan for Lake to arrive in Moscow several business days after the others and that he did not recall any phone call to Lake in Frankfurt. Bratt's telephone records do not show a call to Frankfurt during this time period. In addition, numerous contemporaneous documents contradict Lake's claim. For example, Lake's Travel Authorization form, dated the day of his departure, shows the per diem rate for Frankfurt as well as Moscow, and his ticket shows that it was his plan at departure to travel through Frankfurt and not to arrive in Moscow until March 24, 1997, as do other contemporaneous documents. On the return trip, as well, Lake stopped for two days in Frankfurt. Lake improperly charged the government for lodging and subsistence on those days and for a portion of subsistence on the weekend before he arrived in Moscow. We were unable to find any business purpose for the stops in Frankfurt, and Lake should have borne all excess costs associated with the two stops. Lake told the OIG that his request for reimbursement for these expenses was an administrative error.

B. Travelers Failed to Have a Supervisor Authorize Travel and Approve Reimbursement Vouchers

The Travel Regulations require that all official travel be approved by an official occupying a higher level than that traveler. This applies both to pre-travel authorizations and review of completed post-travel reimbursement vouchers. TR Supp. §301-1.4(a); TR Supp §301-22.2(a)(foreign travel); TR §301-11.4(b)(voucher review). Vouchers are to be reviewed by someone "fully knowledgeable of the employee's activities" who is at least one step of supervisory review above the employee who seeks the reimbursement. TR §301-11.4(b). Within the Department of Justice, only the Attorney General, Inspector General, and Counsel for the Office of Professional Responsibility are authorized to approve their own travel. TR Supp. § 301-1.4(b); DOJ Orders 2200.11D. Notwithstanding the regulations, Bratt repeatedly approved his own travel requests or had subordinates approve them. For example, Bratt authorized his own travel to Panama in March 1995. Bratt's trip to Los

Angeles in February 1996 was authorized four days after his return by his deputy, Sandra Bright. We also looked at who signed the vouchers Bratt submitted in order to be reimbursed for his travel expenses. Among the 33 travel reimbursement vouchers we reviewed from 1995 through 1997, only four vouchers were signed by Bratt's supervisor (Acting Assistant Attorney General John Keeney). All the others that we reviewed were approved either by Bratt, his subordinates, or someone at the same rank as Bratt. Bratt usually had one of his Deputy Executive Officers approve his travel vouchers, including Deputies Verna Muckle, Robin Gaige, and Sandra Bright.

Stromsem, too, routinely had subordinates sign her travel vouchers. Among the Stromsem vouchers we reviewed for 1996 and 1997, none was signed by a supervisor. Stromsem said that Bratt told her that the Criminal Division had delegated the authority to approve travel vouchers to Deputy Director for Administration Raquel Mann and one of Mann's subordinates. Although the general authority to approve travel vouchers may be delegated, travel vouchers always require approval by someone at least at one level of supervisory review above the traveler. TR §301-11.4(b).

Bratt told the OIG that section chiefs can approve their own domestic travel, and as Executive Officer he was a section chief. Therefore, Bratt said, he could authorize his own domestic travel. Bratt also said that since he joined the Criminal Division as Executive Officer there was an understanding with each Assistant Attorney General for the Criminal Division that he could authorize his own domestic travel. Bratt acknowledged, however, that the Assistant Attorneys General relied on Bratt's knowledge of the rules and proper practice when they gave their approval. Bratt said that no one has ever told him that this practice is incorrect. Bratt said that he did not personally review Travel Regulations but that he relied on his staff to apprise him of the rules and any changes to the rules. We believe that, as the chief administrative officer for the Criminal Division, Bratt knew or should have known that only three managers in the Department were allowed to authorize their own travel and that he was not.

Deputy Executive Officer Bright said that she only learned from Deputy Executive Officer Steven Parent (in mid-April 1997) that she, as Bratt's

subordinate, could not sign Bratt's travel documents.[128] Bright explained that when she signed Bratt's travel documents, she did not view herself as approving or reviewing them. She said she was aware that Bratt discussed his travel with his supervisors, so she "saw it as ... he had gotten approval already and it was just a matter of trying to move paper work along." In response to the OIG's question about whether Bright knew, for example, what class of travel Bratt used to Europe, Bright answered that she did not know the specifics of Bratt's travel. "I [had] every expectation, [that Bratt] as my boss and as a section chief, that he was going to – and as an administrative officer, that he was going to comply with whatever the rules were."

Having a subordinate sign authorizations and reimbursement vouchers defeats the purpose of having an "authorizing official" review travel documents. As happened with Bright's review of Bratt's travel documents, a subordinate may simply assume that the supervisor is following the rules, without questioning a boss' justification for a trip or for particular expenses.

C. Contract Employees' Reimbursement of Travel Expenses Through Employee Travel Vouchers

Travel expenses incurred by contractors are reimbursable to the extent and under the terms negotiated in the contract between the contractor and the government. Travel expenses of subcontractors are reimbursable to the extent and under the terms negotiated in the contract between the subcontractor and the contractor. However, we saw that Beth Truebell, an OPDAT contract employee until the summer of 1998 when she became a federal employee, submitted travel vouchers directly to JMD for reimbursement during the time that she was a subcontractor. While we believe that this shows her confusion about her role at OPDAT, it also reflects the failure of effective supervisory review of the travel documents we examined.

Lake also submitted travel requests and vouchers for reimbursement after he had become a consultant. This began when he retired on March 31, 1997.

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[128] Yet, Bright continued to sign Bratt's vouchers until September 1997, that is, even after Bratt began to work at the Immigration and Naturalization Service (INS).

His consultant agreement with Interlog provided that he was to submit invoices for fees and expenses to Interlog, the contractor. Neither his travel request nor his travel voucher for the March trip to Moscow explain that he ceased being a federal employee on March 31, 1997. He was paid and reimbursed, in the same manner as employees, for the expenses he incurred during the April portion of this trip. Bratt signed his travel voucher.

Bratt continued to sign Lake's travel vouchers and Bright continued to approve Lake's travel requests for June and August 1997 travel, when both knew that Lake was no longer an employee and the face of the requests showed that the travel was for INS. Without notice on the voucher that Lake was a contractor, JMD could not judge whether Lake was authorized to voucher directly for his expenses. Furthermore, by giving Lake reimbursement money directly from the government, no one was ensuring that Lake stayed within the limits set by the contract for travel expenses.

IV. PRETEXTUAL TRAVEL

In the course of our investigation, we received two allegations of pretextual travel: (1) that ICITAP Director Stromsem structured her travel so that she could visit her daughter then living in France, and (2) that Bratt was using trips to Moscow to continue a romantic relationship.

A. Stromsem Trip to Tours, France

Stromsem acknowledged that in February 1996, she visited her daughter in Tours, France, while on an official business trip. As Stromsem explained it, as part of a trip to Albania and Slovinia, she decided to include a stop at Interpol's European headquarters in Lyons, France, to ask for help with the ICITAP project in Albania and to request that Haiti be reinstated to Interpol. From Lyons, Stromsem said, she took leave to visit her daughter, who was studying in Tours. (Tours is midway between Paris and Lyons.) She then continued with her official trip. Stromsem's voucher shows leave to travel to Tours and shows that she paid for the difference in the cost of a train ticket from Lyons to Paris and one with a stop in Tours.

The authorization for this trip did not show either that Stromsem planned to take leave in conjunction with her travel to Lyons or that the stop in Lyons was for a business purpose. The authorization did not show that she planned to stop at Interpol and meet with officials there or what she planned to discuss

with them. Rather, Stromsem described the purpose of the trip as: "DOS [Department of State] request to assess possibilities of police training in East Slovenia and Albania. Will connect with already planned operational trip to Albania." Stromsem showed parenthetically in the itinerary block of the authorization form that she planned to travel (apparently on her return) from Albania to Washington, D.C., through Lyons and Paris, France. However, the mere listing of Lyons on the itinerary section of the form does not resolve the question of why a stop is planned.

The authorization for Stromsem's travel was signed by Keeney, but not until after she had completed her trip. Stromsem said, however, that she had received prior oral authorization for the trip from Bratt and that she had included her request for annual leave in conjunction with official travel in the required cover memorandum to Keeney. Stromsem said that she would have difficulty finding copies of her travel paperwork, however, because her secretaries did not keep copies for her and did not file the documents they did keep.

Stromsem's failure to list a business purpose for the stop in Lyons created the appearance that Stromsem did not have justification to be there. Nonetheless, on this record, given Stromsem's broad discretion as ICITAP Director, we cannot say that Stromsem created the stop at Interpol in Lyons to be able to visit her daughter.

B. Bratt European Trips

The FBI reported to the OIG that two months apart two ICITAP employees had mentioned, in conversations with an FBI employee, that each believed that Bratt became romantically involved with someone in Moscow in January 1997 and that Bratt's subsequent trips were arranged to continue the relationship.

In the previous chapter on Business Class Travel, we discussed in detail Bratt's trips to Moscow in 1996 and 1997. It was alleged and we observed during the course of our investigation that Bratt preserved a substantial amount

of free time on his four trips to Moscow.[129] He repeatedly scheduled few meetings in Moscow in advance. Although he wrote to Deputy Assistant Attorney General Mark Richard by memorandum dated February 2, 1997, that he would "to the maximum extent possible" travel on weekends to lessen the impact of his absence from the office, the evidence is that on his business trips to Moscow, he chose to travel on weekdays, which also resulted in weekends abroad.[130]

1. January 1997 Trip to Moscow

In January 1997, Bratt and Hoover took an eight-day trip to Moscow. On his authorization, Bratt stated his purpose was to re-evaluate the Resident Legal Advisor program in Moscow. In a memorandum that he sent before the trip, Bratt told Bonner, the Moscow Resident Legal Advisor, how he wanted to structure his weeklong visit:

> Thursday the 16th – Arrive in Moscow and get settled.
>
> Friday the 17th – Book meetings with officials you identified in your fax.
>
> Saturday the 18th – I would like to travel to meet with Kodan and Tuflyakov in one day. Therefore, I would prefer to fly there [Ekaterinberg], meet with Kodan and Tuflyakov, and return to Moscow in the same day.
>
> Sunday the 19th – Please leave Sunday the 19th open. If it is impossible for us to return to Moscow on Saturday as outlined above, please have us return early on Sunday.
>
> Mon through Wed – I would like to leave the rest of the week open so can plan it as we go. I would like to meet with you at 9 or 9:30 am on Monday and plan the rest of our

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[129] Although Hoover would not confirm it to the OIG, we were told that Hoover told others in the Department of Justice that Bratt did little work on overseas trips.

[130] On his trips to Russia, he traveled on a Wednesday and Thursday (November 1996), Wednesday and Wednesday (January 1997), Wednesday and Friday (March 1997); Wednesday and Friday (June 1997). Each trip included at least one weekend abroad.

> visit at that time. You may leave our meeting with [Chargé D'Affaires Tefft] that you have scheduled for Tuesday the 21st. I would like to have 30-45 mins with him, if possible. In addition, I would like to leave our free time open so we can decide what to do in the evenings and weekend as we go.

Bratt returned to the United States on Wednesday, January 22, 1997. Hoover's meeting notes reflect five meetings, only one of which was after Saturday, January 18, 1997.

2. March 1997 Trip to Moscow

Bratt traveled to Moscow again in March 1997. The justification Bratt listed on his authorization was to re-evaluate the Resident Legal Advisor in Moscow. On the March trip, Bratt again kept the planned schedule to a minimum. Before leaving on the trip, Bratt planned a social dinner with two Russian women (as discussed in Chapter Two) for the weekend of his arrival in Moscow. He also scheduled a meeting Monday morning with his own group to discuss the plans for the rest of the week and another meeting in the afternoon with Russians. One meeting was planned for Tuesday with American Embassy personnel. No other meeting was in place prior to Bratt leaving for the trip. Hoover's and Stromsem's notes show two meetings: one with Russian officials and one with Interpol officials. Hoover and Stromsem, but not Bratt, also made a site visit to a Russian police academy on this trip.

3. June 1997 Trip to Moscow

In June 1997 Bratt took another trip to Moscow. The purpose of the trip as stated on Bratt's authorization was to re-evaluate the progress of the Division's Resident Legal Advisor. A draft fax to the American Embassy in Moscow, dated May 21, 1997, stated that the purpose of Bratt's June trip was to:

> Provide further instruction to the Resident Legal Advisor (RLA) and on-going program evaluation of OPDAT's assistance efforts in Russia. Most importantly, Mr. Bratt will introduce OPDAT's new program director for its NIS/CEE program, Steve Calvery, to RLA Mark Bonner and appropriate embassy officials. While in Moscow, they will

> also meet with Russian legal officials and government representatives to discuss possible assistance projects in the future.

Steven Calvery became the Program Manager for the Newly Independent States program in August 1997. Calvery traveled to Russia in June 1997 and met Bratt in Moscow. He said that he went to participate in Bratt's review of Bonner. Calvery said that he had no itinerary for the trip; he did not believe that the trip was that formal. He said that he and Bratt spent most of their time working with Bonner. We also learned that Bratt had a meeting on June 10, 1997, with an INS official who discussed with Bratt the INS mission in Moscow and INS becoming involved in training operations.

The itinerary prepared by Denise Turcotte showed the schedule for the June trip as follows.

> Friday, June 6 – meet with Mark Bonner
>
> Saturday, June 7 – meet with Mark Bonner
>
> Sunday, June 8 – no work/day to relax
>
> Monday, June 9 – meet with Steve Calvery [and] Mark Bonner
>
> Tuesday, June 10 – meet with Calvery [and] Bonner
>
> Wednesday, June 11 – AM checkout

As we discussed in Chapter Two on visas, Bratt eventually admitted to the OIG that he began a little "intimacy" with a Russian woman on his March 1997 trip and that he became sexually intimate with her on the June 1997 trip.

C. Bratt's Explanations and OIG's Conclusions

The evidence supports the allegation that some of Bratt's European travel was not driven by official business. Bonner told the OIG that he did not know what Bratt did with much of his time on this and other Moscow trips, and we were unable to reconstruct how Bratt spent much of his time in Moscow. Bratt planned little in advance for his trips to Moscow. If he wanted to talk to Bonner, it would have been considerably less expensive to bring Bonner by himself to the United States than it was for Bratt and an entourage to go to Moscow. If he wanted to meet the Russians with whom OPDAT was to do business, he could not reasonably expect to get an appointment at the last

minute, any more than a Russian counterpart could necessarily expect to have Department of Justice officials meet him with only a day's notice.

Furthermore, Bratt's explanations for his trips were not convincing. In response to the allegation that Bratt used government travel as a pretext for social purposes, Bratt said, "That is the most absurd thing I've ever heard." Bratt said that he traveled to Moscow because after his first trip in November 1996, it was apparent to him that Bonner was not working at the same level as the other RLA he met. He said that Bonner had raised a host of administrative issues and that, in addition, the State Department had threatened to cut off funding. According to Bratt, he returned to Moscow in January 1997 to talk to the Russians and develop OPDAT's program. He returned in March, he said, to look at creating an ICITAP program in Russia, to assist with administrative matters, and to work on the training conference scheduled to occur in April. Bratt told us that he went to Moscow in June to evaluate Bonner because no one else was available and that he was asked to do so by Richard and by Mary Ellen Warlow, who had replaced Bratt as Coordinator when he moved to the INS.

Richard had no recollection of whether he asked Bratt to go to Russia in June. Warlow recalled that after she became Coordinator, Bratt expressed a willingness to stay involved in what she called the "Bonner situation." She said that Bratt felt that it was important to keep an eye on Bonner's progress, that Bratt wanted to do it, and that she saw no problem with that. That was Carl Alexandre's recollection, as well, who was the newly appointed OPDAT Director. Bratt's correspondence to Richard in April and May 1997 informed Richard that Bratt intended to stay involved with the Russian project.

Sarah Brandel, a State Department official responsible for approving ICITAP and OPDAT's work in the NIS, told the OIG that she thought that Bonner was doing a reasonable job as the Moscow RLA. Brandel said that the dissatisfaction with Bonner did not come from the State Department. She said it was Bratt and others at Justice who were having problems with Bonner. When Brandel learned that Bratt was making another trip to Russia to evaluate Bonner, she warned Bratt that he should not use State Department funds to evaluate Bonner. Thomas Robertson, the Legal Attaché at the American Embassy in Moscow, observed to the OIG that he thought that Bratt's constant visits interfered with Bonner's ability to get work done.

Stromsem told the OIG that she would not have taken all of the trips to Russia that Bratt did and that it "struck her as odd" that Bratt went to Russia in June, after he was at the INS. Stromsem stated that if she were having difficulties with a subordinate abroad, she would visit to resolve the problem and if that did not resolve it, she would either recall the person or send someone to assist the subordinate to overcome the problems.

Hoover said that Bratt asked Hoover to accompany him to Russia the week before the January 1997 trip. In his initial OIG interview, Hoover said that their agenda was full in both January and March 1997. An FBI Special Agent, however, reported to the FBI in June 1997 that Hoover had told him several months before that Bratt had initiated a romantic relationship with a Russian woman, and that Hoover "stated that it was his belief that subsequent trips to Moscow were primarily to visit this female."

An employee at Bratt's rank is given great discretion in how best to schedule his time. Bratt denied that any of his travel was to carry on a social relationship. Because of the difficulty of proving that there was no government purpose to Bratt's trips, we are not able to establish conclusively that Bratt's trips were pretextual. However, the lack of advanced planning and the fact that most of his meetings were with his own staff in Moscow, when combined with his romantic relationship with a Russian woman, strongly suggest that the trips may not have been necessary or may have been unnecessarily extended for personal rather than government reasons.

CHAPTER SIX: LAKE BUYOUT

I. INTRODUCTION

In 1994, Congress passed the Federal Workforce Restructuring Act (the Act), a buyout program intended to reduce government spending. The Act offered senior federal employees a bonus of up to $25,000 as an incentive to retire early (the "Buyout Program").[131] Under the terms of the program, recipients of the buyout bonus could not render "personal services" to the government, either as employees or on a contract basis, for five years after their retirement. P.L. 103-226, § 3(d)(3). The penalty for violation of the five-year ban on personal services to the government was repayment of the entire buyout bonus. P.L. 103-226, § 3(d)(1).

The OIG received an allegation that Criminal Division Associate Executive Officer Joseph R. Lake, Jr. retired under the Buyout Program and then returned to render personal services to OPDAT as a contractor, in violation of Buyout Program requirements. We received another anonymous allegation that Lake performed personal services, in violation of the Buyout Program, when he worked as a contractor at the Immigration and Naturalization Service (INS).

Our review found that Lake retired from the Criminal Division Office of Administration on March 31, 1997, and received a buyout of $25,000. He was therefore subject to the Buyout Program's post-retirement employment constraints. Robert Bratt hired him to work as a contractor for the Department of Justice at OPDAT, and Lake began that work on April 1, 1997, the day after his retirement. Later, in April 1997, Lake was asked by Bratt to come with him to work at INS, which Lake did, starting on May 1, 1997. In October 1997, Lake stopped working at the INS and began working as a contractor for the National Drug Intelligence Center (NDIC), another Department of Justice organization.

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[131] P.L. 103-226 (March 30, 1994). In the statute, the bonus was called a "voluntary separation incentive payment."

Our investigation was focused on whether Lake performed personal services at OPDAT, INS, or NDIC in violation of the requirements of the Buyout Program. In this investigation, we interviewed Lake, Bratt, and other government employees from ICITAP, OPDAT, INS, the Criminal Division, and the Justice Management Division's (JMD) procurement and ethics staffs. In addition, we reviewed contemporaneous records relating to Lake's employment, including correspondence, contracts, travel records, notes, and telephone records and logs.

This chapter describes the results of our review. We first discuss the Buyout Program's prohibition on personal services, then analyze whether Lake performed personal services work at OPDAT, INS, or NDIC after his retirement. We concluded that as a contractor for OPDAT and the INS, Lake did perform personal services, in violation of the Buyout Program's requirements. We then discuss whether Lake should be required to repay his $25,000 buyout bonus or whether a "good faith" exception to the repayment requirement applies. We found that such an exception does not apply, either legally or factually. In this analysis, we describe our conclusion that the law does not recognize any good faith exception to the forfeiture requirement. We then discuss the history of Lake's efforts to obtain work at OPDAT and the INS after his retirement. We conclude that Lake and Bratt planned for Lake's post-retirement work, were aware of the Buyout Program's restrictions on personal services work, and did not get adequate assurances from JMD that Lake's contract, as administered, was not a personal services contract.

II. THE BUYOUT PROGRAM PROHIBITION ON PERSONAL SERVICES

The Buyout Program provides that:

> An employee who has received a voluntary separation incentive payment [Buyout bonus] under this section and accepts employment with the Government of the United States within 5 years after the date of the separation on which the payment is based shall be required to repay the entire amount of the incentive payment to the agency that paid the incentive payment.

P.L. 103-226, § 3(d)(1). The statute creating the Buyout Program defines "employment" to include "employment under a personal services contract with

the United States."[132] P.L. 103-226, § 3(d)(3). A personal services contract is defined by federal regulations as "a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, [to be] Government employees." Federal Acquisition Regulations (FAR) § 37.101.

In March 1996, OPM, the federal agency responsible for developing policy with respect to personnel matters, issued guidance on the Buyout Program in a document entitled "Reemployment, Personal Services Contracts and the Repayment of Voluntary Separations Incentives" (OPM Guidance). According to the OPM Guidance, personal services could also include those services rendered pursuant to a subcontract:

> There is no requirement that a direct contractual agreement must exist between the former employee and the agency to constitute a 'personal services contract.'...'[P]ersonal services contract means a contract that, by its express terms *or as administered*, make the contractor's *personnel* appear, in effect, Government employees.... 'a personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's *personnel* ....' Thus agencies should not assume that there must be a written contract between the employee and the agency in order to constitute a personal services contract.

(Emphasis in original.) The OPM Guidance also makes clear that the formal language of a contract does not necessarily resolve the issue of whether an individual is working in a personal services capacity. The contractor's actual work and relationship to others in the workplace also has to be examined.

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[132] The statute also provides that in rare cases a waiver of this section may be requested from the Director of the Office of Personnel Management (OPM) where the individual is reemployed with the agency and "the individual involved possesses unique abilities and is the only qualified applicant available for the position." P.L. 103-226, Section 3(d)(2)(A). As OPM stated in a document providing advice on the Buyout Program, "The Director of [OPM] has no authority to waive repayment for an individual who has taken a buyout and wants to enter into a personal services contract with a Federal agency."

While there is no "bright-line" test to determine whether someone is performing personal services, according to federal regulations and the OPM Guidance, there is a family of elements to be used as a guide in making this determination. The elements include:

1) the inherent nature of the work, or the manner in which it is provided, reasonably requires government direction or supervision of contractor employees,
2) comparable services use government personnel,
3) performance of the work is done on-site at government furnished space,
4) principal tools and equipment are furnished by the government,
5) the need for the type of service provided can reasonably be expected to last more than one year, and
6) services are applied directly to the integral effort of the government agency in furtherance of its mission.

Federal Acquisition Regulations (FAR) § 37.104(d)(1-6).

III. LAKE PERFORMED PERSONAL SERVICES IN VIOLATION OF THE BUYOUT PROGRAM REQUIREMENTS

In light of this guidance, we examined whether Lake's work at OPDAT, INS, or NDIC after he had retired from the Department of Justice constituted personal services. We interviewed both Bratt and Lake regarding the nature of Lake's work and the measures they took to ensure that Lake complied with the terms of the Buyout Program. We first set forth their explanations. We then describe the results of our investigation into the nature of Lake's post-retirement work for the government and analyze it against the six elements of a personal services contract that we described.[133]

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[133] We also were made aware of concerns that former Criminal Division Deputy Executive Officer Leslie Rowe, Jr., who had returned to work for the Department after his retirement in June 1994, may have performed personal services in violation of the

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A. Lake's Post-Retirement Work for OPDAT

1. Bratt and Lake's Descriptions of Lake's Work for OPDAT

In separate interviews on October 23, 1997, Bratt and Lake told the OIG that they understood the restriction against personal services that the Buyout Program imposed on Lake, and they tried to adhere to that restriction.

Bratt told the OIG that when he became Coordinator of ICITAP and OPDAT in September 1996, he asked Lake to manage what Bratt perceived to be OPDAT's most pressing problem – the development of its program in the Newly Independent States, primarily Russia. By a memorandum dated October 2, 1996, Bratt gave notice to all ICITAP and OPDAT personnel that Lake would assume day-to-day oversight of an integrated ICITAP and OPDAT project regarding the Newly Independent States and Central and Eastern Europe (NIS/CEE). Lake still held those responsibilities when he retired from the Department on March 31, 1997.

On March 31, 1997, Lake was in Moscow preparing for an OPDAT conference. Lake became an OPDAT contractor on April 1, 1997, the day after his retirement. Lake was a subcontractor to Interlog, a private company that held a contract to provide various consultant services in support of ICITAP's management of its foreign police training programs.

We asked Bratt why he selected Lake to go to Russia in March 1997 when he was so near retirement. Bratt said that ensuring the success of the conference that was to be held in Moscow in April 1997 was of critical importance and that Lake was the only person who combined sufficient program knowledge with an ability to work with Mark Bonner, OPDAT's Moscow Resident Legal Advisor (RLA). Bratt said he found inadequate the other OPDAT staffers who might have taken over Lake's duties.

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restrictions of the Buyout Program. We did not review his case in detail. During the course of our investigation, we did find evidence that federal employees directed some of Rowe's work and he reported to federal employees, which is some indication that Rowe may have been performing personal services. See Chapter Eight, Section V (ILEA Cost Overrun).

According to Bratt, when Lake was an employee his duties included acting for the OPDAT Director, attending meetings, supervising contractors, preparing performance appraisals, and performing NIS/CEE program responsibilities, including course development, budget development, coordinating with the Department of State, and recruiting and interviewing RLAs. Bratt said that after Lake's retirement, Lake was given more specific tasks to handle such as arranging logistics, scheduling and coordinating travel for Assistant United States Attorneys participating in OPDAT conferences, and developing meeting agendas.

Bratt also said that when Lake returned from Russia in April 1997, Bratt and Lake discussed his consultant status. Bratt said that he told Lake that if he was going to be a consultant, he would have to look and act like a consultant. Bratt said that he also knew that Jim Silverwood, the Criminal Division's ethics advisor and an OPDAT employee, had told Lake that he could not supervise or direct anyone as a contractor. Bratt told the OIG that this meant that Lake could not "look, act or smell like a government employee." Bratt said that once Lake became a consultant, Bratt made a conscious effort to give Lake specific jobs, not to see Lake every day, and to reduce Lake's reporting requirements.

When we interviewed Lake, we asked him to describe his work for OPDAT after his retirement. Lake described much broader duties than had Bratt. Lake said that his job as an Interlog contractor was to make sure that OPDAT personnel were prepared for courses that were planned, to help RLAs resolve problems, and to make recommendations to the OPDAT Director. Lake said that he was also involved in reviewing the credentials of applicants for an RLA position in Latvia and recommending whom to select. Lake said that the biggest change once he became a contractor was the loss of his supervisory role over OPDAT staff. He said that after March 31, 1997, he no longer ran the NIS/CEE project, that is, he no longer made decisions, provided supervision, or signed documents. He said he also stopped having staff meetings. Instead, Lake said, he had "team meetings," and he and the OPDAT staff working on the NIS/CEE program agreed that they all had to work together to get the job done.

Lake said that he had no doubt that the work he performed for OPDAT was not personal services. However, he also said that the definition of personal services was a gray area and he might have stepped across the line once or

twice. Lake noted that "when you have been performing a job for many years and then become a contractor, it is very hard to change your pattern of work and not cross the line."

2. Lake's Duties

a. Documents

We examined various documents in an attempt to determine what Lake did at OPDAT before and after he became a contractor and whether he was performing personal services at OPDAT as a contractor. Among other documents, we reviewed a position description for Lake's job at OPDAT before his retirement, the Statement of Work issued to Interlog for Lake's services for OPDAT as a contractor, his contract with Interlog, his invoices, and the description he later wrote about the duties he had performed at OPDAT as a contractor.

Immediately before his retirement from OPDAT, Lake was the NIS/CEE Program Manager. The duties of an OPDAT Program Manager were described in a January 1997 Position Description sent to the personnel staff of the Criminal Division Office of Administration. Although the description states that the Program Manager's duties were not "clearly defined," it says that the Program Manager performs a range of duties, including establishing operational policies and procedures for the project staff and holding subordinate staff and consultants accountable for achievement of results; directing the delivery of training and technical assistance activities, including curriculum development; resolving technical and policy matters for OPDAT relating to NIS/CEE; developing and recommending implementation procedures for use in special training operations; advising the Director of OPDAT on all aspects of project development; and reviewing current personnel and resource allocations among law enforcement agencies and programs to ensure maximum coordination and cost effective deployment.

On March 28, 1997, shortly before Lake's retirement, a Delivery Order and Statement of Work (SOW) were issued for Lake's services to Interlog. See Appendix, Exhibit 12. The SOW described the work to be performed by Lake. The SOW specified that Lake was to work for 130 days at the rate of $300 a day from April 1, 1997, to September 30, 1997, with an option to extend the order for one more year. The requirements of the SOW were couched in the language of advice and recommendations: "Lake's initial objective [is] to

provide act [*sic*] as advisor, facilitator, training material developer, subject area specialist, and program analyst for improving delivery of implementation plans to OPDAT and ICITAP." According to the SOW, Lake was to provide "professional insight to Department of Justice staff who are developing law enforcement, legal conferences, courses, presentations and workshops"; assess and make recommendations about conferences and courses; and provide "on-going expertise in curriculum development, program design, project problem resolution, and professional advice on specified international issues." "In the area of organizational management and operations, [Lake is to] provide analyses, review of and advice on Division program effectiveness and economy; advise on component and program planning (which includes staffing, scheduling and budgeting); and coordinate and oversee activities of contractor-supplied personnel and services to the Division." The SOW also provided that Lake was to write a report/assessment at the conclusion of each assigned activity.

We also examined Lake's invoices to Interlog, but they did not describe what he actually did as an OPDAT contractor. In his invoices, Lake simply billed for "NIS/CEE Projects (OPDAT)."[134]

On July 15, 1997, Lake wrote a memorandum to Bratt that discussed his duties as a subcontractor for OPDAT. See Appendix, Exhibit 13. Lake wrote that he had provided a "daily verbal or written report" to the Executive Officer (Bratt), the OPDAT Director, and the Special Counsel for National Security (Mary Ellen Warlow) "on the daily matters of importance effecting on-going OPDAT programs in Russia, the Ukraine and Moldova in the NIS, and similar European programs in Hungary, Poland, and Latvia." The memorandum stated that Lake's responsibilities included developing OPDAT course and lesson plans; providing assistance to government employees developing such course plans; providing special reports and briefings to the Executive Officer and OPDAT Director on special topics of interest as required; providing guidance to NIS/CEE staff on developing programmatic budgets for the Justice and State Departments; and coordinating and reporting on meetings.

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[134] According to Interlog's records, Lake was paid $15,000 in total for his work as a contractor on OPDAT work.

Finally, in an undated memorandum that was obtained from Interlog's files, Lake wrote that while a contractor at OPDAT, he assisted in work relating to an OPDAT conference; prepared budgets for meetings; recommended possible instructors and prepared sample invitations and notices and prepared biographical sketches of instructors; recommended what each person should teach and provided samples of course materials that could be needed by the instructors; discussed with the Italian Ambassador the participation of an Italian prosecutor and suggested a course outline and agenda for three meetings; assisted in preparing for a second ILEA conference; participated in oversight of OPDAT grantees; assisted in the response to a Moldovian request for aid against public corruption; and developed strategy and courses for the NIS/CEE to be included in FY98 budgets. See Appendix, Exhibit 14.

b. Interviews of OPDAT Staff

In addition to reviewing these documents, we interviewed many members of OPDAT's staff and others to find out what Lake actually did as a subcontractor to OPDAT. OPDAT staff told the OIG that when Lake returned from Moscow in April 1997 following his retirement, his work as a contractor did not change from his work as a federal employee.

In describing Lake's work after his retirement, a subcontractor working for OPDAT said that although Lake was "quote, unquote 'retired'" and "would say the right things," for example, that he could not give directions, after saying these things, he would then give directions and otherwise continued to manage the NIS project. While Lake would say, "I'm not the boss," OPDAT staff said that Lake continued to do many of the same tasks he had done as an OPDAT supervisor, such as attend staff and State Department meetings and supervise contractors.[135]

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[135] The only person other than Bratt and Lake who said that Lake changed his behavior after he became a contractor was Lake's subordinate, Beth Truebell, who was also a subcontractor. Truebell said that she was not aware of any special constraints on Lake's retirement, but that Lake, like other contractors, no longer had any supervisory responsibilities after March 31, 1997. In particular, she said, Lake was no longer her supervisor. (Lake's SOW, on the other hand, said that he was to coordinate the work of

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Mary Ellen Warlow, who replaced Bratt as ICITAP/OPDAT Coordinator in May 1997, said that after she became Coordinator, Lake was "elusively there and then left [to work at the INS]." Warlow said that when she would ask Lake to do something or find out something, he would do it, but she did not recall receiving any written product from him. Warlow said she may have been unaware at the beginning of her tenure as Coordinator that Lake was a contractor rather than an employee. She said did not know when she became aware of his contract status.

3. Comparison of Lake's Work with Personal Services Factors

We compared Lake's work as a contractor at OPDAT against the factors indicative of a personal services contract, which we described in Section II of this chapter.

a. Control and Supervision of Lake

The key element in determining a personal services contract is the degree of control over the contractor. Lodge 1858, Am.Fed. of Gov't. Emp. v. Webb, 580 F.2d 486, 504 (D.C. Cir.), cert. denied, 439 U.S. 927 (1978). While the government may establish the result to be accomplished by a contract employee's work, it may not control the means and methods for accomplishing the work. 26 CFR § 31.3121(d)-1(c)(2)(1991). "Employees are distinguished from independent contractors most basically by the detail with which the party for whom the work is eventually produced actually supervises the manner and means by which the work is performed ...." In essence, a contractor working under a personal services contract is functioning like a federal employee. By contrast, independent contractors are given specific objectives to accomplish but the means and methods of accomplishing the objective is left to the contractor.

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Criminal Division contractors.) His work at OPDAT, Truebell said, was to ensure that the NIS/CEE program stayed on track.

The District of Columbia Circuit Court of Appeals examined a contractual arrangement between the National Aeronautic and Space Administration (NASA) and various companies and stated:

> In each contract, NASA looked to the company that hired the individuals to perform certain tasks. However, the individual companies, not NASA, were to furnish the necessary management and personnel. It was the responsibility of each company to supervise, control, and direct the performance of its own employees in fulfilling the contract's requirements. These contracts required the companies to exercise their independent judgment. This is the classic independent contractor relationship.

Lodge 1858, American Federation of Government Employees v. Webb, 580 F.2d 496, 505 (D.C. Cir. 1978). Thus, a contractor who is truly functioning as an independent contractor should get his instructions from supervisors employed by the contractor company and the contractor should be reporting to those supervisors.

We found, however, that Lake received instructions from Department of Justice employees when working for OPDAT after his retirement – primarily Bratt, and later, on occasion, from Warlow. Also, Interlog appeared to exercise no control over Lake. Lake told the OIG that he had never met anyone personally from Interlog and that all of his contact with Interlog was via telephone.

In his July 15, 1997, memorandum to Bratt discussing his work at OPDAT as a subcontractor, Lake described himself as a special advisor with a daily reporting requirement to Criminal Division managers, including Bratt. Warlow said that she gave Lake assignments and that she did not change her interaction with Lake when she learned that he was a contractor.

In addition, supervision of federal employees by a contractor is indicative of personal services work. Although Lake told the OIG that he no longer supervised OPDAT employees following his retirement, OPDAT staff and others to whom we spoke said that Lake's relationship to OPDAT staff remained the same when he retired. OPDAT staff said that Lake continued to direct and supervise them in the performance of OPDAT's NIS/CEE work.

In a report we received from Interlog that Lake wrote summarizing his work for OPDAT, Lake stated that OPDAT's Moscow RLA was "advised to observe the creation of the documentation and other preparation needed at this stage in the training process," "advised to make media copies of pertinent documents," and to retain them for reuse. Lake also wrote, "I made an observation of the RLA's attention to, and retention of, the advice and methodology for documentation preparation I was providing him." Notwithstanding the passive voice and the use of the words "advised" and "was observed to," this further indicates that Lake continued to direct the RLA, as well as other OPDAT staff.

b. Comparable Services Use Government Personnel

Lake observed that his work as a contractor was to provide continuity between his own work as Program Manager and that of his replacement as Program Manager. This strongly suggests that comparable services to his work as a contractor were performed by government employees. The description of Lake's duties in the SOW and Lake's July 1997 memorandum about what he did as a contractor are similar to the duties set forth in OPDAT's January 1997 position description for a program manager. Furthermore, much of the specific work that Lake said that he performed as a contractor had previously been performed by Lake when he was an employee or by other government employees. For example, Lake said that in Moscow, he made recommendations about who might teach at future training conferences (work that RLA Bonner had previously performed), and developing budgets for the conferences (work that Bratt faulted Bonner for failing to perform). Lake's liaison work with the American Bar Association and other grantees while he was a contractor was the same work that Lake himself had performed as a federal employee. Moreover, in his July 1997 memorandum, Lake said that his duties would be assumed by a federal employee. This is in fact what occurred in August 1997 when Steve Calvery was hired as the Program Manager and assumed the duties that Lake had performed as a contractor. This provides significant evidence that Lake's duties as a contractor were generally performed by federal employees.

c. Inherently Governmental Functions

We also found that some of the specifics of Lake's work as a contractor involved inherently governmental functions, that is, work that is normally done by and should be done by a federal employee.

(1) Personnel Decisions

Lake remained involved in OPDAT personnel matters as a contractor. Lake told the OIG that he reviewed and made "recommendations" about the Latvia RLA candidates. Lake also gave directions about other personnel matters. For example, an e-mail from ICITAP's former Administrative Services Officer Robert Miller to a Criminal Division Office of Administration personnel officer, dated April 16, 1997, reported that in Lake's first week back from Moscow, he gave directions to Miller. Miller (who had been transferred to a new position in the Office of Administration) wrote that Lake asked Miller questions about the posting of a Program Analyst position at OPDAT and wanted Miller to "track down a missing resume, extend the posting, and develop newspaper ads." Miller wrote, "Of course I didn't contradict Joe and I did followup for him ... I would just as soon not do staffing for OPDAT. ..." Miller questioned in his e-mail whether he needed "to continue in this loop, or whether Joe should have someone else help him."

(2) Signing Documents and Making Financial Commitments

One OPDAT staff member told the OIG that, although Lake tried to avoid signing documents, the staff member believed that Lake had signed OPDAT documents after his retirement. According to notes from JMD General Counsel Stuart Frisch, JMD Procurement Services staff told Frisch that Lake had signed some documents for the government when he was a contractor, although the staff could not identify the particular documents. Our review of documents independently uncovered at least one such instance: on July 28, 1997, Lake signed as the government's Program Manager a modification of Jo Ann Harris' consultant contract (which we discuss in Chapter Seven). We also found correspondence on Criminal Division letterhead signed by Lake during the time he was a contractor. On some of this correspondence he identified himself as a consultant, but not always.

Lake's July 1997 description of his work as an OPDAT subcontractor included the "coordination" of OPDAT's grants to the American Bar Association (ABA) and others. In addition, OPDAT staff told us that Lake made the decision in April 1997 to fund the grant to Robert Lockwood, who was running a judicial exchange program.[136] In correspondence provided to the OIG by the ABA, there was a reference to the fact that on April 25, 1997, Lake informed the ABA that OPDAT was committed to "providing some financial support to [Lockwood's] upcoming program to bring six Russian judges and prosecutors to the United States."

d. Other Indicia of a Personal Services Contract: On-site Performance, Use of Government Equipment, Term of Employment, and General Appearances

While Lake's SOW was for five months, it provided for a one-year extension. If services are to be provided for longer than a year, this is some evidence that they are personal in nature.

After his retirement from OPDAT, Lake continued to work on-site in government space. Lake kept the same office and telephone number he had used as an OPDAT employee. Department of Justice records also show that after he retired, Lake kept and continued to use his government telephone credit card. He was also provided with a computer and continued to have access to e-mail.

Bratt and Lake did not do much to make known inside and outside the government that Lake's status had changed on April 1, 1997, when he was no longer a federal employee. When Bratt had appointed Lake in October 1996 to coordinate and integrate the NIS/CEE program for ICITAP and OPDAT, Bratt announced the appointment in a memorandum to all ICITAP and OPDAT personnel. We found no equivalent document announcing Lake's retirement. Rather, Bratt told us that Lake's retirement was announced at an OPDAT staff meeting. But other individuals who worked with Lake at OPDAT and elsewhere told the OIG that they did not know that Lake had retired on March

[136] In Chapter Ten, Section II, we discuss Lockwood's grant.

31, 1997, and returned to OPDAT as a contractor. This failure to identify Lake as a contractor is also contrary to contracting regulations. FAR § 37.114.

Contractors often are responsible for delivering written reports to the government, which advise about specific issues or alternatives. Delivering a product, such as a report, is one indicia that a contract is not one for personal services. Lake's SOW called for him to write a **"**report/assessment at the conclusion of each assigned activity." Yet, in his July 15, 1997, memorandum to Bratt, Lake recast the requirement of the SOW by writing that he was to give "A daily verbal or written report to Bratt, the OPDAT Director or Coordinator."[137]

We found only one written report that Lake gave Interlog about his work for OPDAT. See Appendix, Exhibit 14. In an undated document entitled, "Consultation/Office of/Overseas Prosecutorial Training, Assistance and Development/Criminal Division/ - A Report - ," Lake summarized the projects on which he said he worked as a contractor at OPDAT. Lake wrote that he delivered reports directly to the government "because of security or privacy matters, the reports in their entirety cannot be shared with the public." Yet, there is no list or description of the reports he provided to the government or topics covered. Lake said in his summary that he provided various documents or reports to Bratt or to OPDAT on an ongoing basis. We found no reports from Lake in Bratt's files or at OPDAT. Bright was unable to locate any Lake reports for us. Warlow also did not recall that Lake turned in anything in writing to her. The only other document we found that reflected Lake's work as a contractor for OPDAT was a seven-page course description in Bonner's files that Bonner said was Lake's agenda for one of the OPDAT conferences in Russia. We could not determine whether Lake drafted documents for OPDAT that do not bear his name.

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[137] When we asked JMD Deputy Assistant Attorney General (DAAG) Janis Sposato to review Lake's July 1997 memorandum to Bratt, she said that it appeared to her that someone had made an effort to create reports and deliverables but that the oral daily reporting requirements could suggest that the work was for personal services.

4. OIG's Conclusions

Lake's work at OPDAT met the elements typically found in a personal services contract: 1) he worked on-site at OPDAT, 2) he primarily used government equipment, including government stationery and Department of Justice employee credit cards, 3) he provided services directly to OPDAT in furtherance of its mission, 4) his position was one filled both before and after his retention as a contractor by government personnel, 5) he consulted with and reported to Bratt regularly and gave directions to OPDAT staff, and (6) he continued to involve himself in inherently governmental matters, such as personnel decisions and signing procurement documents.[138]

The Office of the Inspector General for the Department of Transportation (DOT OIG) conducted a review of contracts with DOT Buyout Program recipients who had returned to work at DOT. We believe that its analysis is instructive. In its report that found violations of the restriction against personal services contracts, the DOT OIG stated with respect to one retired employee who had taken a Buyout bonus and then returned to the agency:

> As a contractor, the individual was working in the same office he occupied as an FAA [Federal Aviation Administration] employee. His desk was surrounded by FAA employees. His engineering duties did not change as a contractor employee. He still worked as a team member on facilities and equipment

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[138] We asked JMD's General Counsel Frisch to review Lake's July 15, 1997, memorandum in which he described his "tasks and deliverables" for OPDAT and INS. After reviewing Lake's statement in the memorandum that Lake would be reporting on meetings that needed to be brought to Bratt's attention, Frisch said the statement could be a problem in that it sounded more like a special assistant than a contractor. Frisch also said that the statement in the memorandum that Lake's duties would be assumed by a new government employee made the contract sound like a personal services contract. Frisch said, however, that he did not believe the SOW was a personal services contract. He told the OIG that the description of work in the memorandum was not the determining factor – only learning how the contract was in fact administered would settle the question of whether Lake was performing personal services. Although we believe the July 15, 1997, memorandum did show that Lake was performing personal services, the evidence we gathered regarding how the contract was administered showed conclusively that it was a personal services contract.

> radar projects. He stated his overall work assignments came from the contractor 'manager,' but he said that person did not have the technical expertise to supervise him. We found the employee's assignments were supervised by the FAA Section Supervisor …. We concluded the employee accepted employment under a contract, that was administered, in effect, as a personal services contract, to do work previously done by himself as an FAA employee.

Office of Inspector General, Department of Transportation, Audit Report, February 9, 1996, p. 15.

We believe that the same analysis applies to Lake's work at OPDAT. Indeed, given the circumstances under which Lake went from federal employment to being a contractor – while on a foreign trip to ensure that the planning for an important conference continued on schedule – it was almost inevitable that Lake would be performing personal services. We believe that it also should have been foreseen that Lake would likely be performing personal services given the open-ended description of Lake's duties under the Interlog SOW, with its emphasis on daily reporting to OPDAT supervisors and his status as a "special assistant" providing "professional judgments" essentially as needed.

This is particularly true given the lack of effort by Lake or OPDAT supervisors to ensure that Lake was not performing personal services. Lake told the OIG that on March 31, 1997, while in Russia, he called Bratt to see what he should do because it was his last day as a federal employee. According to Lake, Bratt told Lake not to worry about it, that he was covered with a contract. Bratt also said that he called Lake in Moscow and told him that everything was taken care of. That was hardly sufficient advice to ensure that Lake avoided performing personal services.

After reviewing a draft of this chapter, Lake submitted a written response to the OIG. Lake denied that his work for OPDAT violated the "family" of elements indicative of a personal services contract. Lake said that he received minimal supervision. He also stated that his work on-site in government office space and using government equipment was authorized by the SOW. He also stated that without his knowledge and skills, the Department of State "would likely have withdrawn funding and support of these critical OPDAT programs."

With regard to supervision, the evidence shows that Lake reported regularly to Bratt, and Warlow said she gave Lake instructions. Lake's claim that the SOW authorized his work is beside the point. The question is whether these factors – use of government space and equipment – existed, not whether they were authorized. The essential nature of Lake's services, assuming Lake's contention is true, does not change the analysis. Lake was given a large sum of money by the government to retire, not to continue his same job under a different guise.

B. Lake's Work at the INS

Bratt began working at the INS on April 28, 1997, as Executive Officer for Naturalization Operations. In April 1997, Bratt asked Lake to join him at INS to help him establish its Executive Office. According to Lake's invoices to Interlog, he began to split his time between OPDAT and the INS on May 1, 1997, and he began working exclusively for the INS on August 5, 1997. In this section, we examine whether Lake's work at the INS also constituted personal services, and we conclude that it did.

1. Bratt's Description of Lake's Work at the INS

Bratt denied that Lake performed personal services at the INS. Bratt told the OIG that he relied on Robin Gaige, the Criminal Division's Deputy Executive Officer for Budget, Fiscal and Procurement, to approve Lake's work for him at the INS. Bratt said that he was careful to give Lake limited, discrete assignments and to work within the limits against personal services set by the Buyout Program. Bratt set up a schedule for Lake to work on both OPDAT and INS matters, and Bratt said that he gave Lake his INS assignments.

In a memorandum that Bratt provided to JMD for a September 10, 1997, meeting concerning Lake's contract, Bratt told JMD that Lake was to advise and assist Bratt "with technical problems associated with automated systems, telecommunications, direct mail, 800 telephone service, procurement issues, and more." Bratt's secretary in the Office of Administration who accompanied Bratt to the INS told the OIG that Lake coordinated logistics and "made sure things ran smoothly."

Lake said that almost as soon as he returned from Russia, Bratt asked him to join Bratt at the INS. Lake said that he raised a concern to Assistant Director Stephen Denny of the JMD Procurement Services Staff about whether

he could work at INS under the contract used for his OPDAT work. Lake said that Denny told him that he could not.

2. Documents Describing Lake's INS Assignments

INS documents show that at the INS, Lake performed management duties within INS's newly formed Executive Office for Naturalization Operations. Lake was described as the "action officer" in a series of "action plans" for naturalization quality procedures that Bratt issued in May and June 1997. In those action plans, Lake was assigned, among other duties, with handling the orientation briefing for detailees. In a memorandum dated June 4, 1997, INS Commissioner Meissner reported to all INS employees that Lake would manage the direct mail, systems consolidations and improvement, records liaison, and nationwide toll-free customer service number functions of the new "Naturalization Project Development Branch." She wrote:

> The Naturalization Project Development Branch will be responsible for: Direct Mail, Systems Consolidations and Improvement, Records Liaison, and Nation-wide Toll-Free Customer Service Numbers. *Joe Lake, already with the Office of Naturalization Operations, will manage these functions.*

(Emphasis added.)

An organizational chart attached to the Meissner memorandum shows the Project Development Branch as part of the Executive Office for Naturalization Operations, one of three offices that reported to the Executive Director (that is, Bratt). The other two offices were led by federal employees, one by an INS Associate Commissioner for Examinations and the other by a detailee from the Civil Rights Division.

The July 15, 1997, memorandum prepared by Lake also listed Lake's anticipated assignments at INS:

> 1. To advise and assist the detailed Executive Director for Naturalization Operations [Bratt] on the re-engineering or re-vitalization of certain, existing naturalization programs nationwide. These programs include, but are not necessarily limited to, automated information systems, telecommunications, direct mail services, 800 telephone

> numbers, customer and community relations, procurement issues[,] procedure implementation and more.
>
> Meetings - Coordinate, provide advice and report on meetings between detailed and permanent INS employees, officials of other Department components or Government agencies and vendors providing INS services regarding program or project plans, problems or issues, or accomplishments that need to brought [*sic*] to the attention of the Executive Director or his immediate subordinates.

Lake noted in the memorandum to Bratt, "While this statement certainly doesn't cover many of the *daily* situations that may arise that can call for me to inform or to provide recommendations *to you* on some situation or another related to the naturalization process, it is designed to cover the main programmatic areas of my involvement. All my duties require interface with Criminal Division or INS employees on a daily basis, but only from the standpoint of advising or counseling them on my recommendations." (Emphasis added.)

3. Descriptions of Lake's Work

We also interviewed several people who worked with Lake at INS to determine what he did there and how his status was viewed at the INS. One INS employee believed that Lake was Bratt's "Chief of Staff." Another INS employee told the OIG that Lake acted for Bratt when he was out of the office and that Lake reported directly to Bratt. Another said that Lake was only introduced at an INS training program as being from Bratt's office. A Criminal Division employee characterized Lake as "Bratt's right hand man" at the INS and told the OIG that Lake continued to conduct himself while there as though he were a government employee. The Criminal Division employee said that he had to tell someone at INS who called to implement Lake's request that INS be connected to the EAGLE computer system that Lake was a contractor.

We were told that Bratt had daily staff meetings attended by key personnel and that Lake was an active participant in these meetings. There were also weekly staff meetings that Lake initiated or attended. According to one employee who attended the meetings, Lake set the agenda for the meetings, presided at them, and gave orders to federal employees. This INS

employee said that Lake continued in this role until September 1997, when he was shifted, according to the INS employee, to other duties.

An INS employee who worked with both Bratt and Lake at INS from May or June 1997 until Lake left the INS on October 31, 1997, said she observed Bratt directing Lake. She told the OIG that Lake, in turn, supervised and directed INS employees. She said that Lake directed her Department, and tried to direct her, but she said she would not accept his direction. Others noted that Lake was a team leader who gave directions or supervised a subordinate employee.

Also, at some point during Lake's work at INS, JMD DAAG Sposato received a complaint from someone who believed that Lake was performing personal services at INS in violation of the Buyout Act. Sposato said that she immediately called Bratt to her office to discuss this.[139] Although Sposato did not recall the details of her conversation with Bratt, she told the OIG that after talking about the complaint with Bratt her impression had been that Bratt had given Lake authority over federal employees and that he was being called Bratt's deputy. Sposato said she remembered telling Bratt "it wasn't right" and "to be sure it wasn't a personal services contract."

4. Comparison of Lake's INS Work with Personal Services Factors

We analyzed Lake's INS work, as set out in documents and described by others, against the six-element test for personal services. On the basis of the documents that we reviewed and the interviews we conducted, Lake appeared to be an integral member of the management team at INS. Most important, Lake was supervised by and reported to Bratt, a federal employee, and Lake also supervised and gave directions to federal employees. Lake was largely indistinguishable from a federal employee. That appearance was confirmed by INS employees. While their exact descriptions differed, they described Lake as a subordinate of Bratt. This was also suggested by Lake in his July 15,

[139] Sposato could not date the meeting, but said that she thought that it was shortly after Lake moved to INS.

1997, memorandum, in the midst of his work at INS, when he noted that his work required that he report to Bratt on a regular basis.

There were other indicia that Lake performed personal services at the INS. Lake worked on-site at the INS with government equipment. We were told that he had an office at INS headquarters with his name outside the door. Lake's office was next to Bratt's office. When Bratt moved to a second INS office at 801 I Street, Lake moved with him and had an office in that space as well.

While at the INS, Lake continued to have a government pass, used the same government telephone credit card he had been issued and used as a federal employee, and had a government computer. Lake submitted travel reimbursement vouchers for his travel for INS without specifying that he was a contractor.

In sum, we concluded that, like his work at OPDAT, Lake performed personal services at the INS in violation of the requirements of the Buyout Program.[140]

C. End of Lake's INS Work and Work for NDIC

On August 20, 1997, The Washington Post published an article about allegations of misconduct at ICITAP. In the article, Lake was described as Bratt's "assistant." This article triggered a second complaint to JMD. On September 9, 1997, Sposato met with Bratt for a second time to discuss Lake's

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[140] In an October 8, 1997, memorandum that Sposato wrote to Bratt, she said that Lake could continue to be used as a consultant only if Lake operated completely independently from Bratt's direction, provided written reports to a contracting officer's technical representative (COTR), did not have or appear to have any responsibility for directing or controlling federal employees, and did not have tasks that were advisory in nature. She wrote that Bratt would have to prepare an SOW that would delineate tasks that he wanted Lake to perform and an appropriate schedule and that Lake could have only the most minimal contact with Bratt. She wrote further that she understood that Lake would do much of his work from home and that any space provided to him would not allow for the appearance that Lake was Bratt's subordinate. Since our investigation revealed that Lake had never met these requirements while at INS, we believe that Sposato's reasoning further supports our conclusion that Lake violated the Buyout Program rules.

contract work. According to a memorandum she later wrote in October 1997, she told Bratt at the meeting that he had two options: 1) either stop using Lake, or 2) use Lake as a "true consultant providing discrete work products." Sposato wrote that Bratt was "disinclined" to accept the first option of not using Lake because of, according to Bratt, his "pressing needs for services of the type [Lake] provides."

However, Lake stopped working for the INS soon thereafter.[141] On October 14, 1997, Lake began work as a contractor for NDIC, a Department of Justice office responsible for reporting on drugs, gangs, and violence. He earned $10,800 at NDIC for 30 days work, from October 1997 through the first day of March 1998.

Robin Gaige, NDIC's Assistant Director of Administration, hired Lake as an NDIC contractor. Gaige had previously served as Bratt's Deputy Executive Officer in the Criminal Division's Office of Administration. Gaige told the OIG that during one of her trips to Washington, D.C, she told Bratt that she needed someone at NDIC who was familiar with JMD computer systems to assist her. Gaige said that Bratt informed her that Lake's work with INS and ICITAP was "slowing down" and that Lake might be available.

We conducted a limited investigation of the work Lake did at the NDIC to see if it also involved personal services. According to his invoices, Lake worked a total of 30 days for NDIC over a period of four months. Gaige said that Lake worked primarily from home and spent one or two days a month at NDIC headquarters in Johnstown, Pennsylvania, to discuss his work. Notwithstanding the appointment of a COTR to supervise him, Lake reported directly to Gaige, and she reviewed his work on an ongoing basis. Lake was provided with a cubicle at NDIC and access to secretarial services by the government. Analyzed against the six elements of a personal services contract described previously, it appears that Lake's work for NDIC may have strayed

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[141] Lake's invoice to Interlog shows that after September 18, 1997, he did not work for INS again for a month. In October, he worked for the INS for 10 days, ending on October 31, 1997. In total, Lake earned $28,260 for his work at the INS, for 78.5 days of work. Lake was paid $360 a day for his work at INS. Interlog's rate to the government for his services was $434 a day. Thus, the total amount paid to Interlog was $34,196.

into a personal services arrangement, although this conclusion is much less clear than with regard to his work at OPDAT or INS.

IV. REPAYMENT OF LAKE'S BUYOUT BONUS

A. Background

The next issue we reviewed was whether Lake's Buyout bonus should be forfeited because he performed personal services for the government. This issue first arose in September 1997 when Sposato was asked by Bratt for her advice whether the Department should deduct, as an offset to contract payments due to Lake as an Interlog contractor, the $25,000 retirement buyout that Lake had received.

In a memorandum to Bratt dated October 8, 1997, Sposato recounted the concerns that she had expressed to Bratt in their first meeting about Lake that Lake's assigned duties were inappropriate for a contractor. See Appendix, Exhibit 15. She also noted that Bratt had met with her a second time, on September 9, 1997, and discussed efforts that he said he had made to modify Lake's duties. Sposato noted, however, that she remained concerned about the nature of Lake's duties. She provided further advice on ensuring that Lake's duties did "not slip, in fact, into a personal services mode,"[142] and she reiterated that it was Bratt's duty to ensure that it did not.

Sposato stated in the memorandum that she had not investigated all the details of Lake's service but that she understood that Lake and Bratt had made efforts to assure that Lake did not serve in a personal services contract. Sposato stated further that, in her view, "the border between personal services and more independent contracting is not a line, but a zone." She wrote that she had not made any finding that Lake's contract was not in fact personal services contracting and that she would be unable to do so without a full, factual investigation of the matter. She noted that the OIG was investigating the ICITAP program and Lake's contract might well be one of the areas of investigation. Sposato wrote, however, that she had "little personal inclination to insist that Lake forfeit his $25,000 buyout, and I doubt that such an action

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[142] See fn. 140.

would be sustained if challenged, based upon the scant factual record that I have available to me, and the fairly fluid definition of personal services contracting that is used in the procurement world." She wrote that the General Services Administration (GSA) OIG "under similar circumstances" recommended that no action be taken against buyout recipients because the buyout recipients "do not appear to have willfully or deliberately circumvented the Act." She noted, however, that the DOT Inspector General had recommended repayment of a buyout bonus without considering good faith as a factor. Sposato's memorandum also stated that the JMD General Counsel had contacted the OPM General Counsel, who had reported that OPM had issued no guidance and taken no position on the relevance of good faith to an agency's collection effort with respect to a buyout. The memorandum did refer to, and attached, a memorandum from the General Counsel of the Department of Justice OIG, who asserted that in the OIG's view, "evidence that a good faith exception exists in the buyout law is extremely thin."

Sposato concluded in the memorandum that in the absence of any position to the contrary from OPM or the OIG, her advice was to pay the full amount due on the contract for Lake's services. She added that her "own instincts, supported by the GSA Inspector General, are that good faith must be a factor in any governmental collection effort of this nature." She noted that collection of the $25,000 buyout payment might be difficult in the future, but that the government's obligation under Lake's contract and the Prompt Payment Act must be given precedence over a possibility that in the future a collection effort may be recommended. She also noted the Department of Justice OIG's suggestion that Lake be advised to place $25,000 in escrow. Sposato told the OIG that in her analysis she had assumed "good faith" on Lake's part.

In this section, we analyze the issue of whether Lake should be required to repay the $25,000 buyout payment he received. We examine the legal precedents regarding the Buyout Program and conclude that there is no "good faith exception" to the requirement that those performing personal services must repay a buyout bonus. We then analyze the history of Lake's post-retirement work for OPDAT and the INS to see if there is any factual basis for a "good faith exception." First, contrary to Bratt and Lake's claims to us that they did not plan for Lake's retirement and that it was a last-minute decision, they had for several months explored options to retain Lake's services after his retirement. Second, we also found that Bratt and Lake were on notice of the

restrictions of the Buyout Program that Lake could not perform personal services for the government and the concerns that retaining Lake could violate these restrictions. Moreover, the evidence we found suggests that, contrary to Bratt's claim that JMD had reviewed Lake's SOW for his work at OPDAT to determine whether it was a personal services contract and that JMD had approved it, JMD was not asked to perform such a review, did not perform such a review, and did not provide advice that Lake's contract was not for personal services. Although JMD issued the Purchase Order and SOW for Lake's work at INS, JMD officials did not examine what Lake actually did at INS and were not in a position to opine as to whether he was actually performing personal services.

Therefore, we conclude that Lake should be required to repay the $25,000 buyout bonus that he received.

B. Existence of a Good Faith Exception

We believe that there is no "good faith" exception to the forfeiture requirement when a buyout recipient performs personal services for the government within five years. First, the Act itself clearly states:

> An employee who has received a voluntary separation incentive payment under this section and accepts employment with the Government of the United States within 5 years after the date of the separation on which the payment is based shall be required to repay the entire amount of the incentive payment to the agency that paid the incentive payment.
>
> * * *
>
> [T]he term 'employment' includes employment under a personal services contract with the United States.

P. L. 103-226, § 3(d)(1) and (3).

Second, the only case cited in Sposato's memorandum as supporting a good faith exception – the GSA OIG audit report dated September 30, 1996 – is inapposite. In that case, GSA auditors recommended that because ten buyout recipients did "not appear to have willfully or deliberately circumvented the Act," no action should be taken to recover the buyout money. But the auditors based this recommendation on the fact that GSA had not provided adequate

guidance regarding the conditions under which buyout recipients could return to work for the agency. The Employee Separation Agreement that the buyout recipients had signed stated that they could not be reemployed with the federal government without repaying the buyout payment, but it did not mention that the prohibition could extend to working for government contractors. By contrast, in Lake's case he was informed in the separation agreement that if he rendered personal services to the government during the first five years after his retirement he would have to forfeit the bonus. In addition, as we discuss subsequently, various people raised concerns to Lake and to Bratt about the potential problems with Lake returning to the government to work for OPDAT.

We also note that in response to the GSA audit report, GSA management expressed its belief that the Act did not contain a knowing or willful standard and that a finding that Buyout recipients returned under personal services contracts "can reasonably lead to a conclusion that GSA is obligated to seek repayment." Furthermore, in a November 4, 1997, addendum to its report, the GSA auditors acknowledged that the Act required buyout recipients who performed personal services to repay the buyout amount, whether or not the violation was willful or deliberate. The Addendum stated:

> We stated in the report that because there did not appear to be any willful or deliberate attempts to circumvent the Act, no action should be taken against the buyout recipients. We did not, however, intend our report to provide a legal interpretation of the Act's provisions, which clearly do not require that actions in contravention of the Act be willful or deliberate in order to enforce its requirements. ... [I]f any buyout recipients return to work under contracts that are fully analyzed and determined to be personal services contracts, they must repay the buyout payment as required by the Act.

Third, another OIG that looked at this issue, the Department of Transportation OIG, recommended without consideration of "good faith" that buyout recipients who violated the act should be required to return their buyout bonuses. Department of Transportation Office of the Inspector General, Voluntary Separation Incentive Payments, Report No. R6-FA-6-009, February 9, 1996, p. 4. JMD General Counsel Frisch spoke with an individual at the DOT OIG who told him that they had taken action to recover Buyout money.

Fourth, Frisch made notes of his conversation with a Department of Justice Civil Division attorney familiar with the Act who he asked about a good faith exception to the Act. Frisch wrote in his notes "Good faith not criterion" in determining whether to recover the bonus. He also noted that "no discretion" was permitted and that the statute was "very strong."[143] Frisch told the OIG that the question regarding good faith was a difficult one and that OPM did not provide any helpful advice. However, documents that he provided to the OIG included an e-mail Frisch wrote in January 1997 in which he made express reference to the OPM Guidance for employees accepting a buyout offer that we discussed earlier. The OPM Guidance makes no reference to a "good faith" exception, and it explained that where there is a violation of the act, "The employee must repay the entire amount" of the Buyout bonus. The OPM Guidance also explained that no waiver of the repayment obligation was available in cases involving personal services contracts.

We agree. We found no indication in the statute, the regulations, or the cases interpreting them that any showing of "good faith" could override the

[143] Nonetheless, despite receiving this information, Frisch's notes indicate that he was to write a memorandum to Bratt and Colgate opining that the Criminal Division should not recoup the Buyout bonus from Lake because 1) it was debatable whether Lake had been performing personal services and 2) he had acted in good faith. In an August 2000 interview with the OIG, Frisch said he did not recall speaking to or obtaining information from sources other than those listed in his notes – OPM, the Department of Justice OIG, the DOT OIG, GSA, and the Civil Division attorney. We asked why – when the DOT OIG, the Department of Justice OIG, the Civil Division attorney, and GSA management had concluded that no good faith exception existed in the statute – the October 8, 1997, memorandum had been written to support a conclusion that a good faith exception did exist. Frisch told the OIG that, "My job as a counselor is to assist people. If there is a way in which something is legal, I'm not going to say its illegal." Frisch also said that the Civil Division attorney had discussed that a debt could be compromised. In an e-mail that Frisch sent to us after the interview, he also stated, "In doing legal research for purposes of counseling, whenever you find conflicting decisions, you have to decide what you think is correct. In this case, I think is [*sic*] the correct answer is that good faith should insulate an employee from a recoupment claim. The memo reflects that judgment."

forfeiture requirement in the Act, even if Lake did not deliberately or willfully violate the Buyout Program's requirements.[144]

C. Inapplicability of a "Good Faith" Exception in this Case

Moreover, our review concluded that, even if a "good faith" exception existed to the forfeiture requirement, the facts of Lake's case would not support it. We set forth below a chronology of the development of Lake's contract for OPDAT work and his separate contract for INS work.

1. The OPDAT Contract

a. Bratt's and Lake's Versions

The OIG asked Lake and Bratt about their advance planning for Lake's work as a contractor. Both claimed there was no planning before March 1997. Lake told the OIG that it was never his intention to continue to work for the government after he retired. He said that he took no action before he retired regarding post-retirement work for the government because he was working too hard. He also said that Bratt or his staff made all the arrangements for his contract. According to Lake, he only learned that he had a contract when he called Bratt from Moscow on his last day as an employee and Bratt told him not to worry about it, that he was "covered."

Bratt, too, claimed that the arrangements for Lake to continue working for OPDAT after his retirement were made at the last minute. Bratt said that during mid-March 1997 he had numerous discussions with Deputy Executive Officer Robin Gaige, Acting Executive Officer Sandra Bright, and representatives of JMD about whether Lake's buyout agreement prohibited him from working for OPDAT as a contractor. Bratt said that he relied on his staff for guidance and that he repeatedly spoke to Gaige, Bright, and JMD to determine, "Can I continue to employ Joe Lake?" According to Bratt, Gaige later told him that it was possible to keep Lake, and she took care of the details.

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[144] We did not examine the issue of whether JMD could have withheld the money as an offset. Frisch told the OIG that the money was owed to Interlog, that the Department had no legal basis to withhold it from Interlog, and that Interlog had no legal basis to withhold it from Lake.

Bratt told the OIG that JMD representatives specifically reviewed Lake's Interlog "task order" and told him that Lake could perform this work and not violate the requirements of the Buyout Program.[145]

Bratt told the OIG that it was only after he had traveled to Moscow in March 1997 and assessed Bonner's work there that he actually asked Lake to stay beyond the date of his retirement. Bratt said he called Lake in Moscow on March 31, 1997, Lake's last day as a federal employee, to tell him that a contract for Lake's post-retirement services was in place. Bratt stated that he was not in charge of day-to-day operations of ICITAP and OPDAT and that he left details of the contractual arrangements to his staff.

b. Other Evidence

Bratt and Lake each acknowledged to the OIG that they knew about the Act's restrictions on personal service contracts. In fact, on October 3, 1994, and again on February 23, 1995, Bratt, as the Criminal Division Executive Officer, had distributed a memorandum to all Criminal Division employees that described the Act, the Buyout bonus and its terms, and the five-year prohibition on reemployment and personal services. Bratt attached to both memoranda an application form to use to retire under the program. The form required each applicant to acknowledge that he would forfeit the Buyout bonus if he rendered personal services to the government during the first five years after his retirement.

Lake executed the application and forfeiture acknowledgment on March 15, 1995. See Appendix, Exhibit 16. Lake received additional literature on the Buyout Program conditions at his retirement in 1997, which included the restrictions on performing personal services for the government for five years. Thus, it is clear that Bratt and Lake knew that Act retirees could not perform personal services for the government for five years after their retirements.

Moreover, other evidence showed that, contrary to the claim that Lake and Bratt only began planning for Lake's retirement in March 1997, Lake had spent several months seeking to put in place a contract to work at OPDAT after

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[145] It appears that by "task order," Bratt was referring to the Delivery Order and Statement of Work covering Lake's work as a contractor for OPDAT.

his retirement. The evidence also showed that Office of Administration and JMD officials advised Bratt and Lake that the work that Lake proposed to do, first at OPDAT and then at INS, could violate the Buyout Program prohibition on personal services work.

Lake had served as the COTR for the Criminal Division contract for specialized computer services from the beginning of that contract in July 1991. In January 1996, Lake talked to staff in the Criminal Division Office of Administration's Management Information Staff (MIS) about retiring under the Buyout Program, and he removed himself as the COTR.[146] In 1996, before the computer services contract was set to expire, the Department was reviewing and revising the requirements of the contract in preparation of soliciting bids and selecting a successor contractor. MIS staffer Theresa Statuti was working on preparing descriptions of positions the Department was seeking to fill with the contract. These were technical positions that required various degrees of computer experience and facility.

Statuti told the OIG that in June 1996 Lake asked her to add a new kind of position to the contract requirements. He told her that it was for a special expert and described various qualifications for the position. Statuti believed that Lake was describing his own skills and qualifications. In her view, this was confirmed when Lake told Statuti that the position should fit "someone like a former Deputy Executive Officer" making $125-$150 an hour. Statuti wrote and retained a position description, but because she thought that it was inappropriate for Lake to create a position that only he could fill, she refused to include the position as a requirement in the proposed contract documents. Statuti brought the matter to the attention of her boss, the Director of MIS, Deputy Executive Officer Verna Muckle. Muckle told the OIG that Statuti had told her that Lake was trying to create a contract position for himself and showed the position description that Lake had dictated to Statuti. Muckle told Statuti that it was not going to happen while she was the COTR.

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[146] Procurement officials, such as a COTR, are restricted in their post-employment work. Lake could not have been employed by a company after his retirement if he had been a government COTR for a contract with that same company.

In 1997, Lake attempted to secure another contract for his post-retirement work for the Criminal Division. According to Procurement Services Staff Assistant Director Denny, in January 1997 Lake called Denny to ask for a sample of what had to be included in an SOW for Lake to work for ICITAP as a consultant. Denny's contemporaneous notes of this and subsequent conversations he had with Lake confirm that Lake first raised with Denny the issue of a post-retirement contract with OPDAT on January 6, 1997. The notes indicate that Lake began the conversation with Denny on that day by speaking about a "soon-to-be-retired-employee," but later in the conversation Lake told Denny that he was the "soon-to-be-retired-employee." According to Denny's notes, Lake told Denny that the contract was to be for a term of about nine months. Denny's notes also indicate that he immediately alerted Lake that there were special provisions that governed the Buyout Program, including a five-year prohibition against personal services. Denny also advised Lake that it was "very important" to have any proposed contract cleared with the Department of Justice Ethics Office.

The next day Denny wrote in his notes that although he would not be handling it, he would research the "issue of contracting with former employees." Denny recalled that he spoke with the Department's Ethics Office and JMD's Personnel Office to see whether there was a problem with Lake becoming a contractor in light of his intention to retire with a Buyout bonus. Denny told the OIG that he was told that Lake was prohibited from working under a "personal services contract," that Lake could only work in a non-personal services capacity, and that if Lake performed personal services he would have to pay back the Buyout bonus.

Records of the Ethics Office confirm that Denny called that office to discuss Lake in January 1997. An ethics officer listed in a contemporaneous log entry a call from Denny on January 17, 1997. Although the ethics officer did not remember the conversation with Denny, her log entry stated that Denny asked if there was a rule that prevented the government from contracting with Lake. The log entry reads:

> Joe Lake apparently took a buyout and there is a law barring anyone who takes a buyout from signing a personal services contract with the government for five years. Steve [Denny] says they can get around that by saying the government is contracting for a product not the services. I think this stinks

> and told Steve they should discuss this with Janis [Sposato] who wouldn't like it either.[147]

In a response that Denny submitted to the OIG after reviewing a draft of the chapter, Denny said that he was not trying to circumvent the personal services restrictions by means of a ruse. Denny wrote, "It is appropriate, indeed expected, for procurement offices to suggest changes to SOWs so that it is clear non-personal services are to be furnished. An accepted and legitimate way of doing this is to specify deliverable end products (often reports) that the contractor is to furnish." In an OIG interview, Denny said that he did not recall what he did or told Lake after his discussion with the ethics officer. From documents that we received, on February 19, 1997, Denny e-mailed Lake to set up a follow-up meeting, although we do not know if the meeting occurred or if it did, what was discussed.

During this time period, early 1997, others in the Criminal Division also raised the restrictions of the Buyout Program to Bratt and Lake and expressed concerns about having Lake return to work for the Department under an arrangement that could be considered a personal services contract. Criminal Division Acting Executive Officer Bright told the OIG that in January or February 1997, before Lake retired, Lake brought to a staff member of the Budget, Fiscal and Procurement section of the Criminal Division's Office of Administration a proposal that the government contract for his services and that she was asked to approve it. Bright said that she did not concur in the proposed arrangement because it appeared to her to be a personal services contract. Bright said that she told Bratt that Lake "should not be employed in a personal service capacity because he was not supposed to be doing that, and if he was – if it was found [that] he was working in a personal service capacity, he would have to pay that money back." She told the OIG that what she saw

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[147] Sposato told the OIG that she did not learn about Lake and the Buyout issue at this time. As we discuss subsequently, Sposato told the OIG that she remembered first learning about Lake's buyout and his return to work sometime after he began work at the INS, which did not occur until May 1997. Denny wrote in his August 2000 response that he recalled telling Sposato at a meeting in January 1997 that ICITAP wanted to hire Lake as a contractor after he retired and the JMD Procurement Services Staff had concerns about the Buyout Program. Denny stated that it was only one of many topics discussed at the meeting.

"struck me as an improper attempt" to bring Lake back. Bright said that she advised Bratt to check Lake's contract with someone. According to Bright, Bratt told her that it was not his intention that Lake have a personal services contract. She thought that Bratt had the paperwork for the contract withdrawn.

Gaige told the OIG that she heard that Lake was retiring one day and coming back as a consultant the next and that she was concerned about the "revolving door" issue. She said that she saw "flags" and discussed her concerns with Bratt, Bright, and Silverwood, the Criminal Division's ethics advisor and an OPDAT employee. Gaige denied, contrary to Bratt's claim, that she told him that there would be no problem with Lake's return.

Gaige said that she did not recall Bratt asking her to research the propriety of Lake's return to work for the government as a contractor after receiving a Buyout bonus. Rather, she said that she thought someone else, she did not recall whom, researched Lake coming back as a contractor. Gaige also said that she was told that the JMD Procurement Services Staff was handling the matter, although she did not remember who told her this.

The recollections of Silverwood varied, but he recalled that before Lake's retirement, he and Lake discussed the issue of Lake becoming a contractor for the government. Silverwood recalled that he told Lake that whether he could become a contractor depended on what his work would be because there were limitations. Silverwood told the OIG that the Ethics Office, not he, approved Lake's return as a consultant.

We found no evidence that the Ethics Office advised OPDAT officials that Lake's return as a contractor would not violate the Buyout Program. The Ethics Office log showed that Silverwood called the Ethics Office about Lake on February 20, 1997. The log entry indicates that Silverwood asked whether Lake could return as a contractor after he retired under the Buyout Program. According to the log, the ethics officer with whom Silverwood spoke thought that the question of whether Lake's contract would run "afoul of the rules about personal services contracts" required further research and said that she would get and review material on what the officer called "these rather vague standards" of what constitutes personal services.

The Ethics Office log reflected a second conversation with Silverwood on February 24, 1997, with the same ethics officer. The log reflects that JMD's personnel section had advised the ethics officer that "[t]hose that took the buy outs cannot come back to work for the gov't as employee or anything

that is a services contract (personal services de facto or de jure) with the gov't, unless they pay back the entire $25,000 buy out sum." The ethics officer concluded, "Seems to be quite a few obstacles to employee doing what they want him to."

Lake was hired as a subcontractor to Interlog, which held a preexisting contract to provide consultants and other services to ICITAP. The SOW for Lake's consultant services for OPDAT was issued on March 28, 1997. However, it appears that no one in OPDAT or JMD performed a careful examination of the duties Lake was specified to perform under the Interlog contract to determine whether his duties would, in fact, constitute personal services in violation of the Buyout Program. Rather, the central problem of the Interlog contract – that Lake could not perform personal services – was not resolved prior to the SOW being issued.

Gaige as manager and John Podgorski as the Interlog COTR signed the SOW on behalf of OPDAT. As previously noted, Gaige said that she was told that the Ethics Office had approved the contract. As Podgorski told the OIG, the only issue Podgorski identified was one concerning the scope of the contract, and he did not believe that was a problem.

In his August 2000 response, Denny wrote to the OIG that he "did not prepare, review, approve, or sign the Interlog/Lake orders, nor did anyone whom I supervise." In an interview, Denny said that if JMD had delegated contracting authority to a Division then JMD would not in the ordinary course of affairs review an SOW issued to a contractor for services under an existing contract. He suggested that JMD Procurement Services Staff Deputy Director Paul Turnau might have reviewed the SOW. However, Turnau told the OIG he had not; that it had been submitted by the Criminal Division directly to Interlog. Michaelene Clarke, the JMD contracting officer who was in charge of ICITAP's service contracts, had been consulted about Lake's contract, but after reviewing her notes, she said that she had been told that Lake's return had been approved by an ethics advisor in the Criminal Division. She said she could not recall if she saw the SOW for Lake before his work as a contractor for OPDAT began, and her contemporaneous notes do not reflect that the issue of whether Lake was performing personal services was raised to her. Thus, the JMD review that we were able to find did not show that JMD had opined that Lake's duties as described in the SOW were compatible with his Buyout prohibition on personal services.

c. Modification to Interlog Contract

In addition to the personal services issue, Lake's contract had other problems. The Interlog contract with the Department of Justice, the umbrella contract though which the purchase order for Lake's services was made, only authorized services to ICITAP. Yet, Lake's services were for OPDAT not ICITAP. On May 8, 1997, the contract with Interlog was modified to cover services to OPDAT. Clarke, who processed the paperwork for the modification, said that without the modification Interlog could not provide services to OPDAT under the contract because it was limited to services for ICITAP. Lake had been working since April 1, 1997, for OPDAT under the Interlog contract. Lake's first invoice to Interlog for his work was dated May 9, 1997, the day after the modification was signed.

2. Lake's INS Contract

As noted previously, Bratt went to work at the INS in April 1997 and asked Lake to work with him there. Bratt said that once he was given his new responsibilities at INS, he asked Gaige whether Lake could work for him at INS. Bratt said that Gaige reviewed Lake's "task order" and talked extensively with JMD. According to Bratt, Gaige and JMD determined that Gaige would have to write a new task order for Lake because the one he was working on was specifically for OPDAT. Bratt said that Gaige gave him approval to use Lake. Gaige told the OIG that she did not personally discuss with JMD the issue of the ethics of Lake's return as a contractor.

When Lake moved to INS the issues concerning whether he was performing personal services and work outside the scope of the contract continued. In April 1997 Lake spoke with Denny about the fact that the Interlog contract, which was for services to ICITAP (and later in May 1997 modified to cover work for OPDAT), would not cover work to INS. They discussed putting in place a direct contract for his services with the INS or hiring him under either a Department of Justice litigation support contract known as "Mega I" or under another contract known as "Dyncorp."[148] On

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[148] There were several contracting mechanisms that could have been used to bring Lake to INS. If a contract already existed that covered work to INS, Lake could be hired as a subcontractor. This was the mechanism used for his OPDAT work, using a preexisting

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April 30, 1997, Denny referred Lake's request to Trisha Bursey, the Assistant Director in the JMD Procurement Services Staff who handled small, direct contracts with consultants.

Yet, no contract was in place to cover Lake's work for the INS when he began there. His billing records show that he began work at INS on May 1, 1997. On May 8, 1997, in a memorandum (on Department of Justice Criminal Division letterhead) to Denny, Lake proposed a direct contract with the government for his INS work, and Lake attached his own proposed SOW and sole-source justification. See Appendix, Exhibit 17. Denny told the OIG that he did not recall reading the material that Lake sent him and only passed it on to Bursey.

At the end of May and the beginning of June 1997, there were conversations and correspondence between Lake and JMD's Procurement Services Staff about contracting for Lake's INS services. Lake told the OIG that he began negotiating a direct contract with Bratt for the INS work, but that "someone" realized that a direct contract with the Department of Justice would jeopardize Lake's Buyout Program bonus because he would be providing personal services. According to Denny's notes, on May 30, 1997, Lake told Denny that a "purchase order" for his services was "out because 'someone' says this will jeopardize buy-out." Lake told Denny that the "idea" was now to have him hired under the Dyncorp contract. Eugene "Buddy" Frye, the Chief of the Budget, Fiscal, and Procurement staff of the Criminal Division's Office of Administration, told Denny that "someone [had] raised the buy out issue" regarding Lake. On June 3, 1997, Denny had another conversation about the personal services issue, this time with a JMD employee specialist. The

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contract with Interlog. Another possibility was to contract directly with Lake. In that situation, the contract would have to be open for competition unless a sole-source procedure was used. The sole-source procedure requires that the government agency justify in writing why it is in the best interests of the government not to engage in competition for the contract. A third possibility was to issue a purchase order, essentially the equivalent of a new contract, to a contractor who would then hire Lake as a subcontractor. This method also required competition or the use of the sole-source procedure.

conversation resulted in Denny confirming his understanding that the Buyout restrictions on personal services included subcontracts.

About this time, Lake also learned that Interlog would not pay him for the work he was doing at the INS. When Lake submitted his first bill to Interlog and included not only OPDAT work but also INS work on the bill, Interlog refused to pay Lake for his INS work, since it was outside the scope of his SOW. On June 5, 1997, Lake submitted a second invoice to Interlog. It, too, showed work at INS for 10 days' work, splitting the billing for each day equally between what he called "NIS/CEE Projects (OPDAT)" and work he described in toto as "INS Detail." The Interlog COTR, Podgorski, alerted Carl Alexandre, the new OPDAT Director, in an e-mail about the problem with Lake's bill and reported that "[p]ayment for the INS work is still a matter to be resolved."

On June 9, 1997, Denny and Bursey met with Turnau, the Deputy Director of JMD's Procurement Services Staff. They decided that "all legitimate work under the ICITAP contract" would be paid; that Bursey would do a sole-source purchase order to Interlog, or explore, if she wished, the possibility that INS would do the order; and that Bursey would contact Frye, presumably to tell him of the decision.

In his notes of the meeting, Denny wrote "BL," which he told us meant the "Bottom Line." He also wrote,

→ We've got to take care of Joe

→ We've got to protect Joe

Denny told the OIG in his August 2000 response that "take care of Joe" referred to paying Lake for the work he had done up to that time. He said that "To protect Joe" meant that since "we had been assured Joe was not providing personal services, we needed to write the order in such a way as to reflect this reality and require non-personal services." Denny said that the person providing the assurance was Lake.

Denny's notes of the meeting also list various alternative possible contracts under which Lake might work for INS and the problems with each. One alternative was a direct purchase order to Lake, and Denny wrote:

Direct PO

→ OK per buyout

→ appearances

Denny said he did not recall what "appearances" referred to. "OK per buyout" meant that if Lake was not performing personal services then this, like other mechanisms, was appropriate. One of the alternatives, "sole source order to Interlog," was starred and that was the mechanism that was used to obtain Lake's services. We asked Denny why the decision was made to use Interlog to obtain Lake's services rather than contracting directly with Lake.[149] Denny said that probably the

> thought at the time was that dealing with a contractor as opposed to directly was more appropriate because of the … it would lend more credence to it not being personal services … perhaps was the thinking. That it would establish even more clearly that there was a contractor we were dealing with instead of Joe directly.

Lake told the OIG (incorrectly) that he needed a "buffer" to preserve his buyout bonus, that is, he needed to work under an agreement with a government contractor rather than as a direct contractor with the government. Lake said that to preserve his Buyout Program bonus, he agreed to enter into a second Interlog contract for his INS work. Lake told the OIG that he did not sign the second agreement with Interlog that was prepared because it was poorly written.[150] Lake stated that at that time of the October 1997 interview he had not been paid for his INS work (which began in May 1997), but that he

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[149] Interlog charged the government a 17 percent handling charge for providing Lake's services, thereby raising the cost from $360 a day, the pay that Lake received, to $434 a day. In a memorandum Turnau signed on September 26, 1997, Turnau stated that the handling charge was reasonable "considering the work the prime contractor must perform in maintaining the individual on their payroll, monitoring his performance, and invoicing/paying for the services."

[150] The consultant does not sign the Statement of Work, but signs a consultant agreement with Interlog.

did not care about the money. Lake said what was important to him was the mission; even if he did not get paid, Lake said that he was satisfied that the taxpayers were better served by the work that he and Bratt had done.

On July 7, 1997, JMD issued a purchase order to Interlog for Lake's services through September 30, 1997. See Appendix, Exhibit 18. The SOW that JMD issued along with the purchase order was the one Lake drafted and sent to Denny on May 8, 1997. The primary difference was a rewritten sole-source justification. The sole-source procedure, which results in a waiver of competition for the contract, requires that the contractor be in a unique position to provide resources or the resources are needed on an urgent basis. For the Lake purchase order to Interlog, JMD justified the sole-source procedure by stating that Interlog could "provide exceptionally well qualified personnel who can begin work immediately at INS."[151]

3. Complaints to JMD that Lake was Performing Personal Services

a. First Complaint to JMD

As mentioned previously, Sposato received a telephone call complaining that Lake was performing personal services at INS in violation of the restrictions governing his retirement under the Buyout Program. She told the OIG that she could not date the complaint, but believed that it came shortly after Lake went to INS. Sposato recalled generally that the complainant represented that Lake had taken a buyout but had returned to perform personal services for Bratt at INS. She remembered that she had been told that Lake had an office at INS next door to Bratt's office and that Lake was referred to as Bratt's deputy.

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[151] We pointed out to Denny that the only "exceptionally well qualified" individual that Interlog would be providing was Lake and that it was in a position to do so because OPDAT had previously directed that Interlog hire Lake for its work. We asked whether under those circumstances the justification was adequate. Denny replied that it was "common." We asked whether that meant it was adequate, and Denny repeated that it was "common." He then explained that the justification would not have been adequate for contracts dealing with higher dollar amounts but that for this amount, he would not be surprised to see a sole-source justification written in such a way.

Sposato told the OIG that she asked Bratt to come to her office to discuss the complaint. Sposato said that as a result of the meeting and conversation she had with Bratt, she was concerned that Bratt had given Lake a broad area of authority at INS and that Lake, in turn, was directing federal employees pursuant to this delegated authority. Sposato said she explained to him the characteristics that determine whether someone is performing personal services. She told Bratt that the way he was giving Lake responsibility, the way Lake was directing federal employees, and the fact that Lake's office was in immediate proximity to Bratt's were problems. In response, Sposato said, Bratt told her that he would do something about the problem.

b. Second Complaint to JMD

As discussed previously, on August 20, 1997, The Washington Post published an article reporting allegations of misconduct at ICITAP. In the article, Lake was described as Bratt's "assistant." A senior JMD official raised the issue of Lake's return after taking a buyout in a meeting with other JMD staff. As a result, Frisch researched the issue.

Frisch met with Johnston and Turnau the same day the Post article appeared. Frisch said Johnston and Turnau were concerned that Lake might appear to be Bratt's spokesman. According to Frisch, they also had concerns that the purchase order that had been issued by their office in July was a personal services contract. Frisch told the OIG that the JMD staffer who issued the July 7, 1997, purchase order was "not very sophisticated" in these matters.[152]

Sposato said she called Bratt to her office again, on September 9, 1997, and, as discussed previously, told him that he had to either stop using Lake's services altogether or to define tasks so that Lake truly acted like a contractor.

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[152] According to Denny's notes, the purchase order was originally prepared for his signature. He wrote to Bursey, "I'm perplexed as to why this order was prepared for my signature, and I'd like to talk to you about that …." Denny told the OIG that he did not read the materials and that he never reviewed the purchase order or SOW.

4. JMD's Revised Contract for Lake's Work

On September 26, 1997, JMD modified the contract to Interlog for Lake's services. See Appendix, Exhibit 19. Interlog had not accepted the July 7, 1997, purchase order that covered Lake and had raised various concerns about administrative issues. The September 26, 1997, modification addressed those problems and extended Lake's contract term to December 31, 1997. In addition, the modified contract incorporated a "Revised Statement of Work – INS Support Services," which is a slightly revised version of Lake's July 15, 1997, description of his work at the INS. The tasks described for Lake remained general. For example, it stated that reports were to be made as required, and there was no schedule for Lake's work.

Finally there was an attempt to put in writing in the contract restrictions on Lake's activities. In a memorandum entitled, "Summary of Modification – Interlog" that accompanies the revised SOW, a paragraph labeled "Personal Services" specifically noted that the "Contractor, Subcontractor and the INS Program Office are all fully aware of their responsibilities to ensure that only nonpersonal services are performed." The paragraph also described changes to Lake's working environment, such as that he will work from home, will not attend INS staff meetings, and will not represent himself as a government employee. However, in October 1997 Lake stopped working for the INS and was hired as a contractor for NDIC.

We note that through the course of the many months that it took to put in place Lake's contracts for work at OPDAT and INS, Lake was extensively involved in developing his contracts both when he was an employee and when he was a consultant. Lake initiated the contact with Denny to determine how to structure the contracts, continually suggested and discussed various contracting options, and wrote the SOWs for both contracts. Denny told the OIG that he did not recall any conversations with anyone in OPDAT other than Lake about Lake's work for OPDAT. Frisch told the OIG that in the usual scenario, the Department office usually determines what is needed and asks the contractor which of those needs it could meet. He said that it was unusual for a contractor to reverse the process by initially telling the office what he can do.

V. OIG's CONCLUSIONS

We conclude that, after his retirement under the Buyout Program, Lake returned as a contractor at OPDAT and INS and performed personal services.

This violated the Buyout Program's restrictions, and we conclude that Lake should be required to repay his $25,000 Buyout bonus. We also believe that there is no "good faith exception" to the forfeiture requirement. In any event, such an exception would not apply in this case. Both Lake and Bratt, the person who hired Lake as a contractor, were aware of the restrictions of the Buyout Program and had been alerted to the concerns that Lake's work as a contractor would constitute personal services. Moreover, contrary to their claims, they planned for Lake's post-retirement work at OPDAT. Nevertheless, they failed to ensure that Lake did not perform personal services. Given the nature of the work that Bratt wanted Lake to perform – managing critical programs at OPDAT and INS – we believe that it was inevitable that Lake would perform personal services.

We were told that JMD had approved the contract, that the Department's Ethics Office had approved the contract**,** or that officials were told that JMD or a Criminal Division's Ethics Advisor had approved the contract. Yet, the documentary evidence from the JMD Ethics Office shows only that when proposals were run past ethics officials, they opined that "this stinks" or that there were "quite a few obstacles to employee doing what they want him to." We did not find evidence that any person with expertise in the area reviewed the contract and approved it as complying with the Buyout rules.

We also believe that JMD's handling of the contract for Lake's work at the INS was deficient. JMD permitted Lake to work without a contract for an extended period of time, from at least May until July 1997, when the purchase order was submitted to Interlog (and that contract was not accepted by the contractor until September 1997). Denny told the OIG that the procurement services office was aware of the personal services issue, knew what they were supposed to do, and tried to do their job properly. Yet, the purchase order issued by JMD on July 7, 1997, raised subsequent concerns from two of JMD's top procurement managers that it was a personal services contract. And the purchase order that raised these concerns was issued after a senior JMD official had received a complaint that Lake was performing personal services. In addition, we did not find any reason other than appearances for why the Interlog contract was used to employ Lake rather than directly contracting with Lake, which would have saved the government Interlog's administrative fees and profit. The only explanation given by Denny was that the subcontract lent "credence" to it not being a personal services contract.

However, neither the subcontracting mechanism, the September 1997 contract modification, nor the October 1997 Sposato memorandum to Bratt that told him what Lake must do in the future could cure the fact that, for six months, Lake had been in continuing violation of the Buyout rules. Reformation of the contractual relationship in late September 1997 did not obviate the liability Lake's conduct had already created.

CHAPTER SEVEN: THE HIRING OF JO ANN HARRIS AS AN OPDAT CONSULTANT

I. INTRODUCTION

Jo Ann Harris served in the Department of Justice as the Assistant Attorney General in charge of the Criminal Division from November 1993, until August 31, 1995.[153] In the fall of 1996, while an attorney in private practice, Harris expressed to Criminal Division managers her interest in working as a consultant for OPDAT. In December 1996, she agreed to moderate up to three OPDAT conferences at the American-run International Law Enforcement Academy (ILEA) in Budapest, Hungary, and to assist OPDAT in developing curriculum for its other international training programs. She signed a contract for the work in January 1997. ILEA conferences were scheduled for February, April, and September 1997.[154]

Allegations of impropriety concerning the hiring of Harris and her activities as a consultant for OPDAT's ILEA conferences appeared in news articles. For example, one article alleged that Harris received a contract for $65,000 for eight days' work and that the contract was awarded without competitive bidding. The article alleged that the contract to Harris might have violated Department of Justice ethics rules controlling the award of contracts to former employees. Harris strenuously denied the allegation that her contract was improper.

To evaluate these issues, we interviewed Harris, Criminal Division Executive Officer Robert Bratt, Associate Executive Officer Joseph R. Lake, Jr., and others who were involved in developing the ILEA conferences or Harris' contract. We also interviewed Justice Management Division (JMD)

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[153] Harris' federal career also included service in the United States Attorney's Office for the Southern District of New York as a trial attorney, supervisor, and Executive Assistant United States Attorney, and in Washington, D.C., with the Department of Justice as Chief of the Criminal Division Fraud Section.

[154] Harris withdrew from the scheduled third conference and performance of the curriculum development after the OIG investigation began.

staff about procedures for hiring consultants. In addition, we reviewed contemporaneous documents such as notes of meetings and telephone conversations, e-mail, correspondence, reports, and telephone records.

The allegation that Harris was paid $65,000 for one or all of the ILEA conferences was wrong. The cost of her work for three conferences would have totaled approximately $39,000 and she was eventually paid only $27,000 for 42 days work on two ILEA conferences.

We reviewed whether the development of Harris' contract was in conformity with government personnel, procurement, and ethics statutes and regulations. We conclude that the appearance of favoritism that resulted from hiring the former head of the Criminal Division as a paid consultant to a Criminal Division program just over a year after she left the Department was materially exacerbated by the circumstances of Harris' hiring.

In the process of hiring Harris, OPDAT officials violated the rule prohibiting preferential treatment for former government employees. We found that Harris was in effect awarded a sole-source contract for curriculum development and that her contract would not have met the standards for awarding a sole-source contract. We found that Harris' fee was not the result of an "arm's length" negotiation, and the evidence is unclear as to what basis was used in setting the rate of pay. We also found that OPDAT hired Harris under a contract that authorized consultants to perform work for ICITAP rather than OPDAT and that Harris' work was therefore outside the scope of the contract.

After a brief description of the principles of procurement and ethics regulations that control our analysis, we review each of the major allegations in turn.

II. APPLICABLE CONTRACTING AND ETHICAL PRINCIPLES

We discussed the rules for contracting for consultant services with Director James Johnston and Deputy Director Paul Turnau of JMD's Procurement Services Staff (PSS). They described the circumstances and process for hiring a consultant. In general, the procurement of services by the government is regulated by:

- the Federal Acquisition Circular (FAC) and Federal Acquisition Regulations (FAR); and

- the personnel regulations set out in Title 5 of the United States Code.

In addition, there are restraints and prohibitions set out in Title 18, United States Code, Sections 203-209, and Executive Order 12731, regarding "Principles of Ethical Conduct for Government Officers and Employees."

According to Johnston and Turnau, government departments and agencies are free to use consultants to advise in a variety of areas, including supporting or contributing to improved organization of program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, performance auditing, and administration/technical support for conferences and training programs. Under applicable regulations, consultant services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations. FAC 37.203. In particular, consultants may be used to "obtain the opinion, special knowledge or skills of noted experts" when essential to the agency's mission. FAR § 37.203(b)(3). The regulations also state, however, that services of consultants may not be:

- Contracted for on a preferential basis to former Government employees.
- Used to obtain professional or technical advice that is readily available within the agency or another Federal agency.

FAR § 37.203(c)(3) and (5).

According to Johnston and Turnau, JMD leaves to the Department of Justice office, board, or division ("office") seeking a service the determination of whether it is necessary or reasonable to hire outside services. Johnston said JMD might get involved, however, if the contract involved a so-called "revolving door contract" – that is, a contract for the services of a former Department of Justice official.

Once the determination is made to hire a consultant, there are several ways to do so. An office may hire a consultant under a new contract with the government. Ordinarily, when hiring under a new contract, competitive bidding is required. JMD or the program office would have to go through the

procurement process, which involves advertising the job and then selecting a consultant from among submitted bids.[155]

In limited circumstances, a "sole-source" contract may be authorized. When a sole-source contract is authorized, JMD waives the requirement that the contract be advertised and bids solicited. To get such authorization, an office must submit in writing to JMD a sole-source justification explaining the reason for the waiver. Usually a sole-source contract is justified by the exigencies of time or because of a consultant's expertise.

The fastest way to hire a consultant, according to John Podgorski, an Office of Administration official with experience in handling contracts, is to hire a consultant as a subcontractor under an existing contract between the Department and a third-party contractor. In late 1996 and early 1997, there were several government or Department of Justice-wide "umbrella" contracts under which an office could hire a consultant. However, for an umbrella contract to be used, the office's requested service must reasonably fall within the scope of the existing contract and not materially distort or alter the existing contract. When an office's need falls within the scope of an existing contract, all the office need do to "hire" the consultant is to issue a Statement of Work (SOW) to the umbrella contractor.[156] JMD is not involved.

We asked Turnau, in the context of sole-source contracts, what kind of interplay is permitted between the government and a consultant prior to award of a contract. Turnau explained that a consultant should not tell an office what

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[155] The nature of the process varies with the value of the contract. Small ones (under $2500) may require nothing more than the solicitation of three or four telephone bids. Ones between $25,000 and $100,000 require extensive announcement or advertising of the contract requirement and fixed periods of time for responses and may involve more time as issues are worked out.

[156] Generally, SOWs identify the specific tasks or work to be done by the consultant, the rate of pay and any other related expenses to be paid, the time for the work and deadlines by which it is to be completed, a description of any report or other end-product to be delivered, and a schedule for such delivery. An office may name on the SOW the consultant it wants to do the work.

services were needed and should not write the SOW. Instead, he observed, an office should first identify the service that it wanted or needed, and only then seek a consultant. Turnau explained that the driving force behind development of a contract for a consultant is the need for the work that is to be performed and not a desire to hire a specific person.

Finally, under federal law, a former senior member of the executive branch of government cannot contract with the government until one year after the end of his or her federal service. 18 U.S.C. § 207(c).

III. DEVELOPMENT OF THE ILEA CONFERENCES AND THE DECISION TO HIRE HARRIS

In order to judge whether contracting rules were violated when Harris was awarded a contract without competition, we attempted to determine how and why Harris was hired.

A. Background

The United States established the International Law Enforcement Academy (ILEA) in April 1995 in Budapest, Hungary. ILEA is a cooperative effort of American federal law enforcement agencies to provide training and technical assistance to Eastern European law enforcement officers and prosecutors concerning law enforcement in a democratic society. ILEA programs are expected to focus on leadership, personnel, and financial management issues in law enforcement, human rights, ethics, the rule of law, management of the investigative process, and other contemporary law enforcement issues. In 1997, OPDAT sponsored two conferences at ILEA.[157]

B. Chronology of Harris' Hire

1. September 1996: Preliminary Conversations About Harris' Availability and Interests

Harris' memory about the overtures and invitation for her to become a consultant for OPDAT was limited, as were the memories of most of the

[157] The third conference was cancelled.

witnesses we interviewed about her hiring.[158] Harris said that the process by which she came to be hired began in the fall of 1996.[159] After Harris resigned from the Department in August 1995, she lived in New York City, maintained a private law practice, and was the Pace University School of Law Scholar in Residence. She said that she continued to be interested in the work of the Justice Department, however, and discussed Justice Department work in person and on the telephone with her friends and former colleagues who still worked at the Department. Among the people with whom she kept in touch were two of her former immediate subordinates in the Criminal Division, Deputy Assistant Attorney General Mark Richard – whose responsibilities included matters relating to international issues – and Bratt.

According to the participants, the idea to involve Harris in OPDAT programs originated in conversations between Richard and Harris. Harris told the OIG that on one of her visits to Washington, D.C., in approximately September 1996, she had a meeting with Richard. In the course of what Harris said was a general conversation in which Richard was discussing problems at OPDAT among other topics, Richard asked her whether she was interested in working for OPDAT. Harris replied that she was. Harris said that she was not certain whether she or Richard raised the possibility of her working for OPDAT, although, she said, she thought that Richard had raised it. She said that, while she was not sure, it was also possible that Richard asked her to develop some ideas on how to help OPDAT.

Richard recalled discussions with Harris about working for OPDAT, but could not date them other than guessing they were in late 1996. As Harris had said about him, Richard described Harris as a good friend. He said that Harris was at the Department frequently and that he had a number of occasions to speak to her about the ILEA conferences. He said that it was his idea that Harris work with OPDAT on the ILEA project. OPDAT, he said, needed

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[158] As a result, we were forced to rely on contemporaneous notes to piece together a chronology of events. Even after being shown their notes, some witnesses said they could not recall anything beyond what was written.

[159] Harris' one year statutory prohibition against working for the government expired on August 31, 1996.

someone to coordinate and run the ILEA training program. Richard noted that Harris is a teacher with extensive training experience and she was available to work for OPDAT. Richard recalled that Harris said she was interested in working on the ILEA conference if she could do it within the rules. Richard recalled that he gave Harris' name to whoever was the Director of OPDAT at the time. Richard thought he might have also mentioned hiring Harris for ILEA to Bratt, but he could not recall when.

Bratt told the OIG that after Harris retired, she told Richard that she was available to work for OPDAT or ICITAP.

Harris said that she thought that she met with Bratt in person in September 1996.[160] She said that not knowing whether Richard had mentioned their discussion to Bratt, she may have raised the possibility of doing consulting work with Bratt. She also thought that she might have discussed consulting possibilities with Frances Fragos-Townsend, the head of the Criminal Division's Office of International Affairs. When we asked Harris whether in these conversations with her former colleagues she was soliciting work, she stated that she had plenty to do and was not looking for work.

A note in the Department of Justice's Ethics Office log indicates that on September 20, 1996, James Silverwood, an OPDAT attorney and Criminal Division ethics officer, made an inquiry about Harris. The log reflects that Silverwood had a question about the application of 18 U.S.C. § 207 to Harris. Silverwood was told by Ethics Office personnel that Harris was barred from lobbying for five years but that she could work for the Department because, as the Ethics Office logs note, her "one year 18 U.S.C. § 207(c) bar should be up by now."

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[160] Recovered e-mail shows that Bratt and Harris had a lunch date scheduled for September 25, 1996, although other e-mail makes it unclear whether the lunch happened. Harris confirmed to the OIG that she was in Washington, D.C., on September 24, 25, and 26, 1996.

2. November and December 1996: Harris' Availability and Agreement to Consult on the ILEA Conferences

After the preliminary discussions in September 1996, the next conversations among Criminal Division officials about Harris working for OPDAT occurred in November 1996.[161] Harris told the OIG that Bratt telephoned her in November 1996 to discuss her working for OPDAT. At the OIG's request, Harris searched for and found notes of both her November conversation with Bratt and her telephone records for November 1996. Harris' notes show that she and Bratt spoke on November 25, 1996. Harris' phone records showed that they spoke for 19 minutes. After reviewing her notes, Harris said that she did not recall her conversation with Bratt beyond what was in her notes.

The notes reflect that Bratt discussed with Harris her participation in three conferences at ILEA in Budapest. The conferences were described as ones to which four or five countries would be invited to discuss case studies. The notes state "Prosecutors/judges/investigators," presumably referring to the types of persons to be invited to the conferences.

According to the notes, Bratt also described in the conversation OPDAT's ongoing work in other countries, specifically Poland and Russia. Bratt talked to Harris about his "hug[e] concern" about OPDAT curriculum. The notes indicate that Bratt suggested that they needed someone to have oversight of OPDAT's curriculum, that is, "what we are teaching." Harris said that Bratt told her to call Silverwood to "discuss what role she might play." Harris also said she thought perhaps Bratt said he would have Silverwood call her.

Bratt asked Silverwood and Paul Johnson, one of Bratt's assistants, to work on the process of getting Harris on-board. From Johnson's statements to the OIG and a review of his and Silverwood's notes and records, we determined that after Bratt talked to Harris on November 25, 1996, Bratt asked Johnson and Silverwood to prepare a memorandum (referred to hereafter as the "Consultant Memorandum") that would: 1) describe a consultant position for

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[161] Harris told the OIG that she was unavailable through October. She had spent several weeks in France, became ill with pneumonia, and spent much of October recuperating. Bratt was on official travel from November 6 to 9, 1996, and November 13 to 21, 1996.

Harris for OPDAT; 2) identify contract vehicles that were available to hire her; and 3) discuss whether there was any ethical bar to hiring Harris.

Johnson said he attended a meeting with Bratt, Silverwood, and possibly OPDAT Acting Director Thomas Snow during which Bratt assigned him the job of preparing the Consultant Memorandum for Harris. Bratt told Johnson that he, Silverwood, and Snow were to include a "position description" and possible ways to have the work done. Johnson said he was told to talk to Criminal Division Deputy Executive Officer Robin Gaige and Lake about what contract vehicles could be used to hire Harris. Johnson was told to have the memorandum completed within a week to ten days.

Johnson said that Bratt told them that the position description was to include both work on the ILEA conferences and work on curriculum development. In addition to identifying the option of having Harris moderate the scheduled February 17, 1997, ILEA conference, Johnson's notes of the meeting at which Bratt gave him the assignment also state that they should come up with "a couple of options." In addition to listing "3 workshops," Johnson wrote, "Broader than ILEA," "Identify what would be helpful to the office, whatever we want," and "work out of NY & Budapest program."

Johnson told the OIG that Silverwood's assignment was to look into the ethics of whether they could use Harris since she was a former employee. Johnson wrote down in his notes of the meeting, "Left over 1 year ago. Ethical How can we get her."

From Silverwood's notes, we learned that Harris and Silverwood spoke by telephone on December 6, 1996. After we found Silverwood's notes of his call to Harris, we asked Silverwood about the call. Silverwood said he had little recollection of the circumstances in which he was asked to call Harris.[162] Although his notes begin by observing that Harris "reiterated" her interest "in assisting OPDAT in its mission," Silverwood told the OIG that he was under

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[162] In interviews in August 1997, September 1997, and January 1998, we had asked Silverwood to describe his participation in the development of the Harris contract. He did not mention his telephone call to Harris until a fourth interview in July 1998, when we referred to and showed him his notes of the call. Silverwood said he had forgotten about the call.

the impression that he was the first to discuss with Harris her working on OPDAT programs. He could not explain his use of the term "reiterated."

The notes also indicate that Harris told Silverwood she was only teaching one class in the spring, so she had "lots of time" available. She said that she was willing to travel both to Washington, D.C., and internationally but not for months at a time. Silverwood wrote:

> She [Harris], in response to my description, is interested in:
>
> a) ILEA organizing seminars there.
>
> b) curriculum development (although she is not an expert yet)
>
> 1. Focus on generalized principles or curriculum – what are common denominators that OPDAT can use in its programs
> 2. [illegible] then on reviewing curriculum in each of an ongoing RLA [Resident Legal Advisor] countries. Possible participation in RLA conference at OPDAT in January-February 1997. Dialogue on subject useful there. Preparation of presentations on the subject at that conf[erence] would be helpful.
> 3. Finally development of curriculum for proposed new OPDAT countries, e.g. Rwanda, Bosnia, Peru, Mexico, etc.

Silverwood recalled that Harris asked whether she would be paid and that he told her that she would. She asked how and from what "pot" of money, but the notes do not reflect whether or how the questions were answered. Harris apparently told Silverwood that she would be in Washington, D.C., on December 11 and 12, 1996, and Silverwood told Harris that they could discuss a written proposal then. Silverwood observed in the notes, "We will prepare description of duties for her and she will decide if they are something she can do."

Johnson wrote in his notes, which appear to recapitulate the Harris/Silverwood conversation, "We would be working up a proposal based on knowing our needs and her abilities." On another note preliminary to

writing the assigned Consultant Memorandum, Johnson wrote, "She's not a curriculum expert."

Thomas Snow, the Acting Director of OPDAT from September 30, 1996, until April 1997, told the OIG that he was only marginally involved with planning for the ILEA conference. Snow stated that he never discussed Harris' contract with Bratt or Lake and that he was not involved in retaining her for either the ILEA conferences or to develop curriculum for OPDAT. He was under the (incorrect) impression that Harris' curriculum development work only pertained to the ILEA conferences.

Silverwood and Johnson wrote the Consultant Memorandum Bratt requested. See Appendix, Exhibit 20. As Harris and Silverwood had discussed, Harris' position was described in the memorandum as including the following duties: assistance with preparation and execution of the ILEA conferences; creation of a core curriculum for all OPDAT training; reviewing and developing a curriculum for each country in which OPDAT operates; and designing curricula for prospective programs in countries in which OPDAT hoped to run programs.

On December 10, 1996, two days before Bratt's scheduled meeting with Harris, Silverwood contacted the Department's Ethics Office. He wrote in an e-mail that he wanted to "recuse" himself from the issue that he was raising, since it involved OPDAT, the office at which he worked. Silverwood wrote:

> Harris has expressed an interest in working parttime from NY for the Criminal Division ... and for OPDAT in particular. She is willing to assist OPDAT as needed. We think she could be of assistance in the area of curriculum development, both for our existing programs overseas and new programs that are being developed.

In the e-mail, Silverwood asked the Ethics Office to "explore" the ramifications of 18 U.S.C. § 207 were Harris to be hired as a consultant. Placing his question in context, Silverwood noted that Harris had broad supervisory jurisdiction over OPDAT while she was in charge of the Criminal Division but that she would not be involved in operational cases as a consultant. The next day the Ethics Office told Silverwood that there was no Section 207 problem. We found no evidence that Silverwood consulted with the Ethics Office about the propriety of the contracting vehicle or the process used to hire Harris.

Harris met with Bratt on December 12, 1996, in Washington, D.C., to discuss her work for OPDAT, including, she said, the strategy for the ILEA conferences. They met in Harris' former office at the Justice Department.[163] Harris said that Bratt gave her the Consultant Memorandum at that meeting. Since the memorandum was undated, she later jotted on the reverse that she received it on December 12, 1996. She provided her copy of the memorandum to the OIG. Harris said that she did not recall reading the memorandum at the meeting, but she said that she accepted Bratt's offer at that time.

Lake, who was in charge of planning for the conferences, said that he was called over to the meeting after it had begun. Bratt asked him if anyone had been selected to run the ILEA conferences. When Lake told Bratt that no one had been identified, Bratt told him that Harris had volunteered.

After Harris agreed to participate, the plans that had already been made for the conference were changed. Criminal Division contractor Leslie Rowe said that Lake and Bratt asked him to help develop a conference for ILEA. In response, he invited Assistant United States Attorneys (AUSA) from across the nation to serve as faculty. Rowe said that later Bratt and Lake told him that they were going to run the conference with Harris as moderator and only senior Department of Justice Criminal Division managers as faculty. Rowe, therefore, was required to rescind the invitations he had already extended.[164]

A Statement of Work was issued to Interlog on January 23, 1997. The Statement of Work named Harris as the consultant and set forth the tasks that she was to perform, including preparing for the ILEA conferences, acting as conference moderator, and developing curricula for other OPDAT programs – the areas of work that Harris had discussed with both Bratt and Silverwood.

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[163] The position of Assistant Attorney General for the Criminal Division had not been filled by this time and Harris' former office was vacant.

[164] An AUSA told the OIG that he was called in December 1996 to participate in an ILEA conference to be held in February 1997. He got permission to attend from his office and started to do work for his presentation on money laundering and on a hypothetical that he was told would be at the center of the conference. The AUSA said that after he had begun his work, and he thought after he had provided some of his written material to OPDAT, the invitation was rescinded. He was told that Harris had replaced him.

Interlog signed a contract with Harris on January 28, 1997. See Appendix, Exhibit 21 for the Statement of Work and the Interlog Consultant Agreement.

C. Bratt's and Lake's Explanations for Hiring Harris

Bratt told the OIG that the plan for the ILEA conference was to invite senior people from several countries and consequently they wanted "high stature" representatives from the United States to speak at the conference. Bratt said that Lake or his staff asked Interlog (an ICITAP contractor) whether they had anyone of the requisite stature to teach at the ILEA conference. Bratt added that they did not want to use Assistant United States Attorneys, although he did not say why. Bratt stated that OPDAT considered using former Criminal Division Assistant Attorney General Robert Mueller and former Deputy Attorney General and now Harvard Law Professor Phillip Heymann, but neither was available. Bratt said that he suggested Harris when Richard brought it up during a staff meeting, and Lake looked into the possibility of hiring her.[165]

Following our initial interview with him, Bratt provided to the OIG an undated document discussing Harris' contract. The document stated that the Department of State had "set very high standards for the ILEA courses. Only senior prosecutors, top Ministry of Justice officials, judges or law makers of NIS/CEE countries [were] to participate in the courses." The Department of Justice, Bratt said in the document, had to provide an instructor of equal rank and experience to present the material. Bratt continued, "As I recall, by December 1996, an appropriate instructor had not been found for ILEA I, and consideration was being given to delaying the start of the course even though several embassies had been notified. It was at this time, that Ms. Harris indicated to us her interest in presenting the ILEA course, but only in an interactive forum or symposium format."

Lake told the OIG the ILEA conference was to be at the level of policy-makers and attorneys general. Lake said that one of the first things he did in planning for the ILEA conferences was to form a committee, which included

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[165] Richard had no recollection that Mueller's and Heymann's names had been mentioned.

his assistant Beth Truebell (a contractor) and OPDAT contractor Didato. The committee, he said, was responsible for the developmental work relating to the ILEA conference, including formulating a budget and an outline of the program as well as identifying a leader. Lake said that the committee developed a list of possible leaders, with four or five names, including Phillip Heymann, but Harris' name was not on the list.[166] Lake also said that at the time of the December 12, 1996, meeting with Harris, he had not contacted anyone about running the conference.

Heymann said he did not recall being contacted by anyone about participating in the ILEA conferences. Mueller, who participated in the second ILEA conference as an instructor, told the OIG that he was never invited to lead or moderate the conferences. A subcontractor who had experience with OPDAT's training initiatives told the OIG that he believed there were federal employees with extensive experience who were willing to moderate the ILEA conference.

Both Lake and Bratt told us that the high-level ILEA conferences were the idea of Sarah Brandel, who raised them in the fall of 1996 when she was Director of the State Department's Office of International Criminal Justice, an office that funded much of OPDAT's international training.[167] According to Lake, Brandel told him in July 1996 that she wanted OPDAT to conduct a conference at ILEA of foreign policy makers and "attorney general" types from Central and Eastern Europe to identify barriers in their national laws to then be fixed by their respective legislatures. Brandel, however, told the OIG that she did not know how the idea for the ILEA conferences came about but that Lake took credit for the idea.[168]

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[166] We interviewed Lake twice but only discussed the ILEA conferences during his second interview. After that interview, Lake refused to cooperate further with the OIG investigation.

[167] Bratt said he had no independent knowledge of this but was relying on what Lake had told him.

[168] Mark Bonner, OPDAT's Moscow Regional Legal Advisor, claimed that the idea for the high-level conference originated with him. He said that in November 1996 he was discussing the possibility of organizing a conference at ILEA that would bring together "big

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D. OIG's Conclusions

The FAR prohibits giving former government employees preferential treatment in the awarding of consultant contracts. Because no competition was involved, Harris essentially was awarded a sole-source contract. As a way of judging whether Harris was improperly given preferential treatment, we evaluated the evidence to determine whether Harris could have properly been awarded a sole-source contract, even though OPDAT did not use the sole-source procedure.

With respect to Harris' work on the ILEA conferences, we conclude that a sole-source award could have been justified. Bratt and Lake asserted that someone of Harris' stature was needed because of the "high-level" nature of the conference.[169] Given OPDAT's need for a moderator with extensive criminal law and governmental experience to help plan the conference in a short time frame, we believe that Harris would likely have met the standards for receiving a sole-source contract for planning and moderating the ILEA conferences.

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shots" from the Criminal Division and their equivalents from Russia, Hungary, and the Czech Republic. He said that he raised the idea of holding an international conference of high-level prosecutors at ILEA to Bratt and Lake in November 1996.

[169] We considered the possibility that the conference was turned into a "high-level" conference in order to justify Bratt and Lake's decision to hire Harris. Because we did not find references to "high-level" conferences before the November 25, 1996, phone call in which Bratt asked Harris to lead the conferences, we could not establish that the decision to hold a high-level conference predated Bratt and Harris' conversation. In addition, the evidence contradicts Bratt's claim that the idea of hiring Harris for the ILEA conferences arose after OPDAT looked at or tried to get other individuals to moderate a "high-level" conference. Nonetheless, we did not find that the evidence necessarily warranted a conclusion that Bratt and Lake improperly created a high-level conference solely to justify the decision they had already made to hire Harris. Bratt and Lake may have planned for a high-level conference prior to speaking with Harris and not made a written record of their plans, or once they knew that Harris was available they may have reconfigured the conference to take advantage of her experience and stature. Assuming compliance with other contracting rules and regulations, reconfiguring the conference to take advantage of a consultant's expertise is within the appropriate exercise of a manager's discretion.

However, we do not reach the same conclusion with respect to the part of the contract that dealt with curriculum development for OPDAT's other foreign training programs. As Silverwood's notes indicate, Harris was not an expert in the area of curriculum development. And, unlike the ILEA conferences, there appeared to be no urgency necessitating Harris' hiring through a sole-source contract. We did not find any evidence discussing OPDAT's need for someone to work on curriculum development that predated Bratt and Harris' November 1996 conversation.[170] We believe that Bratt's decision to hire Harris to do OPDAT curriculum development without competition created the appearance of favoritism.

After reviewing a draft of this chapter, Harris wrote in her response to the OIG that she believed the "curriculum development" work referred to work for the ILEA conference and that she was uniquely qualified to perform that task. Harris wrote,

> *If* the phrase in the draft report is meant to refer to work unrelated to ILEA the fact is that I was not tasked to do general curriculum development work; I did not do any general curriculum development work; and I was not paid for any general curriculum development work for other O[P]DAT programs. Although the possibility of a further role for me in connection with the OPDAT curricula was certainly talked about, nothing concrete was discussed during my meetings with DOJ people. My understanding was that they needed it, that I was qualified to do it, but it was for some time in the future. (Emphasis in original.)

The evidence shows that "curriculum development" was not limited to the ILEA conferences but rather was a broad project relating to OPDAT programs in other countries. The consultant agreement signed by Harris makes repeated references to performing tasks as set forth in the SOW. The SOW sets forth six bullet points relating to tasks for the ILEA conference. The SOW

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[170] In a January 1997 memorandum to Bonner, Bratt did raise the need for more standardized curricula for OPDAT. By then, of course, he had already recruited Harris to do the work.

then states, "*In addition to the ILEA activities above,* the consultant will provide ICITAP/OPDAT with ongoing expertise in curriculum development, program design, project problem resolution, and legal advice on specified international issues." (Emphasis added.) The Consultant Memorandum written by Silverwood and Johnson, which was provided to Harris on December 12, 1996, contains a section entitled, "Conference at the International Law Enforcement Academy (ILEA)" and a separate section entitled "Curriculum Development." In the "Curriculum Development" section, Silverwood and Johnson describe a "three pronged effort" to develop "core values" for the training assistance program, to develop curriculum for countries where OPDAT had a program in place, and to develop curriculum for countries where OPDAT planned future programs. In addition, the evidence that we discussed previously – Harris' notes of her November 1996 conversation with Bratt; Silverwood's notes of his December 1996 conversation with Harris; and Silverwood's December 10, 1996, e-mail to the Department's Ethics Office – all show that "curriculum development" was much broader than the ILEA conference. While it is true that Harris did not perform and was not paid for any work beyond the ILEA conferences, the contract that was issued contemplated a role for her well beyond the ILEA conferences.

We also believe that the process OPDAT used to hire Harris created an appearance of favoritism. The evidence shows that rather than OPDAT developing its needs and then setting out to find the best person to fill those needs, which may have involved more than one individual working on different projects, Bratt and then Silverwood discussed with Harris what projects she could perform and then wrote the Statement of Work to fit those projects. Harris was consulted about what work she would do while Snow, the Acting Director of OPDAT, was not consulted about what work OPDAT needed from a consultant. We believe OPDAT violated the principle that the task to be accomplished should drive the development of a contract and the selection of a contractor, not the desire to hire a particular consultant.

IV. THE HARRIS CONTRACT

The allegation that Harris was paid $65,000 for eight days work was false. Harris was paid approximately $27,000 for 42 days work on two ILEA conferences.[171] However, we did find that Harris' rate of pay as set forth in the contract was not the result of an "arms length" negotiation. We also found that OPDAT hired Harris to perform work outside the scope of the Interlog contract, which only authorized Interlog to provide services for ICITAP. In addition, OPDAT could have saved Interlog's administrative fees by contracting directly with Harris rather than using the Interlog contract.

A. Harris' Rate of Pay

The evidence showed that Harris delegated to Bratt, her former subordinate, the responsibility of setting her fee. Although various rates were discussed by Criminal Division officials – from $700 an hour to $500 per day – Harris ultimately received a rate of $650 per day. The evidence is unclear as to what basis or guideline was used to set her fee.

1. Discussions Regarding Harris' Fee

Harris told us that the only time she discussed how much she was to be paid for her work was at the December 12, 1996, meeting with Bratt and Lake. Harris said that she told them that she wanted to be paid fairly for her work but that she left it to him to determine her fee. Harris said the issue was not settled at the meeting. She said that she gave them a range and told them that she wanted to be fairly compensated. She told the OIG that she earned $500 an hour as an attorney and that she earned $1,200 a day as an instructor at the National Institute for Trial Advocacy, but that she did not recall whether she gave Bratt and Lake these numbers as guidelines. She also told the OIG that

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[171] If Harris had performed all the work described in her contract, including all three ILEA conferences and the amount of curriculum development work described in the Consultant Memorandum, she would have been paid approximately $120,000 ($39,000 plus travel and per diem for the ILEA conferences, and $81,250 plus travel and per diem for 20 hours per week for 50 weeks for curriculum development work).

she did not expect the same level of compensation from the government. Harris said that she remembered telling the men to "not embarrass her." She also told them that she was "not willing to work for free." Harris told the OIG that she directed Bratt to "scrub it" (her rate of pay) because she did not want to read about her contract or fee in the newspaper.

Lake claimed to the OIG that Harris informed Bratt and him that her rate was $1,000 an hour. An OPDAT employee recalled overhearing Lake on the phone pressing someone that Harris should be paid a fee of $650 an hour. Podgorski, who later became the Contracting Officer's Technical Representative (COTR) on the Interlog contract, said he heard Beth Truebell and Richard Reilly discussing a fee for Harris of $650 an hour. Although Bratt said he did not recall this figure, Snow recalled being told that OPDAT was talking about paying Harris a fee in this range. Snow said that when he heard this, he went to Bratt and told him that this was an excessive amount. Snow said Bratt told him that there was a misunderstanding and that this was the amount that Harris would earn per day, not per hour.

Bratt's recollection was that at their December 12 meeting Harris initially asked for between $1,200 and $1,400 a day but that they later negotiated her fee to $650 per day. Bratt told the OIG that Lake negotiated Harris' fee, after checking with Department of Justice procurement personnel, the Department of State, Deputy Executive Officer Robin Gaige, and the Criminal Division Office of Administration. Bratt also said that Lake was told by JMD that $650 per day was "within the ballpark" as an appropriate rate of pay for consultants.

Lake told the OIG that the $650 per day rate was suggested to him, he did not say by whom, and he thought that sounded "about right."

From contemporaneous notes from JMD, we learned that on January 6, 1997, Lake mentioned to Stephen Denny, JMD's Assistant Director of the Procurement Services Staff, the possibility of a fee of "$700+" an hour for Harris' work on the ILEA conferences. According to his notes, Denny told Lake that Lake would "have to clear everything with his Ethics office and, as with any procurement, we could restrict competition only with adequate justification."

State Department official Brandel said that Lake did not discuss Harris' fee with her. Brandel recalled that Lake told her that Harris was an extraordinary find, but not that OPDAT would pay Harris to moderate the conferences or that she would be expensive. Brandel said she might have

thought that Harris was moderating the conferences for expenses only. Furthermore, based on documents that we reviewed, the State Department had limits much lower than $650 per day that it would pay consultants. A hard copy of a 1995 e-mail that we found among Bratt's papers stated that the United States Agency for International Development could not pay more than $400 per day.[172] A memorandum from Lake to Bratt, dated March 6, 1997, discussed expenditures for the ILEA conference and noted that because the Department of State imposed a limit of $65 per hour for consultants, the Department of Justice would have to reimburse the State Department $5150.

ICITAP also had limits on consultant fees. In October 1996 ICITAP had instituted a consultant fee cap of $350 per day. OPDAT did not have guidelines for setting the fee because Harris was the first consultant that OPDAT had paid for assistance with its training programs. Generally, OPDAT received assistance from Assistant United States Attorneys or others who only received reimbursement for expenses.

The existence of fee caps for consultant services was discussed in the Consultant Memorandum written by Silverwood and Johnson that Bratt provided to Harris on December 12, 1996. The Consultant Memorandum stated, "ICITAP and OPDAT have established standards of pay for instructors/consultants of $350/day. You can make exceptions to this policy, with a rough ceiling of $500/day."

Johnson's notes show that he asked about pay limits under different contracts. Johnson thought that based on a conversation with Gaige, he wrote in his notes, "We can pay basically whatever Bratt wants to, but it should be in line with something. Rough 500/day." Johnson said that they might have looked at Harris' salary at the time she left the Department as a gauge of what

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[172] An ICITAP organizational review memorandum written in 1995 noted that ICITAP's and OPDAT's foreign training programs were funded by the Department of State using funds from the United States Agency for International Development.

Although not a contemporaneous document, we also found that in 1998, the State Department told OPDAT that the maximum that it could pay using International Narcotics and Law Enforcement funds was approximately $362 a day for consultants.

to pay her, but he was not certain. A note that appeared to reference the salary she earned when she left the Department was among Johnson's papers. Given Harris' annual salary, the note showed a rate of $460 per day.

Deputy Executive Officer Gaige told the OIG that her involvement in Harris' hire was very limited because she delegated the matter to the COTR Podgorski. Gaige said that as far as she was aware, Harris was the only person considered for the job. After she was told by Bratt and Lake that Harris was to be hired, she was not involved in setting the fee, and she only discussed restrictions on what consultants could be paid.

Harris said that she learned in January 1997 that she would be paid $650 a day. She said that on January 6, 1997,[173] Lake telephoned her and said, "We have determined that we can pay you $650." She said she accepted. She did not recall whether Lake said "per day" or "per hour" or words to that effect, but she assumed it was per day.

Although Bratt represented in a memorandum to Criminal Division Acting Assistant Attorney General John Keeney that the ILEA conferences would be funded by a grant from the State Department, OPDAT and Office of Administration documents reflect that Harris' fee was paid for by both the Department of Justice and the Department of State.[174]

2. OIG's Conclusions

We could not clearly determine how Harris' fee was set. Bratt told the OIG in October 1997 that the fee was "negotiated" to $650 a day from Harris' suggestion of $1200 to $1400 per day. Harris, on the other hand, said she left the fee issue to Bratt and that there were no "negotiations."

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[173] Harris remembered the date because Lake reached her while she was out-of-town teaching a course.

[174] A statement with budgeted costs of the first ILEA conference showed the cost of "instructors" as $8,500. Harris was the only paid instructor. Harris, however, was allocated a fee of up to $13,650 for the first ILEA conference and she billed $13,325. In other words, Harris was paid $4,825 more than the budgeted costs. For the second conference, Harris billed $13,487.50, of which the State Department paid $8,300 and the Criminal Division paid $5,187.

The record relative to the setting of fees was unclear and incomplete and participants' memories were inconsistent or vague. We found that OPDAT lacked a history of paying fees for training programs that could serve as a yardstick to measure the reasonableness of a fee for Harris. As one participant's notes recorded, "We can pay basically whatever Bratt wants to, *but it should be in line with something.*" (Emphasis added.) Yet the fee Harris was paid was not in line with her previous salary at the Department nor was it in line with fees paid by ICITAP or the State Department. We were unable to find any evidence that the decisionmakers – Bratt and Lake – used any comparable fee as the basis for Harris' fee. The lack of a clear record setting forth the basis for the fee raises the appearance that Harris was given preferential treatment by her former subordinates.

In addition, we fault Lake for pursuing a compensation package for Harris that was unreasonable for a government consultant to OPDAT. Lake's suggestion to fix Harris' fee at $650 an hour – a suggestion well known around OPDAT even though it was never implemented – added to the appearance of impropriety in the contracting process.

B. The Interlog Contract Used to Obtain Harris' Services

Harris told us that she expected that her contract would be with the Department of Justice. OPDAT did not hire Harris directly, however. OPDAT used an existing contract with Interlog, a private corporation that provided support services to ICITAP, to hire Harris as a subcontractor. We found that the government's contract with Interlog only covered services to ICITAP and not to OPDAT.

1. Determining Which Contracting Mechanism to Use

The question of *how* to hire Harris was initially addressed in the Consultant Memorandum of December 12, 1996, written by Silverwood and Johnson. The Consultant Memorandum discussed two possible options, one of which involved using a Criminal Division contract that required competition and the other option involved using an existing contractor.

Johnson recalled to the OIG talking with Gaige, Lake, and Podgorski about possible contract vehicles for Harris. He had few recollections beyond his notes. Johnson's contemporaneous notes suggest that several possibilities were raised, including: separating out the curriculum development work and

advertising it independently, and using ICITAP to bring Harris on under its service contracts with Interlog or another ICITAP service provider, Scientific Applications International Corporation (SAIC). Johnson told the OIG that the SAIC contract had a limit of $350 per day for consultants, although Johnson said he was told by Gaige that the limit could be exceeded in some circumstances. One note had "sole source" jotted on it, possibly reflecting that a sole-source contract was discussed.

COTR Podgorski told the OIG that Lake came to him, told him that they wanted to hire Harris for the ILEA conferences, and told him that Lake wanted to consult with Podgorski about how to hire Harris. Contemporaneous e-mail show that these conversations started around December 9, 1996. Podgorski said that Lake raised the possibility of two other contractors: Logicon and Aspen.

Podgorski recommended Interlog, however, in part because ICITAP could specify the consultant to be hired under the Interlog contract. Podgorski and Lake discussed the problems with the other contracting options. Podgorski told the OIG that a personal services contract with the Department of Justice would have to be bid competitively and advertised, or if issued as a sole-source contract, it would have to be justified. He called a sole-source contract "a vehicle of last resort." JMD's Procurement Services Staff, rather than OPDAT, would have to issue a sole-source contract, he said, and JMD does not like to do them because they are a lot of work.

In December 1996, however, the Department's contracts with Interlog were limited to providing services to ICITAP. There was no provision for services to OPDAT or to "ICITAP/OPDAT." As we discuss in Chapter Six, the Interlog contract was not amended to include services to OPDAT until May 8, 1997, after Lake began providing services to OPDAT under the Interlog contract. We asked the JMD procurement official who made the May 1997 modification to the Interlog contract whether it was significant that the Interlog contract was limited to providing services to ICITAP. The JMD official said that without a modification to the contract Interlog could not provide services to OPDAT because the contract was limited to providing services to ICITAP. The JMD official also told the OIG that if payments were made before the contract was modified the payments would have to be ratified and officials would have to explain how and why work was performed outside the scope of the contract.

A two-step process was required to hire Harris under the existing Interlog contract: OPDAT had to first request Harris' services from Interlog and then Interlog had to enter into a contract for those services with Harris. The first step was accomplished when ICITAP issued an SOW to Interlog for Harris' services on January 23, 1997, on a form titled, "ICITAP Statement of Work." In the body of the SOW, there are references to "ICITAP/OPDAT." Lake signed the SOW as the Program Manager. On the basis of the SOW, Interlog sent Harris a draft contract. The final contract recited on its cover page that it was an agreement between Harris and Interlog, for the "International Criminal Investigative Training Assistance Program (ICITAP)" and it referred exclusively to work that Harris would provide to ICITAP. Although the SOW and the Harris/Interlog agreement referred to ICITAP, the ILEA conferences and the curriculum development projects were OPDAT programs.

Bratt stated in the undated memorandum he provided to the OIG following his interview that by the time Harris' fee was agreed upon, "there was an urgency in making the final contractual arrangements for Ms. Harris' ILEA task in order that course materials and other arrangements could be coordinated and completed on time."

Harris told the OIG that it was the end of January 1997 when she saw the contract. Lake faxed it to her with the SOW. She told the OIG that she told Lake "they used the wrong rate and the wrong contract."[175] Harris said that she complained to Lake that the contract had boilerplate language that did not fit her duties. She recalled that Lake's response in attitude was, "So what?" and, consequently, she said, she did not pursue the issue.

She did, however, have Interlog take out or modify some provisions. Harris said that when she received the draft contract documents they included an exclusivity clause that would have prevented her from continuing to work for the National Institute of Trial Advocacy. She had it removed prior to signing the contract.

Harris told the OIG that "to this day" she did not understand the contract. Harris signed the contract with Interlog on January 28, 1997.

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[175] By wrong "rate" Harris meant that it was a daily rate, as opposed to allowing her to bill by the hour.

2. OIG's Conclusions

We conclude that the contracting vehicle OPDAT used to employ Harris was inappropriate because Harris' work was for OPDAT, not ICITAP, and therefore, Harris' work was beyond the scope of the contract. While it is possible that OPDAT's use of an improper contract was inadvertent, it created the appearance that Harris was going to be hired regardless of contracting rules or any contracting obstacles.

Given the press of time and Harris' stature and expertise, we believe that OPDAT officials could have directly contracted with Harris for the ILEA conferences using the sole-source process. While we were told that sole-source contracts were not the first choice because they took time, JMD officials said that they could put a sole-source contract for under $100,000 in place in a week. It ultimately took six weeks, from the time of the December 12, 1996, meeting to January 28, 1997, for the SOW and the Interlog contract with Harris to be put in place. A consequence of OPDAT's use of the Interlog contract rather than a sole-source contract was that JMD did not review Harris' hire. Interlog also received administrative and overhead fees that would not have been necessary if Harris had been hired directly.

C. The Harris Contract Modifications

1. Contract Provisions

Harris' contract with Interlog, under the January 23, 1997, Statement of Work, included an arithmetic calculation under the section titled "Consultant Fees." It showed:

Fee per day: $ 650.00

x Fee Days: 21

= Total Fee: $13,650.00

The contract, which anticipated Harris' participation in three ILEA conferences, stated that she would not be paid overtime or for work on weekends or holidays. The contract also provided that "Consultants will not be compensated for report-preparation time unless the SOW explicitly states that report-preparation days are authorized." The contract also provided that Harris would be reimbursed for travel expenses and would be paid per diem and other

expenses to the same extent that federal employees were reimbursed under the Travel Regulations.

2. Modifications to the Statement of Work

OPDAT authorized nine modifications to the Harris SOW.[176] Two modifications permitted Harris to receive payment for work that, absent the modifications, she would not have been paid. These modifications were applied retroactively to work that Harris had already completed.

At Harris' request, on March 24, 1997, the SOW was modified to permit her to bill for work on weekends and holidays (Modification 2). Her preparation and the conference itself included weekends and holidays and without this modification Harris would not have been able to be paid for all of her work.

On March 28, 1997, the SOW was modified (Modification 3) to provide: "Consultant can receive payments for portions of days which will be detailed according to hours worked by the consultant." It was signed by John Podgorski as the COTR.

Harris' first invoice to Interlog was dated March 20, 1997. It covered her preparation for and work at the ILEA conference. It included a request to be paid $975 each for four 12-hour days during the first ILEA conference and $325 for four days on which she worked four hours preparing for the conference. Her invoice showed only three days on which she worked eight hours. The final line of Harris' invoice read: "TOTALS 88 hours (11 days) @ $650 a day = $7,150."

Harris said that her first interim bill to Interlog raised the issue of payment for more or fewer hours than an eight-hour "day" because in that bill she listed the hours that she worked. Harris said that when she first reviewed the SOW, she did not "grasp that 'day' meant an eight-hour workday." She said, "I'm a lawyer and I bill by the hour." After the first ILEA conference, she said, she asked Interlog, "What's a day?" The answer was, "Eight hours." She recalled that she told someone, either Interlog or Beth Truebell, who was

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[176] The first was issued on March 5, 1997, the last on August 21, 1997.

Harris' primary OPDAT contact, that she did not necessarily work in eight-hour chunks. She said she might work for 3 hours and drop it or she might work for 12 straight hours. Someone (she did not recall who) suggested to her that when consultants work a portion of a day, they charge for the whole day. Harris said that she would not do that and said so. Notwithstanding that the contract with Interlog said that there was no "overtime pay," Harris told the OIG that she did not consider the original "$650/fee day" listed on the SOW to be a cap on how much she could charge for any day's work.

Harris said Truebell called her and told her she could not bill as she had done on her first invoice to Interlog. Truebell, although a contractor, was the OPDAT staff person that Harris viewed as in charge of coordinating the ILEA conference. Harris said that after the contract negotiations, all her dealings on the contract were with Truebell. Harris told Truebell she wanted to modify the contract to permit billing for both long days and short days, in essence to turn the daily rate she had accepted into an hourly rate. According to Harris, Truebell agreed and told Harris that she would take care of it.

Modifications to Harris' contract had to be approved by two people: the Project Manager (Lake) and the COTR (Podgorski). Podgorski, who had become the COTR on the Interlog contract on March 1, 1997, told the OIG that Truebell came to him and said that if Harris worked 12 hours, they wanted to pay her for 1.5 days. Podgorski told the OIG that he was not originally inclined to approve this modification. He said that a "fee day" is a "fee day, no matter how long a day it is" and that it seemed to him not to permit payment of more than $650 a day for the consultant's work. He said that Truebell and Lake convinced him to make the modification.[177] He said that Truebell told him that ICITAP and OPDAT "do things differently."[178] Podgorski explained

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[177] In March 1997, Bratt and Lake were making arrangements for Lake return to work for OPDAT as a consultant using the contract with Interlog. We note that Lake authorized a modification to Harris' SOW as Program Manager after his retirement while he was also an Interlog subcontractor. Lake signed the May 1997 SOW funding Harris' work for the second ILEA conference.

[178] Truebell told the OIG that she was not "privy" to any of the issues about Harris' contract, including pay. When we discovered evidence to the contrary, we tried to re-interview Truebell. Truebell, a contractor, refused to be interviewed a second time except in

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that after the modification if Harris worked 24 hours in a row that equaled 3 fee days.

The contract modification signed by Podgorski alone on March 28, 1997, permitted Harris to receive payments for "portions of days which [were to be] detailed according to hours worked by the consultant." As interpreted, this modification permitted payment to Harris for as many hours as she worked in a day; consequently, she was paid for some days more than the $650 a day rate she had originally agreed to accept. Although revisions to a Statement of Work require two signatures and on previous occasions Interlog had refused to implement a change with only one signature, Interlog recognized this modification with only one signature and applied it to Harris' invoice for work done prior to the date the modification was executed.

Harris said that she did not regard the modification as a re-negotiation of the contract because the total amount that she billed the government did not exceed the total amount that she was permitted to be paid under the per day system.[179] The maximum payment permitted for the first ILEA conference was $13,650; Harris billed $13,325. The maximum for the second was also $13,650; Harris billed $13,487.

When we interviewed Deputy Assistant Attorney General John Keeney, he stated that he thought there was no problem changing a daily rate to an hourly rate and then charging as many hours as worked in a day. He said that if the change was retroactive, he might question it, but he assumed a showing was made to justify the change. Keeney said he did not think it was a problem that Harris worked out the retroactive changes in her contract with Truebell, a contractor, because he assumed someone in OPDAT reviewed and approved of the changes.

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the presence of her employer's corporate counsel. We offered Truebell the opportunity to obtain her own counsel, since the presence of corporate counsel would have violated the OIG's policy on the confidentiality of its investigations, but she declined. Ultimately, we did not re-interview Truebell.

[179] Harris also told the OIG that she "wrote off" or did not bill OPDAT for some of her work.

Our primary concern stems from the process used to put the contract modifications into place. Truebell, a contractor, was Harris' primary contact in OPDAT. We found no evidence of negotiations or even discussions about the merits of the requested modifications, whether they were in OPDAT's best interest, or whether the modifications should be applied retroactively. Truebell represented to the COTR that Lake had verbally agreed to the modification. However, by the time that Harris made the request to retroactively obtain payment for work for which she otherwise would not have been paid, arrangements were being made for Lake to also work for Interlog. Thus, it is questionable whether Lake was sufficiently free of a conflict of interest that he should have approved the modification to Harris' contract. While Harris could not have known it, the modification did not receive an appropriate level of scrutiny. Like other aspects of Harris' contract, the fact that modifications were not being carefully considered by government officials created an appearance of favoritism.

V. OIG'S CONCLUSIONS

Harris was well qualified to moderate the ILEA conferences. Bratt and Lake were within their authority to try something new at OPDAT by organizing high-level conferences at ILEA. In addition, hiring a consultant to moderate such conferences was within their discretion. However, government regulations prohibit contracting on a preferential basis with former government employees. We believe that the process used to engage Harris created the appearance that Harris was to be hired regardless of contracting impediments and that she was being given preferential treatment. Harris was essentially awarded a sole-source contract for curriculum development even though we do not believe that she met the standards for that type of contract. Given OPDAT's clear break with precedent by hiring a former high-ranking Justice Department official at a rate significantly greater than the highest rate authorized by ICITAP or the State Department, OPDAT's hiring of Harris and her fee should have been reviewed by persons without close ties to Harris and the basis for the fee should have been clearly set out in order to avoid charges of favoritism or impropriety.

CHAPTER EIGHT: MANAGEMENT OF PERSONNEL

I. INTRODUCTION

The OIG investigated allegations of improper practices in ICITAP and OPDAT's hiring and management of personnel. These included allegations that consultants were misused to manage programs and that employees were hired, promoted, and given bonuses because they socialized with Criminal Division Executive Officer Robert Bratt.

We found that consultants were misused by being given positions as managers and in these positions they directed federal employees and made policy decisions that, by federal regulation, should have been made by federal employees. We also found that, in violation of the conflict of interest rules, consultants were hired as federal employees and given positions in which they made decisions affecting the contractors for whom they had formerly worked.

We also found that in violation of government regulations that require open competition for federal positions, Bratt approved the hiring of a temporary employee for a permanent position at ICITAP before a vacancy had even been announced. Evidence showed that Bratt had previously dated the woman. We also found that ICITAP Director Janice Stromsem hired as a consultant to ICITAP an individual with whom she had family connections. Stromsem then selected the individual for a term position as a federal employee even though other managers thought the individual was unqualified.

Because we only did a limited investigation into the allegations of favoritism, we did not determine whether some individuals at ICITAP, OPDAT, or the Criminal Division's Office of Administration were treated more favorably than others due to their social relationships. We did observe, however, that Bratt participated in promoting and awarding bonuses to people with whom he socialized and that these employees were perceived by others in the Department to have been rewarded for their social connections to Bratt.

II. MISUSE OF CONSULTANTS

The OIG was informed about several kinds of problems that arose with ICITAP's, and to some extent OPDAT's, use of consultants, including (1) the use of contractors as managers, (2) ICITAP's practice of directing a contractor to hire a particular consultant, (3) having a consultant begin work before the

Statement of Work was written and issued to the contractor, and (4) hiring consultants as federal employees and then having them supervise the contractors for whom they formerly worked.[180]

A. Contract Employees Used as Managers and Not Distinguished From Federal Employees

Federal rules prohibit contractors or consultants from directing federal employees or exercising managerial oversight. 5 CFR § 300.502(b). ICITAP and OPDAT managers violated this prohibition. Managers also did not adequately identify consultants as such, which caused confusion about the consultants' status and the scope of their authority.

We were told and saw evidence that Bratt relied on consultants to perform a wide variety of tasks and directed that consultants be indistinguishable from federal employees. This failure to clearly identify consultants is contrary to contracting regulations, which state:

> Contracts for services which require the contractor to provide advice, opinions, recommendations, ideas, reports, analyses, or other work products have the potential for influencing the authority, accountability, and responsibilities of Government officials. These contracts require special management attention to ensure that they do not result in performance of inherently governmental functions by the contractor and that Government officials properly exercise their authority. Agencies must ensure that–
>
> * * *
>
> All contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties are required to identify themselves as such to avoid creating

[180] "Consultant" is the term that ICITAP used for individuals who were provided by a contractor pursuant to ICITAP's issuance of a Statement of Work under an existing contract.

> an impression in the minds of members of the public or Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. They must also ensure that all documents or reports produced by contractors are suitably marked as contractor products or that contractor participation is appropriately disclosed.

FAC 97-01 §37.114.

ICITAP's and OPDAT's practices of not clearly identifying contract personnel caused confusion about who was a consultant and who was not and what, if any, limits there were to the work of consultants.

Some managers recognized this failure to distinguish contractors and employees as a problem. For example, in an e-mail discussing phone listings, Deputy Executive Officer Robin Gaige asked Acting Executive Officer Sandra Bright and another colleague:

> [S]hould we make any indication as to who is a contractor and who is not? I know Bob [Bratt] likes to treat contractors (in many ways) as if they were gov't [government]. However, it's not good to give the impression that they are feds.
>
> I defer to the two of you ....

Miller, who was responsible for administrative matters relating to ICITAP and OPDAT personnel, also told the OIG that Bratt repeatedly said that he saw no difference between federal employees and consultants. As Miller said, "Bob [Bratt] never made much distinction between feds and contractors." In the Office of Administration, Miller said, it appeared to him that federal and contract employees were used interchangeably. Miller said that given Bratt's constant reiteration that he did not want a distinction, Miller was not concerned about this kind of use of consultants.

Both ICITAP and OPDAT used consultants in managerial positions. At OPDAT, for example, contractors managed the foreign training programs, which resulted in consultants giving work assignments to federal employees, consultants representing the government at meetings, and consultants authorizing the expenditure of government funds. At ICITAP, Robert Perito held the position of Deputy Director even though he was employed by a

contractor for the first six months of his tenure. When Stromsem was named Director of ICITAP, Perito, a foreign service officer from the State Department, was given the position of Deputy Director. To assume the position, he had to resign from the State Department. He could not, however, assume another federal position for six months, without adverse economic consequences. Perito explained the problem to Bratt. Bratt "solved" the problem by having Perito work for ICITAP as a contractor for six months.

Despite Perito's denials, evidence shows that Perito functioned as the Deputy Director from the time of his arrival at ICITAP in September 1996, which included supervising employees. In September 1996, Stromsem sent out a memorandum to ICITAP staff announcing Perito's arrival as Deputy Director. The memorandum did not identify Perito as a contractor or otherwise place any limits on Perito's duties and responsibilities. Miller told us that Perito had business cards prepared for himself as Principal Deputy.

Administrative staff were concerned, however. Associate Director for Administration Raquel Mann explained the problem at a staff meeting and to Stromsem in an e-mail.

> I've just read your memo regarding the "Arrival of Deputy Director Robert Perito", where you state that he has joined the organization as Deputy Director and that he will assume responsibility over the Program Implementation component.… I suggest that we clarify that during the next six months, Bob Perito will be working with ICITAP as a contractor, not as a Government employee. In this capacity, he does not have line (supervisory) authority over any ICITAP employee nor can he represent himself as an employee of the government, orally or in writing (business cards, stationary, letterhead, etc., shall not in any way imply employment or legal affiliation with the U.S. Government, Department of Justice or any other Government component).

Despite receiving this caution, Stromsem did not rescind or otherwise publicly notify her staff that her earlier memorandum was incorrect. Rather, according to a contemporaneous e-mail, Stromsem cautioned Perito on the limitation that he could not direct employees and that "to the extent possible" he should have a federal employee with him when he attended meetings at the

State Department or at Justice. Hoover told the OIG that Perito's status "remained ... a confusing thing for all of us for quite a while." Hoover said Perito "in essence was being shown all of the courtesies and privileges of a deputy. And it was just one of these weird situations that we always seemed to find ourselves in." Stromsem and Bratt apparently were willing to ignore the obvious – that it would be impossible for someone to effectively operate as a Deputy Director if the individual could not exercise managerial oversight.

One COTR was sufficiently concerned about ICITAP's handling of consultants that he preserved e-mail addressing the issue. In a February 1997 e-mail to his supervisors in the administrative office, the COTR expressed his concerns about the duties that were being given to Richard Nearing, who was a consultant.

> Nearing is on our internal e-mail. Next thing you will know he has his name on the door and a title. I realize that there is little we can do about the 'functional' duties of these individuals (contractors) in the office, but at least we have to make it appear that things are hunky-dore[*sic*]. I have been told to let 'OPS MANAGEMENT' know when we are doing something wrong, but they don't want to hear it sometimes, so here is what amounts to a silent scream … in my opinion we have several possible PSCs [personal services contracts] situations here at ICITAP HQ and possible other in the field, and I won't even get into OPDAT….
>
> I know that your hands are tied as well … but I must look after 'our' interests. Right? At the same time we could get into trouble, seen as obstructionists, for telling people what they don't want to hear or that they can't do what they want to do.

Bratt denied to the OIG that he ignored rules and procedures and misused government contracts to solve his management problems. Bratt said, however, that Department of Justice management repeatedly put him into crisis situations and expected him to solve the problems.

Bratt said here, as he said on other matters, that he relied on his staff to tell him whether contract employees were available to solve a particular problem he described. He named Lake and Deputy Executive Officer Verna

Muckle as two of the people on whom he relied. As we have noted before, we do not find Bratt's shifting of the burden to staff persuasive.

B. Directing the Hiring of Specific Consultants

We were told that notwithstanding a directive from Stromsem prohibiting the practice, ICITAP selected particular consultants to be engaged by its service contractors. Stromsem issued a memorandum in 1996 to ICITAP employees that directed that ICITAP employees should take care not to hire or appear to hire consultants. Consultants were to be hired, according to Stromsem's memorandum, by the contractor. Yet, Stromsem told the OIG that she did not enforce this policy. She said that it would be "impossible" to comply with its directive. In fact, she said, she never expected compliance with her directive on contract employees and she admitted that she had violated it herself. Patrick Lang, the former ICITAP Program Manager in Haiti, told the OIG that he reviewed resumes and sent draft SOWs identifying consultants by name to ICITAP headquarters for issuance to the contractor.

Stromsem said that no contractor could adequately vet consultants for ICITAP's training programs. Stromsem also said that ICITAP needed to select consultants because ICITAP used contracts as a test for people for whom they considered giving federal jobs. In support of this practice, Stromsem provided a memorandum to her signed by Acting Assistant Attorney General Keeney on January 3, 1997. The memorandum summarized the ICITAP goals that had been discussed with Keeney at an annual review. The memorandum recited that ICITAP was to "give new hires a provisional period as contractors to see how they work out." Keeney said that he thought Bratt wrote the memorandum.

Mary Ellen Warlow, who became the ICITAP/OPDAT Coordinator after Bratt, told the OIG that Stromsem frequently pointed to the Keeney memorandum in defense of her actions even though Warlow said that it was apparent to her that hiring people on a contract basis for a test period was inappropriate. Warlow added that "it is patently obvious that the notion of training a casual acquaintance at government expense and giving that person the experience to then qualify for a job is not right." Bratt told the OIG, as well, that he did not advocate or approve using contracts as a trial for permanent employment, and he denied drafting the memorandum for Keeney.

One of the problems with ICITAP's practice of directing the contractor to hire consultants was that it left ICITAP vulnerable to claims that it directly employed the consultants who were hired and that ICITAP was violating rules restricting personal services contracts. The COTR, Trevillian, expressed concerns about this issue in e-mails to other administrative employees when he found that ICITAP was posting vacancy announcements for contract positions on government web sites.[181]

There were other problems with ICITAP directly hiring consultants. In a report on ICITAP management that the OIG issued in August 1994, the OIG noted that directly hiring consultants wasted money because ICITAP was paying contractors administrative fees when ICITAP was doing the administrative work associated with hiring. Additionally, the practice did not always result in the selection of qualified contractors. In Haiti at least, the primary recruitment tool appeared to be word of mouth, one trainer telling a friend or former colleague about open positions.[182] Warlow told the OIG that she told Stromsem to get a "recruitment strategy together." Warlow said that the job descriptions did not seem to attract applicants. Warlow thought the problem was a combination of wanting a particular person to fill a job and having a limited field of applicants from which to choose.

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[181] For example, in a November 11, 1996 e-mail, Trevellian raised his concern about posting vacancy announcements for contractor positions and he wrote:

> 1) We should not recruit subcontractors for our prime contractors…
>
> 2) The advertisements I have seen in the past are misleading and often times appear to be solicitations for Federal positions…
>
> 3) Why are we as an organization so afraid to allow our contractors to due [*sic*] their job.

[182] We were told that ICITAP's 1998 Haiti review found, for example, that the person who was running the SWAT team training program had never been a police officer and was not qualified for the job. We were told that he had been given this position when it turned out that he had inadequate "people skills" for the position for which he had been originally hired. He, in turn, hired an unqualified person as a firearms instructor.

C. Retroactive Statements of Work

The OIG also learned that consultants were routinely asked to begin work prior to the issuance of their Statements of Work (SOW). An SOW is the mechanism by which ICITAP notified its service contractors of the need for someone to perform specific duties. This practice meant that the paperwork had to be backdated or ratified by someone in a position to do so if the consultant was to be paid.

Stromsem admitted that ICITAP did have consultants begin work without SOWs but she said that it was limited to Haiti and its former Program Manager, Patrick Lang. She said that after the COTR, Trevillian, told her about the problem, she stopped it. Stromsem also said that to eliminate the problem, she modified the SOW process so that SOWs initiated by field offices went through the operations staff in Washington before they went to the COTR.

Trevillian, however, provided documents that demonstrated that the problem of asking consultants to begin work before issuance of their SOW continued well into 1998. Other staff members concurred that it was a recurrent problem.

Those who worked with Stromsem described her as a part of the problem in eliminating retroactive SOWs. Miller said that his attempts to enforce the rules against retroactive SOWs were taken by Stromsem and ICITAP Program Manager Joseph Trincellito as attempts to "shackle" operations. Stromsem, he said, did nothing to support the staff effort to have paperwork done before asking a consultant to start work. Deputy Executive Officer Richard Reilly said that it was typical of Stromsem that she would not enforce policies, even when she had issued them in written form. Instead, she chose to overlook it "this time."

D. Former Consultants Supervising Contracts Under Which They Had Worked

We saw evidence that ICITAP violated ethical regulations when it hired as federal employees its former consultants and then assigned them to supervise their former contracts. For example, Perito worked for Scientific

Applications International Corporation (SAIC) as a subcontractor. When Perito became the ICITAP Deputy Director, he made decisions affecting SAIC contracts.[183]

This was a problem that Warlow identified during her tenure. For employees that she thought should be retained, she prepared letters for Keeney to ask for conflict of interest waivers.

E. The Hiring of Maryanne Pacunas

One attempt to hire a consultant that became notorious at ICITAP and that illustrates several of the problems just described, as well as some ICITAP managers' attitudes about regulations, concerned Maryanne Pacunas, who was hired for an ICITAP clerical position. This transaction was part of the wrongdoing at ICITAP alleged in a Washington Times article on September 8, 1997.

Pacunas was a bartender at Lulu's New Orleans Cafe, a Washington, D.C., restaurant and nightclub. At the time the ICITAP office was located near Lulu's. ICITAP employees, including ICITAP Program Manager Trincellito, would come to Lulu's for lunch or office parties or would stop by after work.

Pacunas said that Trincellito expressed an interest in her career over an extended period of time and eventually hired her as a contractor. She said that in May 1995 or 1996, Trincellito called her and told her to report to ICITAP for a job. She recalled that on the day she reported to ICITAP, Trincellito showed her around the office and then left for Haiti.

We were told by an ICITAP employee that a few days before Pacunas was to begin work at ICITAP, Trincellito asked the employee to train Pacunas on how to enter data into the ICITAP Management Information System (IMIS). The employee told the OIG that on Pacunas' first day at work, Jill Hogarty,

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[183] Federal regulation requires that a government employee not become involved in a matter that would cause a "reasonable person with knowledge of the relevant facts [to] question [the employee's] impartiality in the matter." The prohibitions of the regulation include situations where an employee has (or has recently had) a "covered relationship" with a participant in the matter, such as a contractor/subcontractor relationship. 5 CFR § 2635.502.

who worked at Lulu's and had been hired by Trincellito to work at ICITAP,[184] introduced the employee to Pacunas and explained that this was the woman she was to train.

Pacunas, however, did not know exactly what work she was to do and the employee did not know what training Pacunas would need. The employee went to the COTR to review a copy of Pacunas' SOW. The employee wanted to look at the SOW because it would explain what job Pacunas was to perform and thus what training she needed. The COTR told her, however, that he had no SOW for Pacunas and that therefore Pacunas should not be working.

The employee then consulted with ICITAP's security officer, John Shannonhouse. He told the employee that contractors should not have access to IMIS because of the sensitive information it contained. Shannonhouse escorted a visibly upset Pacunas out of the office. Pacunas did not return.

According to Hogarty, Trincellito initially approached Pacunas about working for ICITAP. Hogarty acknowledged that Pacunas did not have an SOW or an agreement with the contractor before she started to work at ICITAP, but Hogarty said it was not the only time that someone started to work before the contract was "finalized." Hogarty said that Pacunas was treated more harshly than other contract personnel because the COTR's girlfriend, who also worked at ICITAP, became upset when she learned Pacunas' rate of pay. According to Hogarty, because Pacunas was to be paid more than the COTR's girlfriend the COTR made an issue out of the fact that Pacunas did not have an SOW and therefore should not be permitted to work at ICITAP. The COTR, however, said that when neither he nor Shannonhouse nor Hoover had seen any paperwork on Pacunas or knew why she was there, Shannonhouse "stepped in" and escorted her out of ICITAP.

Trincellito told the OIG that at the time that Pacunas was hired, he was in a crisis because he had only 30 days to begin a training program in Eastern Europe and needed immediate clerical support for the effort. Trincellito said that the service contractor could not provide anyone to fill the clerical position. Trincellito said that the idea to hire Pacunas was Hogarty's. Hogarty

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[184] We discuss the hiring and treatment of Hogarty in Section IIIA of this chapter.

recommended Pacunas and, according to Trincellito, he directed Hogarty to offer Pacunas the position and expected Hogarty to take care of the SOW paperwork.

Trincellito did not recall whether he told Stromsem that he was hiring Pacunas. Trincellito denied that he directed anyone to train Pacunas on IMIS. Trincellito said it was "not uncommon" at ICITAP for consultants to begin work before an SOW had been issued for them. He too attempted to lay the problem at the feet of the COTR: He suggested that the reason Pacunas began work without an SOW was that the COTR did not scrutinize all SOWs with an even hand, and that therefore some SOWs took too long to get approved.

Stromsem was out of the office when Pacunas began work at ICITAP. Stromsem told the OIG that she believed Trincellito had mentioned it to her shortly before she was to leave on a business trip. But, Stromsem told the OIG, such a conversation did not constitute adequate notice to ICITAP; Trincellito, she said, should have discussed the matter with other ICITAP managers.

The Pacunas incident typified many of the management problems we discuss in this chapter and others. ICITAP appeared to wait for a crisis to act and when it did act, it did so in a way that created an appearance of impropriety. Appropriate administrative personnel were not notified of Pacunas' hiring and necessary paperwork was not completed. Trincellito's attempt to blame the COTR for not scrutinizing the SOW with an even hand was unfounded since no SOW had been created for Pacunas. In addition, Hogarty's description of the incident is telling. Hogarty described the circumstances of the decision to ask Pacunas to leave as caused by a personal vendetta, rather than security concerns or ICITAP's failure to comply with standard contracting practices. This was an example of what we observed was a recurrent pattern at ICITAP: Staff believed that decisions were being driven by personalities rather than professional considerations.

III. FAVORITISM

Allegations were made to the OIG and in the press that ICITAP managers engaged in improper hiring practices. A 1997 Washington Times article alleged "favoritism in the hiring of staff." It reported that "one female graduate was hired over the objections of personnel managers after encountering ICITAP official Joe Trincellito at a Washington disco called Lulu's, where she

was a waitress. Another female waitress was considered for a job, but … ICITAP chiefs were 'worried they wouldn't get away with it.'"

In May 1996, an FBI agent detailed to ICITAP reported in a memorandum to his supervisors that personnel practices at ICITAP appeared "to have been made on personal rather than professional criteria and the appointments have left other regularly appointed employees rather puzzled if not incredulous that the selections were made."[185] Additionally, during the course of this investigation several ICITAP and OPDAT employees expressed their concern to the OIG over the personnel practices at ICITAP.

It was alleged that ICITAP managers engaged in "preselection," that is, that they chose who to hire before beginning the competitive application process. Robert Miller, who was responsible for the administrative aspects of hiring at ICITAP and OPDAT in 1996, told the OIG that on almost every vacancy announcement he could identify who was going to be selected ahead of time. He also said, "There were few surprises in the personnel arena. Everybody who got selected was a friend of a friend of a friend."

To investigate these allegations the OIG interviewed ICITAP and OPDAT employees and personnel specialists from the United States Office of Personnel Management, the Criminal Division's Office of Administration, and the Justice Management Division (JMD). We examined promotion files and vacancy announcement files as well as a selected number of Official Personnel Files (OPFs).

A. Hiring of Jill Hogarty

The hiring of Jill Hogarty was controversial and was viewed with suspicion by many at ICITAP. Hogarty began with ICITAP in 1994 as a part-time consultant. She was hired in 1996 for a one-year temporary federal position. In 1997 she became a permanent federal employee. It was alleged that Hogarty was "preselected" for the permanent position in violation of

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[185] The agent also stated in the memorandum, "Obviously, hiring practices are conducted at less than arm's length at ICITAP and are unethical if not a violation of government rules and regulations … I can no longer, in good conscience, work within an organization which engages in such personnel practices."

personnel rules and regulations. Some employees alleged that Hogarty received a permanent federal position because she had a personal relationship with Bratt.

1. Background

a. Vacancy Announcement Process

The Justice Management Division's (JMD) personnel staff provides support services for the administrative tasks associated with hiring personnel for the Department's offices. When an office has a vacancy that it wishes to fill, it gives notice to JMD's personnel staff (or an administrative office to which JMD has delegated the personnel function).[186] It does so by means of Standard Form 52 (SF 52). On the form, the office requesting the hire describes the position to be filled by title and grade and a position description is attached. An office's authorization to fill the vacancy is signified by two signatures: that of the supervisor who is making the request and that of a second supervisor who has the power to authorize hiring for the position. As Criminal Division Executive Officer, Bratt held the authority to authorize personnel actions at ICITAP.

Typically, during 1996, vacancies were advertised in a weekly Department career opportunities bulletin. JMD reviewed the applications received in response to determine which applications met the minimum qualifications for the position. JMD then forwarded to the hiring office a list of candidates deemed minimally qualified. The hiring office could select any candidate on the list or choose not to fill the position.[187]

b. Hiring Rules and Regulations

The rules and regulations controlling the government hiring process require an open, competitive process. Applicants are to be judged on their merits rather than their connections to or relationships with someone with

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[186] The function was delegated by JMD to the Criminal Division Office of Administration on December 17, 1996.

[187] We do not discuss the special rules that apply to certain veterans.

hiring authority. As the Merit System Principles state, "Recruitment … and selection … should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity." Title 5, United States Code, Chapter 23 - Merit System Principles, § 2301(b)(1).

According to these regulations, managers are prohibited from taking action to:

- Grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment for the purpose of improving or injuring the prospects of any particular person for employment.
- Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment.
- Deceive or willfully obstruct any person with respect to such person's right to compete for employment.

Title 5, United States Code, Chapter 23, – Prohibited Personnel Practices, § 2302, subpart (b). The regulations require managers to act impartially, to not give preferential treatment to any individual, and to strive to avoid any actions creating the appearance that they are violating the law or ethical standards. 5 CFR § 2635.101(b)(8); 5 CFR § 2635.101(b)(14). When a manager "preselects" someone for a position, the manager has denied other applicants a fair and equal opportunity to compete for a position.

2. Hogarty's Department of Justice Career Path

a. Consultant

Hogarty began working at ICITAP in September 1994 as a consultant. She was initially hired to work as a consultant on the "curriculum development" project for the Haitian National Police Academy.

Hogarty told the OIG that she learned about the opportunities at ICITAP while employed as a bartender at Lulu's. Hogarty said that ICITAP Director John Theriault and Trincellito regularly came to Lulu's. Hogarty said Theriault first approached her about working at ICITAP, and Trincellito reviewed her resume and offered her a part-time position as a consultant. Hogarty said she

was paid $80 for a full day and $40 for a half day. Hogarty said that she made her continued employment at Lulu's a condition of her employment at ICITAP, and until approximately December 1995, she continued to work both at Lulu's and ICITAP.

According to Trincellito, he talked to Hogarty regularly over a period of about eight months. He said that Theriault invited Hogarty to consider working at ICITAP. Hogarty provided Trincellito with her resume; Trincellito evaluated it, he said, and wrote the Statement of Work.

Theriault told the OIG that he had absolutely nothing to do with hiring Hogarty and that, until the OIG interview, he did not know Hogarty's full name. Theriault stated that Trincellito was solely responsible for hiring Hogarty.

The hiring of Hogarty as a consultant typified ICITAP management's casual approach to hiring personnel, an approach that often resulted in allegations of impropriety. Other than a few conversations at Lulu's, it does not appear that Theriault or Trincellito did much to investigate her qualifications. Hogarty stated that "through conversation" Theriault and Trincellito learned about her background and education, and Theriault asked if she was interested in working as a consultant for ICITAP developing legal curriculum. Hogarty brought her resume to Trincellito a few days later. She was not interviewed by anyone else. Hogarty's qualifications for the position were limited.[188] She was a 1991 law school graduate from Catholic University, where, she said, her studies focused on International Law and Criminal Justice. As a law student she twice worked as a paralegal for the Department of Justice, once in the Office of Legislative Affairs and later in the Office of International Affairs, where her resume indicated she prepared documents in accordance with extradition treaties. She told the OIG that after law school, she volunteered at the Democratic National Committee and briefly worked as an

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[188] Hogarty told the OIG that as a consultant at ICITAP, she initially worked with a Haitian attorney to develop curriculum for the Haitian National Police Academy; she was then part of a team that reviewed the Haitian project. She said she later developed curriculum for the judicial police training course and taught the introduction and legal section of the course.

attorney for a law firm doing asbestos defense litigation. She had little or no experience in law enforcement, French civil law, police training, or criminal justice curriculum development.

b. Federal Employee: Temporary Position

Hogarty's employment status changed on January 29, 1996, when she was hired by ICITAP as a full-time Program Analyst, in a temporary position, not to exceed one year. Personnel records showed that Hogarty applied to ICITAP for the temporary position on November 15, 1995. Hogarty acknowledged in an OIG interview that when she applied for the temporary position she was dating Bratt. Hogarty said that she dated Bratt from September 1995 to December 1995.[189] Hogarty initially told the OIG that she did not discuss the temporary position with Bratt prior to being hired, but later in the OIG interview she admitted that she had told Bratt that she was applying for the position.[190] Hogarty said that she could not recall Bratt's response or any other details of the conversation. Hogarty added that because Bratt was no longer the Acting Director of ICITAP, she "assumed" that he had nothing to do with her selection. Hogarty told the OIG that she prepared her application for this position in accordance with the instructions contained in the vacancy announcement. Hogarty said that she was not interviewed for the position and that she could not identify the selecting official.

Documents in Hogarty's Official Personnel File showed she was selected by Trincellito, then the Associate Director for Operations, on December 12, 1995. Trincellito told the OIG that Hogarty was hired as a temporary employee to avoid a contract problem. He said that the Contracting Officer's Technical Representative (COTR), Robert Trevillian, believed that Hogarty could be perceived to be working as a long-term consultant under a personal services contract.

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[189] In mid-August 1995, Bratt left the position of Acting Director of ICITAP and resumed his position as Executive Officer of the Criminal Division. However, Bratt retained authority to approve personnel decisions at ICITAP.

[190] Later in the interview Hogarty again denied talking to Bratt about the position.

c. Federal Employee: Permanent Position

Hogarty's employment status changed again on January 5, 1997. On that date Hogarty was selected for a full-time, permanent, career position at ICITAP as a Program Analyst. She was hired at the same grade and in the same career series as her temporary position. Bratt, who was then the ICITAP/OPDAT Coordinator, signed the paperwork as the "Action Authorized By" official.

3. Allegation of Preselection

Ernest M. Buck, ICITAP's Assistant Program Manager for Africa in 1997, told the OIG that although he was interested in obtaining a career, permanent position himself, he did not apply for the program analyst position because he believed that Hogarty had been preselected.

Buck told the OIG that he came to work at ICITAP in June 1994 as a term employee. His initial appointment was for two years. In June 1996 he was reappointed for an additional two years or until June 1998. Buck said that he left a career position at INTERPOL to accept the term appointment at ICITAP based on the assurances he received from Stromsem and Trincellito that they would do everything they could to get him a career or permanent position later.

Buck said that since he had been at ICITAP there had been only one permanent position posted and that position was given to Hogarty. Buck added that he did not learn about the vacancy until near the closeout date, that is, the date by which applications had to be submitted. Buck recalled a day he and another ICITAP employee were discussing the vacancy announcement that was still open for applications.[191] Buck said, and the other employee confirmed to the OIG, that Hogarty approached them and said, "that's my position."

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[191] Vacant or newly created positions are advertised through the use of "vacancy announcements." The announcements normally contain instructions on how and where to file an application. The announcement also contains a position description and provides a list of the minimum qualifications. The announcement contains an "opening date," which is the date the Personnel Office will begin accepting applications, as well as a "closing date," which is the date beyond which applications will no longer be accepted.

According to Buck, he and the other employee questioned Hogarty about her remark, to which Hogarty responded that she had been selected for the position. Buck told the OIG that he did not apply for the position because he believed that Hogarty's statement that the position was hers was accurate.

Buck said he believed Bratt selected Hogarty because Bratt and Hogarty had been involved in a relationship. Buck claimed to have some first-hand knowledge of the relationship.[192] Buck explained that he would answer the telephones after the secretaries had left for the day and that Bratt would frequently call at that time looking for Hogarty.

Buck said part of the reason why he and the others questioned Hogarty's selection was because Bratt had recently announced that there would be no more permanent positions offered at ICITAP. Buck said that all the "term" employees questioned what had occurred, but none dared to confront Bratt for fear of angering him.

4. Hogarty's Explanation

Hogarty claimed to have little recollection of how she obtained the permanent position or the circumstances of her application. Hogarty told the OIG that she did not recall how she became aware of the vacancy. Hogarty said that she did not remember discussing the vacancy with any other ICITAP employee or manager. Hogarty added that she did not interview for the position, and she did not know who selected her. According to Hogarty, a member of ICITAP's personnel staff told her that Hogarty's temporary position was being converted to a different type of appointment and that it had something to do with "CTAP."[193] Hogarty said that transitioning from a

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[192] Although Hogarty told the OIG that she believed that no one knew of her relationship with Bratt, several witnesses told us that they had been told by Bratt of his interest in dating Hogarty; knew of the relationship directly from Hogarty or Bratt; learned of it indirectly from those to whom Hogarty or Bratt had spoken or from others; or concluded that they had a personal relationship from their conduct.

[193] Under the Career Transition Assistance Program (CTAP), federal employees who lose their jobs when their positions are eliminated due to reductions in force receive priority placement for new positions over all other applicants, including incumbent term or

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temporary to a permanent position had no real effect on her job or pay other than that she "finally had health insurance." Hogarty said that the transition did not require her to do anything, such as submit another application. Hogarty denied telling other ICITAP employees that the position was hers prior to being selected. Hogarty said that she was not told that the position was hers until she was notified of her selection.

5. Decision to Hire Hogarty for Permanent Career Position

To resolve the question of whether Hogarty had been preselected for a position at ICITAP, the OIG investigated who made the decision to hire Hogarty and why. None of the ICITAP managers interviewed by the OIG took responsibility for hiring Hogarty.

The OIG examined the Merit Promotion File maintained by JMD for the Program Analyst position filled by Hogarty. The vacancy announcement opened on November 1, 1996, and closed on November 15, 1996. There were 11 applications for the position. Although Hogarty told the OIG that she did not file a new application for the position, among the 11 applications in the Merit Promotion File was an Application for Federal Employment, signed by Hogarty, dated November 10, 1996.

The OIG asked JMD Supervisory Personnel Specialist Jacqueline Whitaker to review the file. Whitaker generally found that the paperwork was in order; she did not notice anything out of the ordinary or improper about Hogarty's selection based on the information in the file.

Whitaker, however, was unable to identify from JMD's file who selected Hogarty. Whitaker said that the personnel specialist should obtain something in writing from the selecting official that would indicate his or her selection. Whitaker said there was no such document in the file. There was a document in the file that showed that ICITAP had named Hogarty, as was its prerogative, as someone in whom it had particular interest. Whitaker said that normally the

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temporary employees. In fact, while the CTAP program resulted in the extension of her temporary appointment, it had nothing to do with Hogarty's permanent appointment.

selecting official is the person identified on the SF 52 as requesting the recruitment, in this case, Janice Stromsem.

a. ICITAP Managers Denied Selecting Hogarty

Stromsem denied that she was the selecting official for Hogarty. In February 1998, at the first interview at which we raised the issue with Stromsem, she said that she had advised Bratt to only hire term appointments, advice that Stromsem said Bratt agreed with. In March 1996, Bratt issued a memorandum advising that "any new hiring should be done under temporary/term appointments …." Stromsem told the OIG that ICITAP Associate Director for Administration Raquel Mann and Trincellito, for whom Hogarty worked as a temporary employee, were responsible for hiring Hogarty as a permanent employee. Stromsem claimed that she "had words" with Mann and Trincellito about the appointment because they had not adhered to the policy to hire only term appointments.

Based on Stromsem's assertions, we interviewed Trincellito and Mann. Trincellito told the OIG that he had nothing to do with hiring Hogarty for a permanent position. He said that Hogarty, who worked for him, told him that she was applying for a position as a permanent employee. Trincellito told the OIG that after the position was announced as a permanent position, Buck asked him for clarification of the type of position that was being advertised because Buck also believed there would be no more permanent positions. Trincellito said that he told Buck that he must be mistaken about the kind of position being advertised because there were no permanent positions available. However, Trincellito looked into the matter and, he said, soon discovered from the Administrative Services Office that he was wrong.

Mann also said that she was not involved with Hogarty's selection. Mann explained that she left ICITAP on July 7, 1996, six months before Hogarty was selected for her permanent position.

In a July 1998 interview with the OIG, Stromsem told a version different from the one she told the OIG in February 1998. She said that after the earlier interview, she reviewed Hogarty's personnel file and discussed the matter with

Special Assistant to the Director of ICITAP, Cary Hoover.[194] Stromsem told the OIG that Bratt awarded Hogarty the permanent position. She said that Hoover reminded her that, at Hoover's suggestion, Bratt had given Hogarty a permanent job to reward her with health benefits for the good job that she had done on a special project with Hoover in Haiti in September 1996. She claimed in the July interview that the "words" with Trincellito that she had discussed in the prior OIG interview had taken place when Hogarty had moved from a consultant's position to a temporary position. She said that Trincellito or one of her deputy directors, Edward Bejarano or Robert Perito, would have reviewed the applications for the permanent position and suggested that if Bratt directed anyone, he would have directed Bejarano, Perito, or Administrative Services Officer Robert Miller to sign any necessary paperwork. Stromsem told the OIG that she did not recall talking to Bratt or anyone from his staff about hiring Hogarty as a permanent employee.

As a result of this new information, we interviewed Bejarano and Perito. At the time of Hogarty's permanent appointment, Bejarano was a Supervisory Special Agent with the FBI on a temporary detail to ICITAP. He started at ICITAP in June 1996. Bejarano denied being involved in the selection of Hogarty for a permanent position. Bejarano said that he did not recall seeing the vacancy announcement, the best-qualified list, or any of the paperwork that would normally be associated with a permanent position.

Perito also denied being involved in the selection of Hogarty for a permanent position at ICITAP. Perito believed that he was told after the fact that Hogarty had received a permanent position.

In addition to JMD's file on the position that Hogarty filled, we also reviewed the Hogarty personnel file maintained by ICITAP's personnel specialist. In ICITAP's Hogarty file was a copy of the Certificate of

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[194] Although we asked witnesses not to discuss with others the subjects of interviews, to the extent that we were able to judge, few individuals whose conduct was at issue respected this request.

Eligibles.[195] Handwritten next to Hogarty's name is the letter "A" and the initials, "CH," most likely referring to Cary Hoover.

Stromsem, however, told the OIG that Hoover could not have been the selecting official for Hogarty, since Hoover did not have authority to carry out personnel actions. Hoover, she said, would not have approved the appointment without talking to someone else beforehand – someone such as Bratt, herself, or one of her deputies. She said that Hoover did not discuss it with her. Hoover denied that he had anything to do with getting Hogarty a permanent position beyond flagging to the "chain of command" that Hogarty did not have health benefits.

In sum, none of the managers could clarify who selected Hogarty for the permanent position. The ICITAP Director, the two Deputy Directors, Hogarty's immediate supervisor, and the Special Assistant to the Director all denied selecting Hogarty for the permanent position.

b. Bratt Denied Selecting Hogarty

Twice during Hogarty's tenure at ICITAP, Bratt supervised ICITAP: once as Acting Director and once as Coordinator. Even in the interim between these positions, Bratt maintained responsibility for approving personnel decisions at ICITAP.

Bratt served as the Acting Director of ICITAP from March 1995 to mid-August 1995. Throughout Bratt's tenure as Acting Director, Hogarty was an ICITAP contractor. Hogarty said that she dated Bratt from September 1995 to December 1995, after he left the Acting Director position. During the period she dated Bratt she was selected for the temporary position (she was selected December 12, 1995). Bratt served as the Coordinator of ICITAP and OPDAT from September 1996 through April 1997. During this period Hogarty applied for and was selected for her permanent position.

Bratt acknowledged to the OIG that at the conclusion of his time as Acting Director in August 1995, he began a social relationship with Hogarty.

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[195] The Certificate of Eligibles was sent by the United States Office of Personnel Management after it evaluated and ranked the candidates.

According to Bratt the relationship consisted of them getting together to have a few beers after work and dinner perhaps three or four times during October or November 1995. Bratt noted to the OIG that Hogarty was a contractor and not a federal employee when they dated.

Bratt said that he had no idea how Hogarty was invited to apply for a contractor position with ICITAP. Bratt insisted that at no time while dating Hogarty did they discuss her becoming a federal employee. Bratt said that he was aware that at some point Hogarty did, in fact, become either a temporary or term employee.

Bratt claimed that after Hoover and Hogarty returned from Haiti in December 1996, Stromsem approached him about trying to fill some permanent positions. Bratt said that Stromsem was "high" on Hogarty. Bratt said that he and Stromsem discussed hiring Hogarty, but Bratt denied ordering Stromsem or anyone else to hire Hogarty. Bratt said he did not select Hogarty for her permanent position and suggested that Stromsem was the selecting official.

6. Evidence of Preselection

We found strong evidence that Bratt made the decision to give Hogarty the permanent job before the job vacancy had even been announced publicly. We also found evidence that Bratt had been informed, as had other managers, that Hogarty did not have health benefits as a temporary employee. One way to provide Hogarty with health benefits was to hire her as a permanent employee.

a. Bratt Authorized Hiring Hogarty Before Vacancy Announced

The vacancy announcement opened the position for competition on November 1, 1996. Yet, we found an e-mail from Bratt dated October 8, 1996, that is three weeks before the position was announced and opened for competition, authorizing that Hogarty be hired for the position.

Sandra Bright, the Acting Executive Officer of the Criminal Division, e-mailed Bratt asking a question about the 35 employee ceiling imposed on ICITAP.[196] On October 8, 1996, at 10:06 a.m., Bratt responded:

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   Date:  Tuesday, October 8, 1996   10:06 am
   From:  CRM05(BRATT)
Subject:  ceiling -Reply

Nope...I don't know where the 35 came from. EAch hire for ICITAP
is a case by case basis. I do not want to hire many, if any full
time people. I just authorized that they hire Jill Hogarty as a
full time person.
OPDAT is another question. I don't know where the ceiling could
end up. The situation is the same for both of these. For the
next few months the ceilings for these organizations is fluid.
By January we will set pretty solid levels. Till then we should
discuss each hire.

bob
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The OIG showed Bratt the e-mail and asked him about the statement he wrote, "*I just authorized that they hire Jill Hogarty as a full time person.*"[197] (Emphasis added.) Bratt did not offer any explanation for his October 8 authorization of Hogarty for a "full time" position when the vacancy announcement had not yet been issued. After reviewing the draft of this chapter, Bratt's attorney wrote in a response to the OIG, "The email from Mr. Bratt saying he cleared the way for Ms. Hogarty's promotion does not mean he ordered her selected without regard to competition as is implied by the IG. Rather, this email is simply consistent with removing barriers to her conversion so that she could be converted if she applied and was selected."

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[196] Bratt had sent Stromsem a memorandum in March 1996 in which he told her, "ICITAP now has 35 full-time permanent employees; [t]hat current on-board strength will be your new personnel ceiling."

[197] Permanent positions were sometimes described as "full-time."

During his OIG interview, Bratt specifically denied hiring Hogarty to provide her with health benefits. Bratt said that the issue of Hogarty's lack of benefits as a temporary employee was raised but he could not recall who raised the issue. He said he did not take any action in response to Hogarty's lack of benefits.

We find Bratt's belated explanation of the e-mail nonsensical. Bratt made no reference in the e-mail to "barriers" that were being removed. The only potential barrier to Hogarty's hire was a fair and open competition for the position.

b. Hoover Told Bratt that Hogarty Had No Health Benefits

Hoover told the OIG that he had a conversation with Bratt in which he told Bratt that Hogarty did not have health benefits. Hoover said that the subject of Hogarty's health benefits was discussed during the fall of 1996. Hoover told the OIG that Hogarty told him about her lack of health benefits while in Haiti over the Labor Day weekend in 1996. Hoover said that in late September 1996, Bratt gave him a $200 cash spot award for his work in Haiti with Hogarty. Bratt told Hoover what a great job they had done in Haiti. Hoover said that in response, he told Bratt "good … thank you … now do you know that Jill [Hogarty] doesn't even have benefits." According to Hoover**,** Bratt was surprised but Hoover could not recall his exact response. He did think, however, that Bratt said that he would look into it.

Hoover said Bratt later told him in a phone call, "The Jill situation is fixed," or "The Jill situation has been handled." Because he changed offices shortly before this conversation with Bratt, Hoover placed Bratt's phone call telling him that the Hogarty situation had been fixed or handled to the first ten days of October 1996. Although Hoover claimed that he could not recall the circumstances, he said that within a week or two of his call with Bratt, it was "very possible" that when he saw Hogarty he said, "Oh, I understand there is good news," or words to that effect. Hoover recalled that she made the comment to him, "Yes, everything is fine now, I have benefits."

c. Administrative Services Officer Robert Miller Directed to Create a Position for Hogarty with Health Benefits

From July 1995 until April 1997, Robert Miller was the Administration Services Officer for ICITAP. According to Miller, principal among his duties

at ICITAP was to make sure personnel actions were executed in accordance with the regulations.[198] Before coming to ICITAP, Miller was the Personnel Director for External Agencies at the General Services Administration. Miller described himself as an "expert" in personnel issues. Miller said that in general he was not aware of any improper personnel actions at ICITAP. However, he noted that when ICITAP personnel actions were viewed collectively, a pattern emerged. He said that virtually every person hired by ICITAP was known to ICITAP managers before they were hired. Miller believed that the sum of the personnel actions created an appearance that management was handpicking only people they knew for positions.

Miller added that, in his judgment, the only personnel action that raised questions was the one pertaining to the hiring of Hogarty. Miller recalled that during the open period for the vacancy announcement, Buck complained that Hogarty was telling people, "that's my job." Miller said other people may have also complained, but he clearly recalled Buck's complaint. Miller told the OIG that if Hogarty, or anyone else, was announcing that a vacancy is "my job," then that would have a chilling effect on the hiring process and, in his opinion, would make the process unfair. Miller said that he told Hogarty's supervisor, Trincellito, to have Hogarty "cease and desist" such behavior.

When asked if Hogarty's declaration was true, Miller responded, "All those jobs were earmarked for somebody." We asked Miller whether Hogarty had any factual basis for thinking the permanent position she received was hers. Miller recalled a conversation he had with Stromsem in October or November 1996, just a few months before Hogarty's temporary appointment was to expire on January 28, 1997. Stromsem came to Miller and said that Hogarty needed health insurance and asked Miller what kind of appointment could be arranged for Hogarty so that she could have health insurance. Miller said, based on his conversation with Stromsem, that he believed she was making the inquiry on behalf of Bratt. Miller said that he may have had this

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[198] Miller also told the OIG that, "My job is to find ways to make management happy. To be as creative as possible to meet management objectives while ensuring that they [the managers] are staying between the lines."

conversation with Stromsem's Special Assistant, Cary Hoover, but he was reasonably certain it was with Stromsem.

Miller went on to say that he initially told Stromsem that if Hogarty's temporary appointment were extended for an additional year she would be eligible for health benefits in the second year. Stromsem told Miller three months was too long to wait. As a result, they decided to change Hogarty's appointment from temporary to a "term" appointment, which would allow Hogarty to receive health benefits immediately.

Miller said that he prepared an SF 52 to create a term position vacancy for Hogarty and sent it up the chain of command to Bratt for authorization. Miller said the SF 52 came back to him "through the chain of command from Bratt to Stromsem" with the instruction to "just make it permanent." Miller did not believe Stromsem was the driving force for hiring Hogarty. He told the OIG that he recalled Stromsem saying that it was Bratt who wanted to get Hogarty health benefits.

Miller added that he remembered thinking this "would stick out a bit, but who am I [to question it]." Miller said he thought a permanent position would "stick out" because it "created a precedent" and ICITAP did not have many permanent positions. Additionally, Miller recalled that it had recently been announced at a staff meeting that ICITAP headquarters would not be making any position permanent because "headquarters was fat." Miller explained that this ICITAP headquarters policy against hiring anyone into a permanent position was fresh in his mind when he had his initial discussion with Stromsem. Miller said that was why he had not offered the option of a permanent position in the beginning. Miller said he did not think it was an option.

Miller said that if he had believed it was Stromsem's decision to make the position permanent he would have told her that it was not a good idea and that it would "stick out" and negatively affect morale. Miller told the OIG that he did not give this advice because he believed that a number of options for getting Hogarty health benefits had been evaluated, that Bratt had his own reasons for making the position permanent, and that any advice from Miller would probably "not be welcome."

7. OIG's Conclusion

The evidence shows that Hogarty was preselected in October 1996 for a permanent federal position and that Bratt, a federal supervisor who had previously engaged in a personal relationship with her, approved the preselection. The evidence also showed that Stromsem knowingly participated in the preselection. This preselection had a "chilling" effect on other qualified employees, such as Buck, who believed he had no opportunity to be selected.

We find Bratt and Stromsem's conduct in this matter to be prohibited under the Merit System Principles and constituted a prohibited personnel practice. 5 USC Chapter 23, §2301(b)(1); § 2302 Subpart (b); 5 CFR Part 2635, § 2635.101(b)(8) and (14).

B. Hiring of Richard Nearing

Richard C. Nearing is the father of Stromsem's former husband's step-children.[199] Nearing worked for ICITAP as a consultant from January 1997 until September 1997.[200] While a consultant, Nearing applied and was selected by Stromsem for a term position at ICITAP as a program manager. However, other managers questioned his qualifications, and he was terminated as a consultant before being hired for the program manager position.

Stromsem told the OIG that she hired Nearing as a consultant after he called and asked to be interviewed for a position with ICITAP. Stromsem surmised that Nearing called her after she told her daughters that she was looking for people who could do a certain type of work. They apparently passed that information to their stepsisters who, in turn, told their father, Nearing.

Stromsem told the OIG that she interviewed five people for the consultant position and that she offered the position to four of the candidates before Nearing. Each of the four turned down her offer. According to

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[199] The former spouses of Nearing and Stromsem are currently married to each other.

[200] According to Nearing, he initially worked on South Africa and Rwanda program items, training requirements, and program implementation plans. Later, he worked on the Haiti project.

Stromsem, Nearing was the only person who would accept the consultant position.

Stromsem offered to provide documentation of her efforts to hire these individuals and subsequently provided a memorandum dated July 10, 1997, eight months after the interviews were alleged to have occurred and three months after initiation of the OIG investigation. In the memorandum it says the interviews were done between November and December 1996 and were conducted by "Bob Perito, and/or Ed Bejarano and me…."[201]

In a subsequent OIG interview Stromsem recalled interviewing only two candidates, a female congressional staffer and Nearing. Stromsem said the female staffer was not interested in a term appointment and declined the position. Stromsem repeated that Nearing was the only candidate to accept the position.

Stromsem admitted that Nearing had no law enforcement experience and as far as she knew had been previously employed as a "management consultant and a sales person, or something like that." A review of Nearing's resume confirmed his lack of law enforcement experience, as well as a lack of government experience. The resume indicated he was last employed as the Director of Marketing for the Orient Express, Inc., having held that position for only one year. Nearing graduated from Georgetown University in 1966 and attended that university's law school for one year in 1967. Explaining her hiring of Nearing, Stromsem told the OIG that she was looking for people who could write. The OIG asked whether Stromsem reviewed a writing sample from Nearing. She said she only asked for a resume.

Deputy Director Perito told the OIG that he and Stromsem interviewed Nearing for the consultant position. Perito told the OIG that ICITAP was looking for individuals to work as consultants with broad experience and good writing capabilities who could create proposals, reports, and evaluations. Perito said that he identified one individual for the consultant position and Stromsem identified Nearing. Perito believed that Stromsem told him that Nearing was a relative of someone Stromsem knew, but that Stromsem did not

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[201] The document is a memorandum to the file. The purpose for writing it is not given in the memorandum.

perceive a conflict of interest in proposing to hire Nearing. Perito could not remember if Stromsem told him about Nearing's skills, but he did remember reviewing Nearing's resume. Perito recalled that Nearing did not have any law enforcement experience, but Perito thought that Nearing did have experience in owning his own business.[202] Perito explained that a lot of what ICITAP does is administrative and does not require a law enforcement background. According to Perito, Nearing was the only person who would accept the consulting position.

Nearing told the OIG that he became familiar with ICITAP while working for a courier company whose name he could not recall. Nearing added that since his daughter went to school with Stromsem's daughter he decided to call Stromsem and express his interest in joining ICITAP. Nearing said that he went for an interview with Stromsem and Perito. At the conclusion of the interview he received a job offer for a contractor position. Nearing said that he was directed to an ICITAP contractor and was told that the contractor would hire him and work out the other details.

During the OIG's interview of Nearing, when he was still working as a consultant for ICITAP, he indicated that he believed he was going to be selected for an ICITAP term position. He said that once he became a term employee, he would become the Assistant Program Manager for Haiti at ICITAP Headquarters.

Stromsem said that while employed as a consultant, Nearing applied for a federal position at ICITAP and had been found qualified by the Office of Personnel Management. However, Stromsem said that in this same period the Department's Ethics Office called to discuss a potential conflict of interest with the consultants. The Ethics Office was concerned about consultants being hired as federal employees and then making decisions relative to their former employer. Stromsem said that in response to the Ethics Office concerns, Warlow sought waivers for people who either were employees or were about to become employees of the otherwise applicable conflict of interest provision that would have barred the employees from making decisions regarding their former contract employers. To get such waivers, Warlow prepared letters for

[202] Nearing's resume does not show that he had owned his own business.

the signature of Acting Assistant Attorney General for the Criminal Division John Keeney.

Stromsem said that there were several people, however, for whom Warlow would not agree to seek a waiver. One of those was Nearing. The waiver letter had to explain why it was in the interest of the government to bring a particular consultant on as a federal employee. According to Stromsem, Warlow did not think Nearing was "what we were looking for," so she would not write the letter. Stromsem said she agreed with Warlow because Stromsem had found "another source" for what she was looking for, another way "of getting people who could write and plan." Nearing's work as a consultant with ICITAP ended in the fall of 1997 and he left ICITAP then.

ICITAP Deputy Director Bejarano told the OIG that in early 1997 Nearing applied for an Assistant Program Manager position in Haiti but did not make the "best qualified" list.[203] Bejarano said no one was selected for the job. The position was re-advertised in March 1997 and this time Nearing did make the "best qualified" list. Bejarano said that he reviewed Nearing's resume as part of the selection process. Bejarano added that he noticed Nearing had no law enforcement experience and seemed to change jobs every three years.

Bejarano said that he, Stromsem, and Perito met to interview a retired State Department Regional Security officer with 25 years of law enforcement experience for the position. According to Bejarano, they did not interview Nearing. Bejarano said that he, Stromsem, and Perito met again to make their selection. Bejarano wanted to hire the retired Security officer but was outvoted by Perito and Stromsem. Bejarano added that at the time he was not aware of any family connection between Nearing and Stromsem. Bejarano said that Stromsem instructed him to sign the personnel action hiring Nearing for the position.

By this time, Bejarano explained, Warlow had been appointed the Coordinator for ICITAP and OPDAT. Warlow approached Bejarano and chastised him for selecting such an unqualified person for the position.

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[203] The Best Qualified List is composed of those individuals who qualify for a position under competitive merit promotion/staffing procedures. Referrals of candidates evaluated under competitive procedures to the selecting official are made from among this group.

Bejarano said that he explained the circumstances to Warlow and she told Bejarano that she could not let them hire Nearing.

Warlow told the OIG that Nearing told her he had been hired as a contractor for a trial period and if he worked out he would get a government job. Warlow said Nearing applied for a program manager job shortly after being hired as a contractor but he did not qualify for the position. He was retained as a consultant, however, and in April 1997 Nearing applied for another government job. According to Warlow, his application consisted of four to five pages that basically described his four months experience as an ICITAP contractor, yet somehow he emerged as a candidate for the job.

Warlow said she asked Stromsem how Nearing became a possible candidate for employment, and Stromsem said that she had become aware of Nearing through the father of her children. Stromsem told Warlow that she thought Nearing was a good writer.

Warlow explained to the OIG that she had heard that there was some resentment toward Nearing and thought the situation was very peculiar. Warlow said she asked Stromsem again about Nearing when Warlow learned that Nearing's ex-wife's current last name was Stromsem. Stromsem explained that Nearing's ex-wife was married to Stromsem's ex-husband.

Warlow understood that Stromsem wanted to hire Nearing for the Assistant Program Manager position and that although Bejarano signed the paperwork to hire Nearing, Bejarano was actually the only dissenting voice. Bejarano defended his action to Warlow by saying it was the "decision of the group" but Bejarano told Warlow that he felt Nearing was not qualified.

Warlow said she had reservations about Nearing not being qualified because of his lack of experience, and she was troubled by his personal connection to Stromsem. When Nearing was listed as a qualified candidate for the Assistant Program Manager for Haiti, Warlow said she knew she had to confront the issue. In Warlow's opinion, Nearing was not qualified and the process for hiring him was inappropriate. Warlow said she could not recommend to Keeney that it was in the best interest of the government to waive the conflict of interest for Nearing.

Although Stromsem had told the OIG that she agreed with Warlow's decision, Warlow said Stromsem protested the decision not to hire Nearing. Warlow said that she asked Stromsem why, in light of all the allegations of

cronyism at ICITAP, she did not recuse herself from Nearing's selection. According to Warlow, Stromsem had no answer. Bejarano told the OIG that while Stromsem refused to discuss the issue with Warlow, Stromsem yelled at Bejarano one day that he and Warlow had made the wrong decision about Nearing and they were ruining ICITAP.

Had it not been for the intervention of Warlow, there is little doubt that Nearing would have been selected to fill the Assistant Program Manager position, a term appointment as a federal employee. Both Bejarano and Warlow thought that Nearing was unqualified for the position. While we recognize a manager's prerogative to hire individuals with certain skills rather than experience in a particular field, Stromsem's involvement in Nearing's hire gave rise to an appearance of favoritism. She should have recused herself from the hiring process.

C. Socializing with Subordinates

1. Allegations and Investigation

The OIG received numerous allegations that Bratt routinely socialized with an "inner circle" of his subordinates at the Office of Administration and at ICITAP, that he gave favored treatment to them, and that he dated subordinates. We are aware of no specific rule that prohibits a supervisor from socializing with a subordinate. However, the conflict of interest statutes and the Standards of Ethical Conduct for Employees of the Executive Branch set forth the general rule that a federal employee is to avoid situations where his official actions affect or appear to affect his private interests, financial or non-financial. Moreover, as a matter of common sense and good management, supervisory officials should avoid creating situations in which employees are likely to view the manager as rewarding employees for personal reasons rather than merit.

The OIG learned from interviews that Bratt socialized extensively with a certain group of subordinates. Bratt regularly joined a group of Criminal Division personnel after work for drinks. This same group, we were told, went to the gym or played basketball with Bratt and was invited to his beach house in Delaware.

We also heard from Office of Administration and ICITAP staff that Bratt unfairly promoted or otherwise favored with bonuses the same group of people

with whom he regularly socialized. We reviewed the career histories of some of the individuals about whom the allegations were made. We observed that individuals with whom Bratt socialized received rapid career advancement. Bratt was the requesting official, the authorizing official, and sometimes both for many of the promotions.[204] For example, two employees in the Office of Administration went from GS 7s to GS 14s in five years; another individual advanced from a GS 9 to a GS 15 in six years. One of these employees received three $2000 awards and a total of over $7700 in awards over the course of four years. Another of these employees was promoted to a supervisory position after a vacancy (for a position that required technical knowledge not common in the Department of Justice) that was advertised only within the Department and for which he was the only applicant. Bright said she selected him for the job, but Bratt told the OIG that he had input into the decision. Bratt told us that he had hosted the employee and the employee's girlfriend at his beach house for three days. The employee, in turn, told us that while he did not recall whether it was in response to a request from Bratt, he had volunteered to and did spend a weekend at Bratt's beach house putting up drywall and insulation.

However, we did not compare the careers of these individuals with the careers of other employees who were not part of the "inner circle." Therefore, we cannot say this history necessarily demonstrates that Bratt treated his friends more favorably than he did others on his staff. Yet, other staff members certainly believed that this group was being unfairly favored and the appearance of favoritism added to the divisiveness and animosity in ICITAP and the Office of Administration.

In addition, some people perceived Bratt as flirtatious at staff meetings because of the way he joked and used diminutive nicknames, and because of the interplay between himself and the women who were perceived to be the subjects of his attention. Bright told the OIG that Bratt would sometimes tell off-color jokes at staff meetings. Bright said that she warned Bratt that he was the boss and just because everyone laughed, it did not mean some people might not be offended.

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[204] The records did not show who was responsible for the bonus awards.

Bratt's conduct with female subordinates in particular was a contributing factor to the general impression that he engaged in improper favoritism toward certain employees. Although Bratt denied it, the OIG was told by staff members that Bratt asked out or dated several female subordinates and contractors in ICITAP and the Office of Administration. We were also told that Bratt asked subordinates to find out whether a particular ICITAP contractor was seeing someone, and that staff members set Bratt up on dates.

We were told that Bratt intervened to protect the salary of a woman who worked as a subcontractor when she was found unqualified for the position she occupied. We were told of Bratt's interest in the woman. According to one employee, the subcontractor told the employee that she was "in favor" with Bratt; the employee also said that at one point, "the word went out" through the Criminal Division that the subcontractor was "untouchable because Bratt was interested in her." Another individual told the OIG that the subcontractor told her that Bratt had "asked her out" a couple of times. During a renegotiation process in 1996 with the prime contractor, the Criminal Division's Management Information Services office convened a working group to examine the qualifications of the contractor's personnel. We were told that the group found that the subcontractor was not qualified for the position she held. When told the results by one of the working group members, Bratt directed that she was "not to lose a dime, you hear me, not to lose a dime." Bratt said in a December 1995 e-mail that he had "heard more good things about [her] in the past week than anyone in Admin…. Can we have the company give her a Christmas bonus? a nice bonus too." Bratt denied that he had any social contact with the woman.

Bratt's conduct with female subordinates and engaging in regular social activities with certain select individuals led to dysfunctional office dynamics. Hoover told us that during the course of the OIG investigation he discussed this issue with Bratt.

> [M]y feeling was that perhaps [Bratt] had been running ICITAP and OPDAT and Admin like a frat house and that a lot of people deeply resented that … it was like inner circle/outer circle dynamics that ran the Criminal Division's Executive Office.

Hoover said that in response, Bratt said, "Well, you may be right; but still I don't see what I have done outright wrong."

Steven Parent, a friend of Bratt's who is now a Deputy Executive Officer in the Office of Administration, said that when he stopped in to see Bratt one day, Bratt asked Parent, "If I dated so and so ... what's wrong with that?" Parent responded that if he had the situation as a hypothetical in law school, he could probably construe Bratt's behavior (dating subordinates) as a pattern of behavior that allowed Bratt to get personal benefit out of hiring people who he ends up dating.

Bratt denied to the OIG that he improperly promoted and awarded subordinates who were his friends. Bratt acknowledged socializing outside of the office with several female subordinates in the office, but he told the OIG that he tried to keep "work, work and play, play."

2. OIG's Conclusion

When a supervisor becomes and is known to be a personal friend of a subordinate, special care must be taken to avoid the appearance of impropriety in personnel actions. The fact that we received numerous allegations that Bratt favored a small, select group suggests inadequate care was taken to avoid the appearance of favoritism.

By dating or socializing with women in the office, Bratt created an atmosphere in which allegations of favoritism flourished. Bratt did nothing, we believe, to discourage his subordinates from fixing him up and from playing a go-between role in his personal life. We believe this can constitute behavior inappropriate to the workplace.

Bratt, in particular, should have been aware of the problems that arise when a manager is perceived to improperly favor some employees over others. In February and July 1995, Bratt wrote reports to Assistant Attorney General Jo Ann Harris after he investigated allegations of impropriety that had been made against ICITAP Acting Director John Theriault. One of the allegations was that Theriault surrounded himself with and favored a core group. Bratt wrote to Harris:

> Relying upon this core group, [Theriault] ignored the advice and counsel of the remaining staff and publicly criticized their performance. The result was a divided staff and an unproductive work environment. This problem was exacerbated by … Theriault's apparently close personal relationships with two [of the individuals]. …

> These contractors became part of the Director's inner circle and were allowed to perform activities outside the scope of appropriate contractual responsibilities, including issuing direction to ICITAP staff.
>
> [I]t is no surprise that … employees are professionally and personally frustrated by … their sense of being ill-appreciated or professionally disadvantaged because they were not a part of the Director's 'inner circle.'

Yet, Bratt did not recognize that he created the same problems among his own staff for which he had criticized his predecessor.

CHAPTER NINE: FINANCIAL MISMANAGEMENT

The OIG received allegations that ICITAP and OPDAT's finances were mismanaged. While we do not discuss every issue that was raised to us, the allegations that we address are illustrative of problems that were reported to the OIG.

We discuss below the allegations that ICITAP did not know on what it had spent its money, that it was overcharged for services, and that it did not always get that for which it had paid. In particular, we examined the allegation that: 1) ICITAP could not account for its expenditures in the Newly Independent States (NIS) program, 2) ICITAP did nothing when one of its service providers unilaterally increased its charges, 3) ICITAP spent over $300,000 on a computer program that did not work, and 4) OPDAT substantially overspent its translation budget for the first conference it ran at the International Law Enforcement Academy. In the course of our investigation, we also found that at the request of Criminal Division managers, a company which had contracted to provide computer facilities support over a period of years rendered services to the Office of Administration and to ICITAP and OPDAT that were outside the scope of its contract. We found that the Criminal Division failed to effectively oversee the contract and that the company overcharged for services that it performed for the Criminal Division. With respect to ICITAP's Haiti program, we found that ICITAP was able to account for certain goods that the OIG selected for tracking.

I. ICITAP'S INABILITY TO ACCOUNT FOR EXPENDITURES FOR THE NEWLY INDEPENDENT STATES

Managers need accurate financial data to effectively run programs, particularly programs as complex as those involving training in foreign countries. Yet, ICITAP operated for years without the ability to ascertain whether it was receiving the goods it had ordered and for which it had paid. In essence, the financial data that ICITAP collected from its service contractors did not permit managers to track the services that contractors delivered with services that ICITAP had ordered.

Even when ICITAP managers were notified of the billing problem, they failed to take action to solve it in a timely manner. In an investigation that predated this one, the OIG was asked by Assistant Attorney General for the Criminal Division Jo Ann Harris in 1994 to investigate allegations of

misconduct at ICITAP. The allegations concerned a variety of issues, including mismanagement of service contracts. In a report dated August 11, 1994, the OIG noted that "The billing systems used by some of the service contractors made it difficult, if not impossible, for ICITAP to verify the accuracy of invoices. Furthermore, ICITAP did not have an effective system to verify that goods and services ordered from the service contractors were actually received." The OIG cautioned ICITAP and the Criminal Division that "ICITAP is highly vulnerable to contractor over-charges."

During the current investigation, the OIG again examined ICITAP's billing system as a result of receiving an allegation that ICITAP could not account for more than $1.0 million allocated to ICITAP's NIS program. To investigate the allegation, we interviewed managers and financial officers at the Department of State and ICITAP who funded or supervised ICITAP's NIS program and we reviewed contemporaneous documents both requesting and providing information on ICITAP's NIS accounts. We found that the problem identified by the OIG in 1994 was not remedied until after it resulted in a crisis in 1997 brought on by a request by the State Department for an accounting of ICITAP's expenditure of State Department funds.

A. State Department Requests for Accounting of Expenditures

The allegation regarding the NIS program appeared to relate to a series of reports that ICITAP prepared for the Department of State in the summer of 1997 explaining its NIS expenditures to date. In 1995, the International Narcotics Law Enforcement (INL) Section of the State Department funded a $1.35 million ICITAP program in Georgia, the Ukraine, and Belarus. In September 1996, ICITAP represented to INL that it had $1.2 million remaining from those funds. At the same time, ICITAP submitted to INL a proposal for a "regional NIS program." The Department of State asked ICITAP to "hold off" on implementation of its proposed program.

The State Department asked for a report of how ICITAP had spent the NIS money to date.[205] ICITAP Special Assistant to the Director Pamela Swain

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[205] ICITAP was required under its funding agreements with INL to "keep full and complete records and accounts with respect to the allocated funds ... and such records and accounts will be made available to USAID upon request." "In addition, a monthly summary

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told the OIG that in February 1997 ICITAP provided what she called a "good, clear document" showing its expenditures by country. The document included a Summary of Expenditures to Date. Swain said that at the time she explained to the State Department that it was difficult to arrive at the figures because for programs run in more than one country, ICITAP had no record to show how much had been spent in each country. The February 1997 ICITAP status report to the State Department showed that ICITAP had only approximately $378,000 remaining available in NIS funds, almost $1.0 million dollars less than it had a few months before.

In May 1997, ICITAP sent INL a revised proposal for approximately $3.3 million to conduct training in five NIS nations. ICITAP told State Department officials that all prior NIS funds had been spent. INL officials concluded that ICITAP had implemented the regional program. INL asked ICITAP to explain, country by country, how it had spent the money. Swain told the OIG that it was as if the conversation in February about the difficulty of coming up with this kind of accounting had never happened.

According to Department of State financial officers, their repeated requests to ICITAP for a detailed accounting of NIS funds were unsatisfied. Ultimately, in June 1997, to get a response, Department of State INL financial officers asked Sarah Brandel, the Deputy Director of INL, to intervene with Janice Stromsem, the ICITAP Director. Brandel telephoned Stromsem to convey the request.

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of obligations will be prepared and faxed to the Office of Financial Management … by the fifth working day after the end of each month" "USDOJ shall also provide USDOS with quarterly reports of program activities." In the Interagency Agreement dated February 24, 1997, between the State Department and ICITAP for funding of $34,596, cost and other reporting requirements, however, were unilaterally described as "not applicable" and initialed by Criminal Division Office of Administration Deputy Executive Officer Robin Gaige. Gaige's successor as the manager of ICITAP's financial affairs, Richard Reilly, told the OIG that Gaige would only sign the Memorandum of Understanding with these changes. He added, however, that the Department of State had not concurred with her action. The Gaige deletions were not initialed by the State Department.

In June 1997, according to the State Department, INL wanted a "specific breakdown" of how ICITAP had spent the NIS money: not just country-by-country but training course by training course. ICITAP responded to the INL request on June 26, 1997, with an analysis for Belarus expenditures. State Department officials believed that the June report showed that the Belaurus program for which ICITAP charged INL $163,000 had only cost $118,620. Because the State Department was not satisfied, in July 1997, according to the State Department, ICITAP prepared and sent to the State Department a revised report, in a different format, with less detail, in which the Belarus program was still listed as having cost $163,000. The State Department was not satisfied with this report either.

ICITAP submitted to the Department of State a final revised report on September 8, 1997. The September report showed that ICITAP had spent approximately $1.15 million. Thus, notwithstanding its earlier representation that it had spent all funds, this suggested that ICITAP had retained about $200,000 of the original $1.35 million allocated to NIS programs.[206]

B. ICITAP Managers' Explanations

We asked Richard Reilly, Chief of ICITAP's Budget and Finance Office, to explain why it was so difficult for ICITAP to provide to the State Department detail of how it spent money. Reilly noted several problems. Contractors, Reilly said, did not provide sufficient detail in their invoices to permit ICITAP to track expenditures. Reilly told the OIG that the report to the State Department was based on delivery orders with estimated, not actual, costs. He also said that ICITAP could determine totals of expenditures by task order but not by course (the way the State Department had requested the

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[206] The OIG investigation into the NIS allegation was underway when ICITAP's September 1997 report was submitted to the Department of State. The State Department budget officer who reviewed the report was concerned at what he believed to be double billing of labor costs. An OIG auditor clarified that there were two kinds of labor costs (those of the service contractor itself and those of the consultants they hired) and that the report did not show double-billing for labor. The OIG auditor was also able to explain that an item that State thought was an overcharge was an expense that ICITAP had misclassified. With these clarifications, the State Department accepted the September accounting of ICITAP's prior NIS programs.

information). As an example, Reilly said that a forensics course in Uzbekistan might include two trainers, interpreters, and travel costing $350,000. But each consultant and the course supplies would be listed on different documents. Therefore, ICITAP could not provide the requested information by reviewing paid invoices.[207]

Swain told the OIG that ICITAP prepared the document for the State Department by going through each statement of work and each delivery order. She said that she also had to use estimates because some of the expenses were based on regions and she had to pro-rate the cost of some activities to derive a per country cost.

Stromsem said that ICITAP considered the summary information adequate because one of its funding providers, the Department of State Bureau of Latin American Countries, never looked at or asked about details of each program's expenditures. According to Stromsem, no one asked for any expenditure details until the INL office at State started funding ICITAP programs in August 1995. Stromsem told the OIG that she never understood the ICITAP budget and she was frustrated with the inability of the administrative section to provide correct data. Stromsem said that one problem was that she never received financial statements that would reconcile with the money provided by the State Department. Stromsem said she had suspicions that Mann did not so much develop budgets as guess at them. Stromsem said that the financial statements Mann and then Deputy Executive Officer Robin Gaige provided never reconciled with the money provided by the State Department. According to Stromsem, when Gaige replaced Mann, Gaige was too inexperienced to manage the financial side of ICITAP's affairs as was Reilly, who took over from Gaige.

ICITAP Special Assistant to the Director Cary Hoover stated to the OIG that, "Financial accounting at ICITAP stinks." He said that no one seemed

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[207] ICITAP and JMD used a consultant, Systems Flow Incorporated (SFI), to write ICITAP's services contract request. According to SFI, it recommended to ICITAP that contractors be required to show on their vouchers detailed expenses. SFI said that it made the recommendation to ensure that ICITAP could determine that it was getting what it was paying for. However, ICITAP did not follow SFI's advice, and as a result, the contractors showed summary expenses only.

concerned about whether the numbers reconciled in the end. Hoover advised that during the time Mann was responsible for tracking budget figures, the numbers seemed okay, but no one understood how she arrived at them.

Mann told the OIG that Stromsem received detailed weekly reports relating how much money ICITAP had spent and what was in each country account but that Stromsem did not seem to review the reports. Mann also said that the administration section was presumed to have more data available than it actually did.

C. Allegation of Deliberate Misrepresentation

Two witnesses told us that the numbers used by ICITAP in its efforts to reconcile NIS expenses were not accurate. A contractor who worked with Hoover at ICITAP for two months in February and March 1997 said that Hoover told her that when he was informed that the numbers did not work, he told an ICITAP staffer who was providing budget information to the State Department to "fake it." The contractor also said that ICITAP had a similar problem accounting for expenditures in Rwanda.[208] Another ICITAP employee who worked on some of the State Department reports told the OIG that the numbers in the reports were "fudged."

Hoover told the OIG that he took over responsibility for the NIS program in February 1997, and he discovered that no one could tell him where the approximately $1.5 million already allocated to the program had been spent. Hoover said that he had five or six people working on the question for five days. He said that they did a "manual accounting" of the project and came within about $30,000 of the funds allocated. Hoover denied that he or those he assigned to the project attempted to hide the problem or otherwise attempted to fake data or deceive State Department officials.

The evidence is not sufficient to substantiate that there were deliberate misrepresentations in any of ICITAP's NIS reports to the State Department. The reports of "fudging" of figures, we believe, was probably a reflection that estimates and, to some extent, arbitrary allocations were used. There was no

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[208] An allegation about Rwandan funds is discussed in Chapter Ten, Section IV.

evidence that ICITAP hid its use of estimates and interpolations to construct a country by country accounting from the State Department.

D. OIG's Conclusions

The 1994 OIG review noted that ICITAP did not require contractors to provide sufficiently detailed invoices and we recommended that ICITAP promptly develop a system to verify the accuracy of contractor invoices. Three years later, in 1997, when the INL office of the State Department asked for information regarding expenditures by country and then by course, ICITAP still had no systematic way to retrieve this information because, just as in 1994, ICITAP paid its contractors on the basis of invoices that had data grouped by kinds of goods or services but not by country or course. In 1997, as in 1994, for ICITAP's NIS program there was no country-by-country financial profile reflecting allocated budget or expenses. The fact that it took six people repeated tries over seven months (from February to September 1997) and an OIG auditor who also provided information to the State Department to develop a report satisfactory to the State Department shows ICITAP's difficulties reconciling its NIS expenditures. Even with all the manpower that ICITAP threw at the problem, ICITAP could not account for its expenditures except in a limited way.

Funding agreements between the Departments of Justice and State required ICTIAP to provide reports of program activities and such other information or documentation that the State Department might request. When a misunderstanding arose between ICITAP and the State Department about what programs had been funded and what monies spent, it should not have come as a surprise that the State Department would request a detailed accounting. Yet, until this crisis with the State Department arose, ICITAP chose to ignore the notice that it had since at least the 1994 OIG report that it needed detail on its invoices beyond contract categories. We asked Stromsem who was responsible for responding to the 1994 OIG report. She said that she and Hoover were responsible. She said that as of the date of the interview (July 1998), they had not completed their work because it was an "on-going process" of revising policies and procedures.

Stromsem blamed others for ICITAP's failure to account for its expenditures to the State Department. Since Mann had left ICITAP approximately one year before INL pressed ICITAP for an accounting , the problem could not be laid exclusively at Mann's feet. Gaige, too, left ICITAP

before INL pressed for an accounting. Mary Ellen Warlow told the OIG that, "ICITAP [was] constantly making the administrative section a scapegoat and that is inappropriate and unfair." We believe that Stromsem's blame of Mann, Gaige, and Reilly was ill-founded, since the problem was not with the administrators but with the information available to them.

II. THE INTERLOG, INC. UNILATERAL PRICE INCREASE

The August 1994 OIG report reported that ICITAP's acceptance of inadequately detailed invoices rendered ICITAP vulnerable to contractor overcharges. During this investigation, we found that even when ICITAP received notice of a possible overcharge, it did nothing. ICITAP's lack of scrutiny of contractor bills permitted overcharges to go undetected and unresolved.

The OIG received an allegation that Interlog, one of ICITAP's service contractors, overcharged ICITAP for Interlog's services. Our investigation showed that Interlog unilaterally raised an administrative fee it charged ICITAP, an action not permitted by the contract.

In 1993, JMD issued requests for proposals to potential contractors to supply goods and services to ICITAP. Interlog bid on the ICITAP contract on the basis of ICITAP's estimates of its needs for the first year and for four successive years. The Interlog bid was accepted, and Interlog agreed to provide both personnel and supplies to ICITAP. ICITAP used Interlog to provide goods and services in Haiti, including staff to serve as cadet instructors and police advisors. The contract with Interlog to provide goods and services was signed on September 3, 1993.

On February 27, 1995, Interlog sent notice to ICITAP that effective March 1, 1995, it was increasing its materials handling fee (MHF) five percent, from four percent to nine percent (referred to in the contract as the "Contractor Handling Charge"). On March 23, 1995, it sent the same notice to JMD. The MHF compensated Interlog for indirect costs associated with the performance of a contract, for example, the labor hours spent by procurement assistants to procure the services of consultants, supplies, and equipment; receiving and shipping clerks; and the person supervising the ICITAP warehouse. There was no provision in the contract that permitted such a unilateral increase. Interlog put the increase into effect April 1, 1995. ICITAP paid the additional charge.

However, at the end of 1996 or the beginning of 1997, a contracting officer at JMD, who then had responsibility for administering the Interlog contract, saw the unanswered March 1995 notice of Interlog's unilateral fee increase. The JMD contracting officer noted in an e-mail to "Richard" (possibly Richard Reilly) "both [ICITAP and JMD] ... ignored Interlog's [notice] that it was unilaterally increasing its MHF rates." During a meeting with Interlog representatives on February 6, 1997, the JMD contracting officer required Interlog to justify the rate increase. In response, Interlog said that ICITAP had underestimated by almost 500 per cent its use of the Interlog contract in the base year. [209]

Interlog's increased charges to the government for the MHF from March 1, 1995, through September 30, 1996, was in excess of $300,000. Ultimately, because of the increased level of contract activity, in subsequent negotiations JMD allowed Interlog to increase its MHF as of April 1996. Interlog reimbursed the government $124,569, which represented the disallowed overcharge, less certain allowed offsets.[210]

The Interlog overcharge is an example of ICITAP's poor financial management. Despite being informed that a contractor was more than doubling its administrative charges ICITAP officials either failed to notice the increase or failed to take any action upon receiving the notice.

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[209] Interlog claimed that ICITAP estimated procurement activity of $100,000 for equipment and supplies when actual expenditures in the base year (FY94) were over $1.9 million. Interlog also asserted that ICITAP had notified Interlog that it would need an office suite to house a few publications and store obsolete property. Interlog ultimately had to acquire and maintain a 4800 square foot warehouse to meet the increased procurement activity and additional storage requirements.

[210] While ICITAP was in negotiations with Interlog on the material handling fee charge, ICITAP asked Interlog to modify its invoice practice to give ICITAP the item-by-item information the NIS problem with the State Department made clear that it needed. Interlog said that to deliver the kind of detailed information ICITAP wanted Interlog would need to modify its accounting software. Interlog said that ICITAP's request for information created a 2500 percent increase in Interlog's reporting requirements. From the overcharge to the government from its MHF, JMD agreed to credit Interlog with just under $100,000 to buy new accounting software so that Interlog could track expenses with greater detail.

III. CRIMINAL DIVISION MANAGERS MISUSED CONTRACT FOR COMPUTER SUPPORT SERVICES

In April 1991, the Criminal Division entered into a contract to supplement the computer staff in the Office of Administration Management Information Systems. In October 1996, the contractor who had received the contract was awarded a second contract for similar services to the Criminal Division. In the course of our investigation into other matters, we observed that Criminal Division managers used the contract for computer support services to hire staff for the Criminal Division correspondence units and other positions that did not relate to computer support, such as writers and secretaries. These hires appeared to be outside the scope of the contract that was only designed to provide computer specialists.

Consequently, we conducted further investigation of these contracts. We limited our review of the Criminal Division's hiring practices under its first contract, to the period January 1, 1994, through September 30, 1996, (Contract 1), and under the second contract, to the period October 1, 1996, through September 28, 1998 (Contract 2)(collectively, "the Contracts"). Our examination disclosed that Criminal Division managers, particularly Associate Executive Officer Joseph Lake, used the Contracts to hire personnel to perform work outside the scope of the Contracts. We also found that Criminal Division managers failed to observe that the contractor routinely assigned personnel to work under the Contracts at job classifications for which they did not have the skills or experience required by the contract and that this practice resulted in substantial cost to the government.

A. Contract 1

For the period of January 1, 1994, through September 30, 1996, the government paid the contractor a total of $4,048,021.67 under Contract 1 for the services of 56 individuals.[211] We found problems with payments for the services of 25 of the 56 individuals.

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[211] Lake was instrumental in developing the contract and was the Contracting Officer's Technical Representative (COTR) for Contract 1.

1. Work Outside the Scope of the Contract

The purpose of Contract 1 was to provide support for two of the Criminal Division's computer systems: a case tracking system and the "EAGLE system." The contract stated:

> The Criminal Division … seeks a contractor to provide facilities management, operations and logistical support for Project EAGLE, as well as its automated information systems and network. Furthermore, the Criminal Division is seeking analytical and technical support services for the contractor for automated information system planning and risk assessment.
>
> * * *
>
> Scope of Work
>
> The work of the contractor will involve two separate basic functions: service in support of the Division's case tracking system … and service in support of the Division's Project Eagle systems.[212]

The contract set out specific tasks that the contractor was to perform, such as providing daily support for workstations and providing advice on the need for new or modified automated information systems.

The Criminal Division correspondence units tracked, read, and responded to correspondence.[213] The contract did not authorize the performance of such services. The contractor staff that served in the correspondence units of the Criminal Division performed work outside the scope of the contract.

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[212] The contract stated that the Project EAGLE network provided Department employees with desktop access to word processing, electronic mail, calendar management, communications and file-transfer, database management, document storage and retrieval, and access to commercial data bases such as Westlaw.

[213] The Criminal Division Correspondence Units included the Citizen Correspondence Unit and the Executive Secretariat Correspondence Control Unit.

We also found other personnel hired under the Contracts who performed a variety of services unrelated to supporting the Criminal Division's computer operations. Among the people so hired was Beth Truebell, whose main duties consisted of writing and editing ICITAP's Bi-Weekly newsletters, reports, memoranda, and assisting in organizing seminars and other training courses.[214] Some OPDAT staff described Truebell as Lake's "assistant." Other contractor personnel worked as secretaries , developed a "legislative history of ICITAP," and coordinated field trips and other training for paralegals. This work was not authorized by the contract.

The total amount that the government paid the contractor for services outside the scope of the first contract was $938,422.80.

2. Overpayments for Unqualified Staff

The structure of the Contracts was the same. All job categories were defined. For each job category, the contract set out requisite skills and experience, and a detailed list of the responsibilities for that category including particular tasks. The job category determined the amount the contractor was permitted to charge the government for the person's services. As an example, we set forth the responsibilities and qualifications for the job category of Senior Programmer Analyst as listed in the Contracts.

Responsibilities:

- Is capable of independently maintaining and modifying complex systems and developing new subsystems;
- Guides users in formulating user requirements for new, modified, and enhanced software and capable of arbitrating disputes between users;

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[214] Truebell said that she was hired as a technical writer by the contractor and assigned in December 1994 to work in the Office of Administration in the Criminal Division. She was reassigned to ICITAP when Bratt became its Acting Director and promoted at that time to the position of Program Analyst. She returned to the Office of Administration in mid-December 1995. In September 1996, when Bratt became the ICITAP and OPDAT Coordinator, Truebell returned with Lake to work at OPDAT.

- Analyzes proposals for system design and develops design of all new, modified, and enhanced software;
- Recommends optimum approach for software development;
- Provides implementation of all new, modified, and enhanced software; and
- Coordinates software implementations with designated Government personnel.

Qualifications:

- Has a minimum of 5 years experience in software design, development, and implementation;
- Familiar with all levels of automated systems development in microcomputer, minicomputer, local area network, standalone, multi-user, batch, and on-line environments;
- A minimum of 3 years experience in programming of complex management information systems, preferably in a law office environment;
- At least 5 years experience in developing complex applications in RPG III in an IBM AS/400 and/or System/38 environment;
- Familiarity with the operation of the IBM AS/400 and System/38 computers and peripheral devices;
- Must have a good working knowledge of computer operating systems and high level programming languages, such as COBOL, FORTRAN, ORACLE, C, RPG 3/4, or BASIC.

To determine whether the personnel the contractor provided and for which it charged the government were qualified as required by the contract, we reviewed and analyzed the contractor's monthly reports. The contractor identified in the reports the duties assigned to each employee and the office to which each employee was assigned. We reviewed as well the personnel files of the contractor's employees assigned under the contract to the Criminal Division, including the employee's resume, application for employment, personnel action notice, notification of pay increase, and performance evaluation. We also reviewed these documents to determine the number of years of experience, expertise, and education of the employee. We requested

additional information about the employees by means of a survey that we requested the contractor's employees assigned to the Criminal Division's Management Information Services staff to complete, and we interviewed some of these employees. We then compared each employee's experience and expertise with the requirements of the Contracts.

The OIG found that the contractor billed the government for the work of individuals who did not possess the qualifications required by the contract. As an example, the contractor billed the government for Truebell's services as a Senior Programmer Analyst.[215] As specified above, a Senior Programmer Analyst required extensive experience with computers, such as "5 years experience in software design, development, application integration, and implementation," and familiarity "with all levels of automated systems and application development in microcomputer, minicomputer [local area network], standalone, multi-user, interactive, batch, and on-line environments." Truebell's resume did not reveal any computer-related skills other than the ability to perform desktop publishing.

The problem of unqualified consultants existed independently of the problem of work outside the scope of the contract. In many instances, even though individuals were working in a technical computer capacity, individuals did not have the qualifications to meet the job category at which the contractor was billing.

Based on the information that we reviewed, we believe that the contractor billed and was paid $1,366,845.70 for personnel who did not qualify under the labor category at which the contractor billed. Had those employees been billed at the labor category for which they did qualify, the government would have paid only $800,186.44. Therefore, we believe the contractor received $566,659.26 in over-payments from the government.[216]

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[215] A Senior Programmer Analyst cost $44.92 an hour ($46.28 for option year 4 of the contract).

[216] This amount only includes those individuals whose work was within the scope of the contract but who were unqualified for the position they held. The amount of overcharge for individuals whose work was outside the scope of the contract and who were also unqualified is set forth only in the section discussing work outside the scope of the contract. Thus, while

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B. Contract 2

For the period of October 1, 1996, through September 28, 1998, the government paid the contractor a total of $3,475,378.95 under Contract 2 for the services of 54 individuals. We found problems with payments for the services of 19 of the 54 individuals.

Contract 2 was amended to include work performed by the Criminal Division correspondence units.[217] However, ICITAP, OPDAT, and the Immigration and Naturalization Service (INS)[218] continued to use the contractor's personnel to perform work outside the scope of the contract. For example, one contract employee helped coordinate Criminal Division parties, designed certificates for the ILEA conferences, coordinated training classes, and wrote and edited a weekly publication for the Criminal Division. For those services that continued to be outside the scope of the contract, the government paid a total of $658,875.64.

Under Contract 2, the contractor again billed staff at labor categories for which they did not qualify. Based on the information we reviewed, we believe the government paid a total of $1,032,675.90 for these unqualified contract employees' services. If the contractor had billed the government at the rate for which the employees qualified, the total would have been $656,534.44, and the government would have saved $376,141.46.

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some employees violated both features of the contract, the associated costs have not been double counted.

[217] Verna Muckle was the COTR for Contract 2. Muckle was the head of the Criminal Division Management Information Services (MIS) office at the time we initiated our investigation. Previously, she served as Bratt's chief financial officer in the Office of Administration. Muckle did not claim to have any computer or technical expertise.

[218] One of the contractor's employees went with Bratt to the INS. The contract called for services to be provided to the Criminal Division.

C. Explanations and OIG's Conclusions

Bratt said that he was familiar with the general computer services contract, but that it was Lake's responsibility as COTR to know the specifics of the contract. Bratt said that he knew that writers had been hired under the Contracts and that the correspondence unit had been staffed through this contract as well. He said that no one ever raised to him any problem with using the contract for these purposes.

Muckle explained to the OIG that she would make requests for contract personnel and that she was always allowed to fill positions on the contract. She would request personnel by means of a memorandum to her supervisor (Bratt), in which she would explain where the additional personnel would work. She told the OIG that she did not ask the contractor for resumes for the individuals the contractor assigned to positions under the contract. She relied on the contractor to supply staff that were qualified for the positions to which they were being assigned.

During an interview in February 1999, the contractor's program manager said that staffing the Criminal Division correspondence units under Contract 1 was justified because the correspondence units required the introduction of technology and computer tracking to automate the correspondence process. The program manager claimed that the scope of the contract was broad enough to include the work of the correspondence units, since, he said, the contract covered facilities management, operations, and logistical support for the Eagle system, as well as for its automated information systems and network. The program manager also said that Truebell was an analyst and that he saw no problem billing her under Contract 1 at the Senior Programmer Analyst rate because that position was described in the contract with a "slash," (i.e. Senior Programmer/Analyst) which meant that the rate applied to either a Senior Programmer or to an Analyst.[219]

After reviewing a draft of the chapter, officials representing the contractor said that all of the work had been authorized by government

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[219] Truebell was billed as a Technical Specialist under Contract 2 at a rate higher than the rate for a Senior Programmer Analyst under Contract 1. She was also unqualified for the Technical Specialist labor category.

officials. The program manager said that Lake had continually directed contractor employees to provide various services and that Lake assigned the employees to various locations. The program manager said that he was only informed after-the-fact of what his employees were doing. The contractor officials also said that they believed that all work performed was within the scope of the contract because, in their view, the purpose of the contract was to provide work for the Department of Justice as directed by the COTR. The officials also denied that they provided unqualified employees. They asserted that the labor categories were intended to be broad enough to cover the work the employees were doing, that when they offered changes to the contract the government delayed implementing them, and that the government accepted the contractor's personnel knowing of their qualifications.

We disagree with the contractor's assertion that the purpose of the contract was to provide services to the Department of Justice as directed by the COTR. The contract is clear as to the purpose. It was to provide computer support services for the Criminal Division, not to provide a limitless supply of extra employees to serve Lake. We fault Bratt, as the chief administrative officer, and Lake for using the contract in this manner. In addition, we were not persuaded by the program manager's analysis of Contract 1. Contractor personnel in the correspondence units were reviewing and responding to incoming mail rather than providing computer support services as authorized by the contract. The fact that contractor personnel used computers in their work did not bring the work within the ambit of a contract providing computer support services. The language of Contract 2 supports our analysis. Contract 2, effective October 1, 1996, was similar to Contract 1 except that language specifically permitting staffing of the correspondence units was added. New positions and duties relating to the correspondence units were also added. We believe this is additional evidence that the language of Contract 1 did not cover the correspondence units.

We note that the contractor did not have access to the OIG's workpapers to review the basis for our conclusions with respect to each individual employee. Consequently, they offered a blanket denial of wrongdoing with the explanations as previously stated. We do not believe that the various explanations the officials offered satisfactorily explained the discrepancies that we observed. In addition, with respect to the one example we specifically questioned the program manager about, we did not find his explanation of why the contractor charged the government under Contract 1 for Truebell's services

at the rate of a Senior Programmer Analyst persuasive. Contrary to the program manager's claim, the job category set forth in Contract 1 was "Senior Programmer Analyst," not "Senior Programmer/Analyst." In any case, regardless of the presence or absence of a "slash" mark in the position title, Truebell clearly did not meet the qualifications pertaining to that position title.

D. Summary of Billings

The following table is a summary of the amounts that we believe the contractor overcharged the government under both contracts:

Total Billings:	
Contract 1:	$ 4,048,021.67
Contract 2:	$ 3,475,378.95
Total:	**$ 7,523,400.52**
Work outside of the scope of the contract:	
Contract 1: (Correspondence)	$ 693,927.46
Contract 1: (ICITAP/OPDAT)	$ 244,495.34
Contract 2: (ICITAP/OPDAT/INS)	$ 658,875.64
Total:	**$ 1,597,298.44**
Excess profit from billings on services outside the scope of the contract:	
Contract 1: (Correspondence)	$ 38,009.59
Contract 2: (ICITAP/OPDAT/INS)	$ 135,199.45
Total:	**$ 221,901.29**[220]

[220] Even if the contractor were to be permitted its actual costs for the services it provided that were outside the scope of the contract on the basis that the government did receive a benefit from the services, we do not believe that the contractor should be permitted to profit on this work. Therefore, this figure constitutes the minimum amount of overcharge for the services that were outside the scope of the contract. Included in this amount is a

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Overpayments for Unqualified Computer Support Staff:	
Contract 1:	$ 566,659.26
Contract 2:	$ 376,141.46
Total:	**$ 942,800.72**[221]

The use of these contracts to staff the Office of Administration and to provide contract employees at ICITAP, OPDAT, and later at the INS permitted Lake and the Criminal Division to fill positions even when there were hiring freezes in place and even when the positions to be filled should have been filled by federal employees.[222] Even if the government benefited from the services provided, the government was routinely over-billed for the contractors services because the contractor filled labor categories with staff who did not

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calculation for what we determined was "excess" profit. We calculated excess profit by using the actual rate that the contractor paid the employee and adding certain overhead charges permitted by the contract resulting in a "fully loaded rate." In some instances, we found that the contractor charged the government more than the fully loaded rate, and we deemed this to be excess profit.

[221] Based upon information we obtained regarding the qualifications of the contractor's personnel performing computer support services, we determined the labor category for which they were qualified and applied that labor rate.

[222] During at least some of the time that Lake used the Contracts to staff the new correspondence units, as well as to supplement the staff of the Office of Administration, ICITAP, and OPDAT, there was a hiring freeze in place in the Department of Justice. In the same period, Bratt recommended personnel ceiling levels that he noted were "steadily decreasing" to deal with the reality of "declining resources." Federal regulations state that contract personnel are not to be used permanently or to circumvent controls on employment levels. In a discussion of changes to the regulations dealing with agencies' use of "private sector temporaries" (i.e. contractor personnel), the Office of Personnel Management stated, "agencies are not permitted to use such services to circumvent controls on employment levels. This means agencies could not use temporary help services merely because hiring was frozen or ceiling levels were insufficient."

have the requisite experience.[223] If the contractor is permitted to be paid for the actual cost of services that were outside the scope of the contract because the services were provided at the request of the government, the contractor should not be entitled to the excess profit on those positions. We find, therefore, that the minimum sum that the contractor over-billed the government is:

Summary of Overcharges	
Overstatement of Labor Costs and Profits:	$ 221,901.29
Overstatement of Qualifications:	$ 942,800.72
Total:	**$1,164,702.01**

IV. ICITAP'S MANAGEMENT INFORMATION SYSTEM

We received an anonymous allegation that ICITAP had spent $300,000 in the development of an automated information management system that was poorly designed and difficult to use, that it had been abandoned, and that another $135,000 was being spent to develop a successor system.

To investigate the allegation, we interviewed ICITAP personnel who were involved in the development of the computer-based information management system or who had some familiarity with it, JMD procurement personnel involved in awarding the contract to develop the system, and consultants who worked on the project. We also reviewed related contract documents.

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[223] We observed other billing practices that cost the government more than it should have paid for services, although we did not attempt to calculate the costs involved. For example, the contractor billed the government at the higher rate for work performed by its employees on a temporary basis but did not bill the government at a lower rate when its employees were assigned to perform the work of a lower rate job category. This was particularly evident regarding Hotline duties. Contractor employees were assigned Hotline duties on a rotating basis instead of hiring one or more Hotline operators to perform the functions at a much lower hourly rate.

We found that between 1994 and 1996, ICITAP committed extensive time and money to the creation of ICITAP's Management Information System (IMIS), which was developed by Systems Flow, Incorporated (SFI). When the system did not function in accordance with ICITAP requirements, ICITAP committed significant additional resources in 1996 to the development of a successor system, the International Resource Management System (IRMS). A contract to develop IRMS was awarded to CACI International. In the meantime, ICITAP used the flawed IMIS system that was in place. By 1998, IRMS still was not functional. At that point ICITAP abandoned its second effort and decided to make do with IMIS. Between 1994 and 1998, ICITAP spent over one million dollars on these two projects.

A. Development of the System

In May 1992 at the recommendation of JMD, ICITAP hired SFI to develop management systems and a structure to complement ICITAP's growth. As part of its work, SFI was to prepare an ICITAP practices and procedures manual. According to SFI, when it began its work, ICITAP did not have the most fundamental accounting practices in place. ICITAP also had no office-wide computer network. Each program manager kept his own financial records; there was no interactive exchange of financial information. Office-wide financial reports could only be generated by hand after collecting each program manager's data from a spreadsheet.

SFI recommended that ICITAP develop a database to collect information and generate reports. The management information system would gather all the program data accumulated by ICITAP in accomplishing its police training mission including: police cadet or trainee data, teacher/consultant names and data, ICITAP courses and training programs, equipment purchased and donated, contractor costs, costs and charges against budgeted funds, and budget reports of obligations by country, appropriation, function, ICITAP activity, and object class code. In 1994, SFI developed a mock-up of a system to give ICITAP managers an idea of how the system would work. However, ICITAP managers were not impressed by the demonstration model, and in July 1994 ICITAP management (Theriault as Director) decided not to go forward with the automation project.

In 1995, when Bratt became the Acting Director, he saw the need for an information database and reinstated development of an ICITAP automated information system under the existing SFI contract. Bratt assigned Lake to

work on the project. Lake asked SFI to put together a database program to collect all the information on ICITAP's organizational activities, He wanted a prototype delivered within three months, that is, by June 30, 1995. The SFI manager said that he told Lake that would be difficult but they would try to accomplish it.

SFI finished a prototype in June 1995 and finally completed the development of the program at the end of September 1995. IMIS was sufficiently in place in six months for ICITAP staff to begin to work with it.[224] However, the system did not function well.

IMIS users at ICITAP complained about how long it took to enter information and how long and difficult the process was to correct an erroneous keystroke. They also complained that the budget information they tried to retrieve from the system was inaccurate.

Many reasons were given for the difficulties. SFI said that the program had been developed for faster computers and ran well on those. ICITAP, however, used less powerful computers. With respect to other problems, SFI attributed some of the difficulties to the fact that program managers were inconsistent in the data they sent to headquarters.

Stromsem, on the other hand, faulted SFI. She said that SFI used the policies and procedures manual that it had initially put together for ICITAP in the development of the IMIS prototype. According to Stromsem, the manual was inadequate and inaccurate because SFI had failed adequately to consult with ICITAP Operations personnel in the development of procedures set out in the manual. So, according to Stromsem, problems that were in the manual were built into IMIS. Stromsem said that she told Raquel Mann and SFI that the manual was incorrect. Stromsem said that she and others were frustrated when they attempted to use IMIS because she could not get accurate information on the one thing she wanted to know, how much money was left in a program. Stromsem said she asked Bratt for help with IMIS and he assigned Lake.

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[224] The SFI manager said that one of the problems SFI faced while working on IMIS was that other contractors who worked with Lake constantly wanted SFI to do work outside the scope of the contract. The SFI manager said that he complained to no effect.

Others told us that one of the central problems with IMIS was Stromsem's failure to support its implementation. Mann said Stromsem was not interested in being trained on IMIS and failed to support it. Gaige, too, stated that Stromsem not only failed to support IMIS, but made her opposition known publicly. John Shannonhouse, who was the technical advisor for SFI's work on IMIS, told the OIG that there was a constant battle between the individuals who wanted IMIS and managers who were against it. He identified Stromsem and Special Assistant to the Director Cary Hoover as being against IMIS "from the beginning."

Some of the problems for which staff blamed IMIS related not to IMIS itself but to other issues. For example, the use of floppy disks to transmit information from the field to ICITAP headquarters was a source of many of the problems. SFI had recommended use of the Internet to enable ICITAP field offices to access IMIS. Lake, however, rejected that suggestion and said that ICITAP would use floppy disks to transmit information from the field because ICITAP planned eventually to use the State Department's Diplomatic Telecommunications Service to communicate with ICITAP field offices.[225] But the use of floppy disks created significant problems. Sometimes floppy disks from the program managers in the field were not received at headquarters until a week or two after being sent. At other times, the floppy disk became damaged in transit, so a new one had to be requested because the data on the damaged floppy could not be retrieved. Because of the time involved in mailing and receiving disks, financial data was often out of date. In addition, until August 1997 ICITAP did not obtain sufficient information from its contractors to enable it to generate accurate reports about its expenditures.

After delivery of the initial product, modifications and upgrades were incorporated continually as IMIS users discovered weaknesses or sought to

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[225] Although it was originally designed as a temporary measure, the use of floppy disks continued because ICITAP decided not to use the State Department's telecommunications network. For a brief period, ICITAP did use the network but, we were told, ICITAP did not anticipate that it would be billed for its use. When it was, ICITAP decided that the system was too expensive. In addition, the system only linked together embassies. Where ICITAP offices were not in the embassy, such as in Haiti, connections would have required further expense.

have IMIS perform additional tasks. In addition to the initial cost of $94,000 to develop IMIS, ICITAP spent over $300,000 for modifications, upgrades, maintenance, and help-desk services in 1995 and 1996.

According to Stromsem, because of all the problems associated with IMIS, Lake recommended that ICITAP hire consultants to review the system. CACI was hired to perform the study, and it recommended that the IMIS program be rewritten rather than continue to make modifications to the program. In addition, by 1996 ICITAP had moved from the Office of the Deputy Attorney General to the Criminal Division. The Access database program that SFI had used to develop IMIS could not be supported by the Criminal Division, which was committed to the universal use of Oracle. In September 1996, CACI was awarded a contract of $283,572 to rewrite the IMIS program to overcome its difficulties and to convert it from an Access database to an Oracle database. ICITAP created various working groups to analyze what ICITAP needed from an information management system and to work with the contractor to develop the new system.

After reviewing requirements with ICITAP staff, CACI decided to create a new system, IRMS, which would incorporate new capabilities in the system, and CACI also decided that it should use PowerBuilder and not Oracle as the database. ICITAP agreed to fund the new enhancements and development process.

CACI, however, was never able to deliver a functional system. In August 1998, the Criminal Division refused to authorize further work on the system. As of that date, ICITAP and OPDAT had spent a total of $591,530 on IRMS.[226] Thus, between 1994 and 1998, over $1.0 million was spent on development of an automated management system. As of mid-1998, ICITAP was using a version of IMIS. Over time, sufficient refinements had been made to make it usable and some of the problems, such as the speed of IMIS, had been fixed. At the time of our interviews, some problems were still being worked on.

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[226] Not all of the money came from ICITAP; just under $40,000 was paid by OPDAT and just over $92,000 by the Criminal Division.

B. OIG's Conclusions

The evidence shows that the development of IMIS and IRMS was difficult. The individuals who we interviewed assigned blame for the problems to intransigent managers, the contractors, managers who were responsible for various decisions that affected IMIS, and the accounting system that was in place before IMIS was created. Although we interviewed many individuals who participated in the decision-making process, we did not seek to evaluate every decision that was made during the development process. For example, we were told that the decision to use less powerful computers created problems for the system but we were also told that the decision was understandable because of the significant expense involved in upgrading computers at the time.

Nonetheless, we are able to make certain judgments based on the information we received. In the early stages, IMIS did not receive appropriate attention from ICITAP managers. As one ICITAP manager noted, IMIS was a compilation of everyone's wish list. Having a computerized listing of individuals trained and courses offered had the same priority as developing a functional, interactive accounting system. As a result, modifications and upgrades to the system were continually made and these "fixes" often resulted in the creation of other problems. In addition, the decision to use floppy disks rather than plan for a network capacity that could be easily accessed by all users led to significant problems. The data was never synchronized with the current state of affairs.

Better planning in the initial stages might have saved the government money. However, without an extensive investigation that we did not believe was merited at this stage of the process, we were unable to quantify how much money might have been saved had IMIS been properly planned and executed.

V. THE ILEA TRANSLATION COST OVERRUNS

The OIG received an allegation that OPDAT had overspent its translation budget for the February 1997 ILEA international conference in Budapest, Hungary, by over $100,000. Our investigation confirmed this allegation, and an internal OPDAT review initiated by Warlow in September 1997 also concluded that rushed and inadequate planning were the causes of the excessive translation costs.

As we previously discussed in Chapter Seven, in the fall of 1996, at the initiative of the State Department, Bratt and Lake decided that OPDAT should

host a series of international conferences at ILEA. The conferences were to focus on discussion of the investigation and prosecution of a hypothetical transnational crime. American and Eastern European investigators and prosecutors were to attend the conferences.

To effect this plan, the participants needed to have access to a common body of information. For this, the conference schedule, the hypothetical transnational crime, and criminal statutes from the relevant nations were to be translated. Lake assigned to Truebell the job of identifying and pulling together all material to be translated for the conference. She was to gather already translated material such as relevant criminal statutes and order translations of any additional material that the participants would need to discuss the hypothetical transnational crime.

Truebell was a contract employee who was assigned initially to the Criminal Division Office of Administration. She told us that she had been hired as a writer. Truebell came to OPDAT with Lake when Bratt was appointed Coordinator, and she functioned as Lake's assistant. She had no legal training or experience, no familiarity with American or foreign criminal codes, and had never before developed a budget.

Representatives from Moldova, the Ukraine, and Hungary were invited to the first ILEA conference to join Department of Justice Criminal Division section chiefs, who represented the United States. To be sensitive to newly independent democracies of the former Soviet Union, it was decided that translations should not be limited to Russian. .

The Department of Justice had a contract in place for translations. After discussion with the COTR for the translation contract, Alice Kennington, who worked in the Office of Special Investigations, Truebell set a budget of $16,000 for translations. Truebell told the OIG that she arrived at this figure by using a draft proposed Russian criminal code as the basis of her discussion with Kennington. The draft code was 80 double-spaced pages. Kennington gave an estimated cost of between $165 and $200 per 1,000 words and said that translating a typical double-spaced page averaged 250 words a page. To estimate the number of pages that she would need to have translated, Truebell assumed that a "typical" criminal code would be 80 double-spaced standard type pages, like the draft proposed Russian criminal code. She concluded that she would need 320 pages translated (approximately 80 pages x 4 participating countries) and added another 30 pages. (350 pages x 250 words/1,000 x

average of $182 = $15,925) With these assumptions, Truebell estimated the translation costs at $16,000.

The February ILEA conference was postponed from the first week of February to February 16 through 21, 1997. The first translation order was placed on January 24, 1997. Between January 24, 1997, and January 31, 1997, Truebell ordered translations in excess of half a million words to be delivered between January 31, 1997, and February 10, 1997.

Truebell said that she decided what to have translated by determining what was already available in translation at United States embassies of the participating countries. She also asked a paralegal to identify the current criminal codes applicable to the countries of the representatives. Truebell said she obtained input from discussions with the "Course Development Committee" for the ILEA conference.[227]

Truebell said that she never counted the pages she sent out for translation and neither tracked translation expenditures nor reconciled them to the budget as she placed orders. Truebell said that she believed there was a mechanism of oversight between the COTR and the contractor and that Kennington knew that Truebell had a $16,000 budget. According to Truebell, she initially asked the translators to select the relevant passages from the material she sent and to translate those passages. The contractor, however, did not agree to perform that task. Thereafter, Truebell ordered entire criminal codes and codes of procedure translated.

The COTR Kennington said that she made repeated efforts to discuss the translation orders with Truebell, but that Truebell refused to talk to her saying that she was too busy to bother with Kennington. Kennington also told the OIG that when the contractor tried to find out what sections should be translated, Truebell refused to identify specific sections and told the contractor

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[227] Truebell and Lake both referred to an ILEA Course Development Committee. According to Truebell, the committee was formed in mid- to late-December 1996 and dealt with the programmatic issues and agenda for the ILEA conference; however, Lake continued to have overall responsibility over the project. The OIG found no evidence of a "committee." We did find that Lake and Truebell would consult with OPDAT staff as particular questions arose.

to do everything since Truebell did not have time to bother with it. Kennington said she believed Truebell had put very little time into planning the conference.[228]

Thomas Didato, who staffed OPDAT's Newly Independent States program, told the OIG that he tried informally to help Truebell. He told the OIG that he gave her recommendations about where to search for already translated materials and advised her to ask a lawyer to identify what parts of a criminal code were needed. He said that she rejected his efforts to help and did not follow his advice. We were also told that one of the factors leading to the cost overrun was that Truebell requested entire statutes rather than specific sections, for example, 18 U.S.C. § 201 versus 18 U.S.C. § 201(a)(ii).

When Truebell's orders were estimated to be in excess of $200,000, Kennington notified Eugene Frye in the Office of Administration, who notified Office of Administration managers. Bratt directed Leslie Rowe, a Criminal Division contractor, to look at what happened; as soon as he did, Rowe stopped all translations. Ultimately, expenditures for translations were $128,258.67.[229] The cost included charges that Truebell had not anticipated, including a 20 percent surcharge for translations ordered on an expedited schedule, and a

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[228] In an e-mail dated January 31, 1997, to Kennington, Eugene Frye of the Office of Administration suggested setting up some kind of control, such as a dollar figure cap. Kennington responded on February 3, 1997, that this seemed like a good idea and suggested a cap of $10,000. Kennington wrote that: "In the present case, there was no clarity about the amount of material being sent out – there were three deliveries within a week, and each was much more than we had been led to expect. The costs were stated at the outset, but, of course, in terms of dollars per thousand words. Many of the documents were to be translated into two or three languages. It was also clear from the time of the first batch that rush fees would apply, given the short turnaround time of even that first group of documents. Had there been priorities set and candidness about the deadline (not until Friday afternoon did I learn that there would be people departing for Budapest after the 11th and the conference would not even start until the 16th) we could perhaps have had at least some of the material translated at the standard, non-rush rate. Up to that time, I was told to get everything done by the 10th. Above all, OPDAT waited far too long to initiate the translations."

[229] To achieve this reduction, 12 orders were cancelled and others were stopped in early stages, which the translators estimated would have cost an additional $75,000.

higher cost for translating from English into foreign languages. The quote that Truebell relied on was for translations from a foreign language into English.

In February 1997 Bratt asked Lake to analyze the source of the problem. Lake wrote in a memorandum to Bratt that the overruns were caused by the Criminal Division's faulty contract process. He blamed the translators who, he said, "apparently insisted on translating an entire code or statute, if necessary, to locate a particular needed portion of the code or statute for the requestor." He said that OPDAT was not told of the surcharges for accelerated delivery. He blamed the vendor, as well, for undertaking work in excess of the estimated budget. Lake noted that the short time between the orders and the conference contributed to the cost overrun. Lake wrote that the loss of attorney Rowe from the "Committee" "probably put the responsibility for the translations in the wrong inexperienced hands."[230]

In February 1997 Bratt also asked Frye and Paul Johnson, another Office of Administration employee, to make recommendations to avoid a recurrence of this kind of problem. They recommended that the Office of Administration assume responsibility for managing translations and that better financial controls be instituted.

Bratt said that when he left the Criminal Division in April 1997, the matter of whether the State Department should pay the full cost of the translations had not been resolved. Warlow, who succeeded Bratt as Coordinator, told the OIG that she first learned of the problem in an article in The Washington Post discussing waste and abuse. She said that Carl Alexandre, OPDAT's new Acting Director, suggested they look at the question of who should shoulder the excess costs of the translations. Warlow asked a new attorney assigned to OPDAT to identify the source of the ILEA translations cost overrun problem, on the basis of a document review.

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[230] Rowe had been hired as a contractor for the Criminal Division to review classified records and make recommendations about declassifying those documents. Work on the ILEA conference was outside the scope of his Statement of Work. Performing tasks as assigned by federal managers is indicative of a personal services contract (see Chapter Six, Lake Buyout), which Rowe was forbidden to work under as he had taken a $25,000 Buyout payment in 1994.

That lawyer identified inadequate planning as the cause of the excessive translation expenditures. She found that substantially more material than was necessary or relevant was translated, and that there had been an inadequate search for translated material. Some material that was translated at a "rush" rate, the attorney found, was already translated in OPDAT's files; some was available elsewhere. She found that the problem of translating too much material could have been avoided with some "extra effort in the planning stage" by using attorneys to identify portions of statutes that were essential. On the basis of this analysis, Warlow believed that the cost overrun could not be charged to the Department of State. The Criminal Division paid $112,343.30 ($107,624.30 + $4,719.00) for the ILEA translation cost overruns.

We conclude, as OPDAT's own review and analysis found, that there was not enough time devoted to planning the conference and the wrong people were asked to do the work. Lake's memorandum to Bratt in which he placed the blame on the contractor, the translation COTR, and the contract process ignored the more central problem that Lake put an inexperienced contractor in charge of major aspects of the conference and then failed to supervise her. Inadequate time was spent researching what material was already available in translation, and no lawyer was consulted about how to narrow the translation requests. As a result, the Department spent considerably more on translation costs than it need have.

In addition, Lake did not use OPDAT staff to assist in the development of the ILEA conferences. Although Lake and Truebell told the OIG that OPDAT staff was involved with the development of the ILEA conferences the staff they identified as being involved said that they provided only minimal input. Lake told the OIG that he was out to "show them," the OPDAT staff, how to put on a conference. But as a result, he deprived himself of the OPDAT staff's knowledge and experience, which we believe contributed to the ILEA cost overrun.

VI. HAITI

We were told by some ICITAP employees that the ICITAP Haiti program was not well managed. Because the lack of detail in the service contractors' invoices, as described earlier, prevented ICITAP from determining whether it had received all the items in Haiti that it had ordered, we decided to investigate whether ICITAP had received the goods for which it had paid.

We concluded that it would be exceedingly difficult to determine whether ICITAP received the supplies it paid for. We decided to limit our review of purchases to whether ICITAP could show us on-site in Haiti certain expensive items that its records showed it had purchased. We pre-selected 131 items to track in Haiti. Our review found that the principal Haiti contractor, Scientific Applications International Corporation (SAIC), had in place and used an effective inventory control system, and we were able to account for all but one of the 131 items.

Some of the supplies are used directly by ICITAP; some are purchased by ICITAP and immediately donated to the government in Haiti. We were able to track both kinds of supplies. When goods are shipped to Haiti, SAIC prepares and sends to its representative in Haiti an Inspection and Acceptance (I&A) list. When the goods arrive, they are inspected by both ICITAP and SAIC. After inspection, the SAIC representative, the ICITAP Haiti Program Manager, and the ICITAP training program coordinator sign the I&A list. ICITAP's copy of the list is maintained in Haiti. We asked for and received copies of recent lists from the contractor who retains the original list in the United States. From the I&A lists, we identified 131 large or expensive items that ICITAP ordered for Haiti, for example computers and cars. We found that SAIC and the Haiti Program Managers maintained an appropriate inventory control system and were able to account for items that were purchased both for ICITAP's use and for donation to Haiti. We were able to account for 130 of the 131 items on the I&A lists. With the new accounting detail that is available from its service contractors, we expect that ICITAP should be able to track whether it has received what it ordered and at what price.

CHAPTER TEN: MISCELLANEOUS ALLEGATIONS

We investigated more allegations and issues than we discuss in the previous chapters. In this chapter, we first discuss an allegation that Criminal Division managers donated excess government computers to schools in which their friends or family members worked, an allegation that we confirmed. In the remaining matters that we discuss in this chapter, we either did not corroborate the misconduct or impropriety alleged or the evidence was insufficient to allow us to reach a conclusion.

I. DONATIONS OF EXCESS COMPUTERS

In the course of our investigation, we were told that Criminal Division Office of Administration supervisors Robert Bratt and Sandra Bright had donated excess government computers to schools at which they had personal connections. In 1996, when he was the Criminal Division Executive Officer, Bratt allegedly directed the donation of computers to a school in Warrenton, Virginia, where his then-girlfriend worked. We were told also that Deputy Executive Officer Bright directed computer donations to a Virginia school district where her husband was employed as a principal.

A. DOJ Computers for Education Program

Pandora Brown, a member of the Property Management Services (PMS) staff of JMD, told the OIG that she managed the Department's computer donation program from its inception through early 1997. She said that under the program, government computers that had become surplus or excess government equipment were donated to primary and secondary schools. The program began informally in mid-1994 when surplus equipment was given to a school in the District of Columbia. In April 1996, an executive order formalized the program. In 1996, guidelines existed to determine which schools had priority for receiving donations, but there were no guidelines for handling requests by Department of Justice employees for donations of computers to specific schools.

Brown described for the OIG the donation process. Brown said that when she was in charge of the donation program, a Division property manager would contact her when the Division had surplus equipment to donate. JMD prepared the paperwork and, generally, JMD's warehouse staff delivered the computers.

The Management Information Staff (MIS), which was part of the Office of Administration, was responsible for the Criminal Division's computers. The head of MIS in 1996, Chris Burn, told the OIG that his staff would first prepare the computers for transfer along with an inventory for the Office of Administration. The Office of Administration would, in turn, contact JMD to determine where to send the surplus computers. Burn then received from the Office of Administration paperwork designating the recipient school and the number of computers to be donated.

B. Donation Directed by Executive Officer Bratt

A JMD transfer order, dated January 30, 1996, shows the transfer of 35 computers to the Central Elementary School, Fauquier County School District, Warrenton, Virginia.

1. Bratt's Version

Bratt acknowledged that he authorized the donation of computers to the Warrenton, Virginia, school at which his then-girlfriend was a teacher. He said that the woman he was dating, whom he identified to the OIG, taught at a Warrenton, Virginia, primary school and requested the computers.

Bratt told the OIG that he asked his staff to make sure that the donation was within the guidelines of the Department of Justice. According to Bratt, he told his staff that a friend of his requested the computers, and Bratt asked his staff to check the propriety of the transfer with JMD. Bratt said that at the time he authorized the donation the Criminal Division had excess computers, and JMD had no school to which to donate them.[231] In response to the OIG's question as to who made the decision to send the computers to Warrenton, Bratt stated, "In consultation with the Justice Management Division, I made the decision."

Bratt justified the decision to donate computers to the school by explaining that the school had the highest rate of children on public assistance

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[231] To the contrary, paperwork dated February 9, 1996, within two weeks of the transfer to the Warrenton school, shows that JMD handled computer donations to two elementary schools in Washington, D.C., and the Washington, D.C., Corporation Counsel's Office.

in Virginia. Bratt said that he thought that the donation was appropriate because of the school's "terrific need."

2. Investigation

Contrary to Bratt's assertion regarding JMD's involvement, we found no evidence that anyone from the Criminal Division checked the propriety of the transfer with JMD or that JMD officials knew the details behind the donation. Bratt did not provide us with the name of a specific individual on his staff or the MIS staff whom he had asked to check the propriety of the school donation.

Neither Brown nor her supervisor, Harriett Fisher, recalled the transaction. Brown, who according to the paperwork authorized the transaction, said that nothing about the donation stood out in her memory.[232] She was unaware or could not recall why the Criminal Division was interested in donating computers to that particular Virginia school. Chris Burn, head of the Criminal Division's Office of Administration computer staff (formally called the "Management Information Staff" or MIS) told the OIG that after he sent JMD a form listing the disposition of the computers to the Virginia school, a JMD employee contacted Burn's office and was very upset. The employee told Burn that JMD had a list of approved schools and, in the future, he should check with JMD before delivery.

Bratt and a Criminal Division computer staff contractor delivered the computers to the Warrenton school. Bratt introduced his girlfriend to the contractor when they were delivering the computers.

C. Donations Directed by Senior Deputy Executive Officer Bright

In May 1996, the Criminal Division directed that 25 computers be sent to the Lancaster, Virginia, High School. In October 1996, the Criminal Division directed that 30 computers be sent to the Lancaster, Virginia, Middle School. The principal of the Middle School was Bright's husband.

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[232] As we discuss subsequently, Brown did raise questions with her supervisor when she learned about Bright's connection with a recipient school.

1. Investigation

The sequence of events surrounding the first donation by Bright to the Lancaster County, Virginia, school system is not entirely clear. Brown told the OIG that the first notice she had of the transaction was a May 24, 1996, memorandum from one of Burn's subordinates telling her that the Criminal Division had directly donated 25 computers to Lancaster County, "in lieu of sending these computers to the warehouse for later disposal." When she called about the computers, Brown was told by the employee who sent the memorandum that the computers had not been transferred but were going that day. Brown was also told that a Criminal Division employee who volunteered at the school to which the computers were going would deliver the computers.

Burn recalled that there were two donations but he did not recall details of the first donation and he said he may not have been involved in it. With respect to the second donation, Burn sent a memorandum to JMD on August 14, 1996, attaching a copy of a letter addressed to Bratt from Bright's husband, who was the principal of the Lancaster Middle School in Lancaster County, Virginia. Burn asked only that the request be added "to the rest of the equipment requests now pending before you and your co-workers. Deal with this request as you see fit." According to a chronology prepared by Brown, Brown told Burn that JMD would not authorize delivery without a signed receipt for the computers that had been previously transferred to the Lancaster High School.

During the week of September 15, 1996, a month after the date of her husband's letter, Bright became actively involved in moving the issue forward. Burn told the OIG that Bright called him to ask why the computers had not been delivered. This is consistent with a contemporaneous Burn e-mail, which reflects that Bright contacted Burn and apparently asked him to do what he could to speed things up. Burn recalled that JMD had told him that approval was pending a JMD meeting to review the request. He said that Brown later told him that the request had not been approved and Burn in turn told Bright.

On September 24, 1996, Bright e-mailed Burn that she had directly contacted Brown at JMD about the computer request and that Brown told her a different story. According to Bright's e-mail, Brown was waiting for paperwork from MIS to process the computers. Bright told Burn in the e-mail that Brown had "NO PROBLEM" with the donation. (Emphasis in original.) Bright also told Burn that she had asked MIS Deputy Director for Operations

Raquel Mann to expedite the paperwork. Bright said that she would "hand-carry [the transfer form] to Lancaster County and get the superintendent's signature." Bright added in the e-mail to Burn, "I'm disappointed to find out that this scenario is different than the one you were emailing me…."

On the day that Bright contacted Brown and Mann, September 24, 1996, JMD generated and MIS signed replacement paperwork for the first set of computers that had been donated at Bright's request. The Lancaster High School principal signed the paperwork on October 4, 1996. Brown said that after she received the form, she prepared the paperwork to transfer the second set of computers. The transfer order, dated October 29, 1996, states that 30 computers were being sent to Henry Bright, Principal of the Lancaster, Virginia, Middle School.

Both Brown and Burn told the OIG that they did not believe it was appropriate to send computers Bright had control over to a destination of her choosing. Burn described Bright's September 24 e-mail to him as "blistering." As Burn understood it, JMD told Bright that Burn was holding up approval of the donation, not JMD. Burn told the OIG that in a conversation with Brown, she had told him that she was getting a lot of pressure, and JMD decided not to hold up the donation.

The chronology prepared by Brown stated that in September 1996, Brown received calls from the Criminal Division about the Lancaster Middle School computer transfer. According to the chronology, Brown again reiterated her concerns about the missing paperwork. The chronology also stated:

> I also indicated that CRM [Criminal Division] should forward its listing of the excess computers and that we would assess whether there was a need at a school, which had priority. At that time, CRM indicated that they wanted its computers to go to Lancaster. PMS [Property Management Services] received numerous phone calls from Chris Burns [sic], Sandy Bright, Verna Murkle [sic], Pat Pitts and other CRM employees concerning the transfer of its computers. After consultation with PMS management, we informed CRM that while the transfer was not an ideal situation due to the relationship of the Deputy Executive Officer and the school's principal, we were assured that the

computers were indeed excess and were not under the direct purview of Ms. Bright.

Because she thought the donation of computers to a school in which Bright's husband had an interest was a problem, Brown asked her supervisor to review the donation. Brown stated, however, that she held up the transfer because of the missing paperwork not because of her concerns about Bright's relationship to the school. Brown said that her supervisor, Fisher, did not have a problem with giving the computers to Bright's husband's school.

Fisher told the OIG that she approved the donation. She recalled Brown coming to her with concerns about the donation going to Bright's husband's school. Fisher said that given the number of computers that were becoming available for donation during that time period, that there were no strong policies in place governing donations, and that she thought it was proper to "spread the wealth" around, she did not object to donating computers to a rural school district like Lancaster County. Fisher noted that the program encouraged but did not limit distribution to empowerment community and enterprise zone schools. Fisher opined that while it was not the best judgment by Bright to request that computers go to her husband's school, Fisher did not believe there was anything wrong with it.

An individual who worked in MIS and who was involved in the computer donation said that some members of MIS were concerned at the time with the propriety of Bratt's donation of computers to the Warrenton, Virginia, school and later to Bright's husband's school. However, the employee stated that no one raised the issue for fear of retribution. Others to whom we spoke at MIS reiterated those concerns with respect to the transfer involving Bright.

2. Bright's Version

Bright said she did not think that she had done anything wrong. She described the Lancaster County school system as "very rural, very poor, had no computers in the system …." She believed that at the time of her husband's request, the Department had 600 excess computers.

With respect to the first donation, Bright said that she verbally asked Bratt if a donation of computers could be made to the Lancaster County school system and he approved. The computers ultimately went to the high school and Bright said she was not involved in selecting the particular school. Bright said that her husband was the principal of the Lancaster County Middle School

and that after the donation to the high school he asked whether the Department of Justice would donate computers to his school. At Bright's suggestion, he wrote a letter to Bratt dated August 13, 1996, requesting computers.

Bright admitted that she took an active role in obtaining the computers for the Lancaster County Middle School. Bright said that she believed that she stayed within the guidelines of the Executive Order on computer donations and that her conduct was proper. Bright also said that she knew that Bratt had approved a donation of computers to another school in Warrenton, Virginia. Bright said that JMD knew that her husband had initiated the requests, but JMD staff had not expressed any concern to her about the donations to schools in which her husband had an interest.

After reviewing a draft of this section of the chapter, Bright wrote in response to the OIG that she did not intend to intimidate anyone into taking action that was either illegal or unethical. She wrote that her calls to Brown were to gather information, not to apply pressure. Bright concluded her response by stating that she recognized "that my actions could have been perceived as using my position to 'give gifts' to my husband's school system" and she further stated, "I am sorry if this created an appearance of unethical behavior."

In the same interview in which he discussed his own involvement in the Warrenton computer donation, Bratt discussed the Bright donation. He described one transaction. Bratt said that the replacement of computers in the Criminal Division in 1995 and 1996 created a significant surplus of computers. Bratt recalled that during that period, Bright's husband wrote in and requested a donation of computers. He was not clear whether he ever saw the letter. In response to our question of who authorized the Bright donation, Bratt said, "In consultation with the Justice Management Division and property management staff, the initial call was made by Sandra Bright, who talked to them, and she informed me of it and so I can say I'll accept the responsibility." Bratt said that Bright told him that she made the calls to JMD.

Bratt said that his concern that it was not entirely proper for Bright to be involved in the decision to donate computers to her husband's school was alleviated when Bright either provided Bratt with a copy of or told Bratt that there was a 1996 order promoting donations of excess computers. Bratt said that Bright told him that JMD was aware that the computers were going to her husband's school.

D. OIG's Conclusions

Under applicable federal regulations, an employee may not use the employee's public office for private gain or for the private gain of friends or relatives. 5 CFR § 2635.702. Government ethics rules also state that government employees may not give preferential treatment to any private organization or individual. Executive Order 12674(g), (h). Generally, a government employee may not participate without authorization in any matter that could affect his financial interests or those of his spouse and where the matter is one in which a reasonable person would question the employee's impartiality. 5 CFR § 2635.502(a). In addition,

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

5 CFR § 2635.702. If an employee has a conflict of interest or believes that his impartiality might be questioned, he must either disqualify himself from taking an action that could affect his interest or receive prior authorization from the agency's designated ethics officer. 5 CFR § 2635.502(a),(d).

Arguably, Bratt did not violate any federal rule or regulation. It is unclear whether a donation of computers to a school would result in a private gain or benefit to a teacher at the school in violation of 5 CFR § 2635.702. Furthermore, a girlfriend is not a covered person under 5 CFR § 2635.502.

The argument that Bright violated the conflict regulations is stronger, however. A principal at a school is more likely to have received a "benefit" by the donation of computers to his school. The evidence is strong that Bright's actions induced other employees to act on her behalf.

Bright's conduct may be mitigated by the fact that she received a supervisor's, Bratt's, approval and JMD's approval for at least one of the

transfers.[233] We would note, however, that the approval did not follow the requisites of 5 CFR § 2635.502, which requires that the approval be in writing, consider various factors that are set out in the regulation, and include a determination that the interests of the government outweigh any appearance of a conflict.

Regardless of whether they violated a rule or regulation, Bratt and Bright should have been more cognizant of the appearance problems associated with providing computers to schools associated with family or personal friends. Two problems can result from such action: (1) schools that do not have "contacts" and do not receive computers may believe that the process is "rigged" and (2) employees who are not in a position to give "gifts" to their friends and relatives' schools may also resent the process. There is a significant appearance problem when government employees direct the transfer of government property to specific institutions with which they are affiliated.

Furthermore, actions by Bratt and Bright exacerbated the appearance problem. Bratt did not need to personally deliver the computers to the Warrenton school. Bright should have let the bureaucratic process run its course without the interventions that came to be perceived as pressure by Department employees.

We conclude that Bratt and Bright used poor judgment in initiating, promoting, or approving requests to send computers to schools associated with a family member and a close friend.

II. GRANT AWARD TO ROBERT LOCKWOOD

The OIG received an allegation that there was something "dubious" about a grant for the American-Israeli Russian Committee (the "Committee") from the Department of Justice. The allegation was that the grant was approved because the Committee's creator and driving force, Robert Lockwood, was a personal friend of Attorney General Janet Reno. The

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[233] Although Bright stated that Bratt authorized both transfers, Bratt only seemed to recall one donation. JMD's Brown stated that she did not know about the first transfer until it was already in process.

individual making the allegation acknowledged that he was not involved in the grant award and did not know any specifics.

We determined that on July 3, 1997, the Committee was awarded a $17,328 grant by the Office of Justice Programs (OJP) for a Bi-National Judicial Exchange Program.[234] Since we confirmed that a Department of Justice grant had been awarded to Lockwood's Committee, we investigated the circumstances under which the award was granted. We did not find that Lockwood's Committee was given a grant because of any association by him with the Attorney General.

Lockwood, who was the Clerk of Courts of Broward County, Florida, told the OIG that he was an acquaintance of Reno and said that he told people that he knew her. He also told the OIG that he had organized and run an international exchange program among Israeli, Russian, and American judges since about 1987.[235] Lockwood, whose office was in Fort Lauderdale, Florida, proffered documents and news clippings describing his international efforts. He said that he had brought Supreme Court Justice Stephen G. Breyer with him to Russia on one trip and that once after that, when some students were in Washington, D.C., at Lockwood's request, Justice Breyer joined them briefly for lunch.

Lockwood said that he thought that a professor at Georgetown University had put him in touch with Mark Bonner, the OPDAT Moscow Resident Legal Advisor. Bonner confirmed that he met Lockwood through a professor at Georgetown. Bonner told the OIG that before he went to Moscow (in September 1996) as OPDAT's Resident Legal Advisor , Bonner telephoned Lockwood. In this initial conversation, Lockwood told Bonner that he had connections to the Russian judicial training academy and that he knew the Attorney General from when she had been the District Attorney in the next county in Florida. In their call, Lockwood told Bonner to give his regards to the Attorney General. Bonner told the OIG he stopped by the Attorney General's office to do so, and as he was leaving a message for her she walked

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[234] OPDAT agreed to reimburse approximately $20,000 to OJP for this grant. That sum included an administrative fee.

[235] We interviewed Lockwood in July 1998; he died in January 2000.

out of her office. After listening to Bonner relaying Lockwood's greeting, the Attorney General said, "Oh, how's Bob? Tell him I said, 'Hi.'" Thereafter, in correspondence to his Department colleagues, each time Bonner referred to Lockwood he also mentioned that Lockwood was a friend of the Attorney General.

In November 1996, when Bonner was in Moscow, he wrote OPDAT that Lockwood was going to introduce him to Vladimir Peisikov, Vice-President of the Russian national judicial training academy, to discuss the possibility of working together. That meeting occurred around December 1, 1996. In January 1997, Bratt went to Moscow to meet Russian officials and to assist Bonner in developing a training program. From notes of their meetings, a plan for a conference in Irkutsk, a small town in Russia, was discussed. Eventually, a work plan was developed that included a conference in Irkutsk that was to be conducted jointly with Lockwood.

On January 22, 1997, according to notes provided to the OIG by the Attorney General, Lockwood telephoned her office, and apparently told a staff person who answered the phone that he had been introduced to Bonner and mentioned Justice Breyer. The Attorney General told the OIG that she recalled a telephone call from Lockwood. She thought that Breyer had referred Lockwood to her. She said that she spoke to Lockwood because she knew his name and knew that he was an elected public official; she said she did not know him and that she would not recognize him.[236] The call, the Attorney General said, was memorable because she could not understand from the conversation what Lockwood wanted.

On January 30, 1997, Lockwood sent a letter to the Attorney General thanking her for receiving his call. Lockwood's letter did not appear to be from a close friend, since Lockwood mentioned that he had enclosed his resume in prior correspondence. He also noted that he had been "disjointed" in their phone conversation. In this letter, Lockwood asked to be invited to the Department of Justice with Russian jurists, so that he could join them in

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[236] Lockwood told the OIG that he had attended a conference in Washington, D.C., at which the Attorney General spoke. He said that after the meeting, he introduced himself to the Attorney General, but she "just looked at him" and did not appear to recognize him.

meetings and invite them to Florida. He also mentioned that he planned to fund the travel of American judges and professors to Irkutsk that summer where they would lecture on the American judiciary, jury trials, and the independence of judges.

The letter did not ask for funding. To the contrary, Lockwood wrote the Attorney General, "Everyone seems in great favor that I continue with the projects which do not involve taxpayer dollars." The Attorney Generla recalled that she kept a document relating to Lockwood for an extended period because she did not know what to do with it. She did not recall that she asked anyone to do any follow-up as a result of Lockwood's call or letter.

However, it appeared that someone later raised with Bratt Lockwood's call or letter to the Attorney General. Based on notes taken by Bratt's assistant, Paul Johnson, on March 7, 1997, Bratt referred to Lockwood at a meeting he held about his next trip to Moscow. Bratt asked Johnson to get a copy of Lockwood's earlier letter to the Attorney Generla and to make an appointment for him to meet with Lockwood on an upcoming trip to Miami. Johnson claimed no recollection of this or any other call to Lockwood.[237] We surmise that either the Attorney General or someone on her staff mentioned Lockwood to Bratt, since he was leading the Department's prosecutorial and judicial training effort in Russia.

On March 13, 1997, in conjunction with an unrelated trip to Florida, Bratt and Johnson met with Lockwood at his office in Fort Lauderdale. Lockwood told the OIG that he thought that he was being looked over. On March 16, 1997, Lockwood wrote Peisikov that he had been visited by Bratt and Johnson "of Attorney General Reno's office." Lockwood sent a copy of the letter to Peisikov to Bratt, Johnson, and Bonner, and also faxed a copy to the Attorney General. At a regularly scheduled coordination meeting on March 17, 1997, the Attorney General gave a copy of Lockwood's letter to Criminal Division Chief of Staff Claudia Flynn and then or shortly thereafter Lockwood

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[237] Johnson identified his notes of the meeting and recalled that he asked that Lockwood's letter be faxed to him from another section of the Criminal Division, but recalled nothing beyond what was in notes and documents that we provided to him for review.

was put on the Attorney General's "get-back" list. The get-back list included matters that had come to her attention that she wished to pursue, about which she had questions, about which she wished to be kept informed, or about which she wished to ensure that there was follow-up, though not necessarily by her office.

As a result, Flynn apparently discussed Lockwood with Bratt. She did not recall the conversation. However, in an e-mail dated March 17, 1997, to an assistant to the Attorney General, Flynn explained that the Attorney General wanted Bratt to "pursue this only if he thinks that it is a good idea." Flynn sent a copy of her e-mail to Bratt. In a follow up e-mail dated March 24, 1997, Flynn suggested a date in May 1997 to "get back to" the Attorney General on Lockwood, since Bratt had told her that although he had already met with Lockwood once, he expected to meet with him again in April.

Flynn told the OIG that the Attorney General's direction regarding Lockwood meant that Bratt should use his own judgment about Lockwood. She noted that the Attorney General was aware that her mere expression of interest in something could be misunderstood as a directive and that her comment was to ensure that there was no such inference regarding Lockwood matter. Flynn said that she suspected that the Attorney General knew Lockwood because the Attorney General knew many prominent local figures in South Florida, but Flynn said that she was never told that they knew each other. Flynn did not recall anyone ever saying, implying, or suggesting that Lockwood should be treated differently than people who were not known to the Attorney General.

Flynn's e-mail indicated that Bratt told Flynn that he had met with Lockwood once, that he was giving Lockwood's "proposal" consideration, but that he did not yet know whether it would be useful. Flynn's e-mail does not describe Lockwood's "proposal." The proposal is also not described in Bratt's follow-up letter to Lockwood, dated March 19, 1997, in which he wrote that he "looked forward to coordinating our work in Russia" and enclosed some OPDAT material.

Peisikov wrote Lockwood on March 25, 1997, that he needed money for the judicial conference in Irkutsk, that he had spoken to Bonner about it, and that Bonner had promised to answer that week. A few days later, on April 7, 1997, Peisikov wrote Lockwood that he would need $11,700 for the conference. This was followed by two letters on April 21, 1997, from

Peisikov, one to Lockwood saying that Peisikov had talked to Bonner about the Irkutsk conference and discussing a Florida meeting for Russian judges, and one to Bonner asking him to organize and fund the Florida meeting.

On April 25, 1997, Lake told the ABA that the Department was committed to "providing some financial support to [Lockwood's] upcoming program to bring six Russian judges and prosecutors to the United States."[238]

Lockwood said that he found the grant process confusing and that he spoke with many people about it.[239] In May 1997, Lockwood submitted a proposal to OPDAT to fund two programs, one to bring Russians to the United States, one to bring Americans to Irkutsk. OPDAT Director Carl Alexandre approved the proposal and forwarded it to OJP for funding on June 4, 1997.[240]

When he approved the proposal, Alexandre had only just become OPDAT Director. Alexandre told the OIG that he was briefed on the matter before he signed the letter. He could not recall whether it was Lake or another OPDAT contractor who briefed him. He was certain, however, that he was told in the briefing that Bratt and Lake had already approved the grant and, he thought, had already spoken to Lockwood about it.[241]

Alexandre's June 4, 1997, letter to OJP said that OPDAT had been asked to get the funds to Lockwood as soon as possible. It did not say who was

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[238] Although Lake had been a contractor since April 1, 1997, he was still working at OPDAT on a part-time basis in June 1997, and he was in charge of sustaining OPDAT's NIS program until his successor began work in August 1997.

[239] Department phone records show that Lockwood called Lake, Johnson, and Truebell on numerous occasions in May 1997, all of whom were with Bratt at INS at this time.

[240] Bonner told the OIG that the Irkutsk seminar was canceled. Lockwood used the grant to bring Russian judges to Florida in July 1997 and to bring American judges to Moscow in September 1997.

[241] Bratt denied to the OIG that he had anything to do with the application for the grant. He claimed that he had no idea who did. We do not credit Bratt's claim, both on the basis of Alexandre's clear memory and on the basis of Department telephone records, which show that Bratt and those that reported to him – including Johnson, Lake, and Lake's assistant, Beth Truebell – were in touch with Lockwood in April, May, and June 1997.

pressing for funds. Alexandre told the OIG he had no recollection that he was told who wanted the funds quickly. Alexandre speculated that his use of the words "get the funds to Mr. Lockwood as soon as possible" were probably prompted by Lockwood's frequent calls on the status of the grant. Alexandre said he was not told that the Attorney General had any particular interest in the grant and he said that he did not do anything unusual with respect to the grant because of the Attorney General's involvement.

In 1998 Lockwood asked for but was denied additional funds. The new OPDAT NIS manager, Steve Calvery, told the OIG that Lockwood was the sort of person who "constantly drops names." He said of the award of the grant, "it probably helped [Lockwood] that he knew Reno and dropped her name all over the place, but I don't think that was the reason he got the grant." Calvery said that he did not think it a worthwhile project, but noted that his predecessors' "judgment may have been different." He said that Lockwood had a difficult time providing reports, as well as articulating goals and objectives. Lockwood, Calvery explained, sent newspaper articles instead of reports.

Calvery told the OIG that when his grant was not renewed, Lockwood threatened to call Alexandre and the Attorney General. According to Calvery, Lockwood did call Alexandre. We found no evidence that Lockwood called or wrote the Attorney General about his failure to get a second grant. Calvery said he did not receive any inquiries from the Attorney General or the Attorney General's office regarding the decision not to renew the Lockwood grant.

In sum, while there was some evidence that the Attorney General at least knew Lockwood's name as a Florida elected court official, there was no evidence that they were friends, that Lockwood's program was funded because of what could at most be called an acquaintanceship, that the Attorney General encouraged anyone to award a grant to Lockwood's Committee, or that the Attorney General became involved in OPDAT's decision not to continue to fund the program. Lockwood did not learn of the possibilities of working with and receiving funding from OPDAT from the Attorney General, and we saw no evidence that he was directed to OPDAT for that purpose. We found no evidence that the Attorney General was told that OPDAT approved a grant for Lockwood's program or, later, that it had not. We found that Lockwood appeared to name drop to Bonner, and that Bonner passed on what he was told. We do not find in this record support for the allegation that the decision-

makers funded Lockwood's proposal because of any friendship with the Attorney General.

III. ALLEGED CONFLICT OF INTEREST

An anonymous letter dated July 2, 1997, alleged that John Shannonhouse, while he was ICITAP's Contracting Officer's Technical Representative (COTR), had a conflict of interest in administering a contract for the development of ICITAP's information management systems.

Shannonhouse was hired at ICITAP in February 1995. He was assigned to be the Program Manager or technical advisor to the contractor, Systems Flow Incorporated (SFI), developing ICITAP's Management Information System (IMIS). Shannonhouse became the COTR on the SFI contract in 1996. He believed that, regardless of problems experienced by the users, IMIS was a good system. Once the decision was made in 1996 to abandon IMIS and hire a new contractor, Shannonhouse was named as Project Manager and asked to coordinate the new contractor, CACI International Incorporated, and working groups ICITAP created to deal with issues associated with the new system. His belief in the old system was alleged to have conflicted with his assignment to assist in the development of the new one.

Shannonhouse unconditionally denied any conflict of interest in his service as COTR for either the SFI or CACI contract. We found no evidence that Shannonhouse had any conflict of interest, as defined by government rules and regulations, in the contracts he managed and therefore determined that the allegation was without merit.

IV. EXCESS AMERICAN BAR ASSOCIATION OVERHEAD AND RWANDA EXPENDITURES

It was alleged to the OIG that the American Bar Association (ABA) program in Russia, which is funded by Department of Justice grants through OPDAT, spent an excessive sum on its overhead. The OIG reviewed the overhead expenditures of the ABA program in Russia and applicable grant regulations. We also interviewed a former International Relations officer of the Department of State, an ABA Grant Administrator, and OPDAT and Office of Justice Programs officials. We found that the ABA's expenditures for overhead did not exceed the sums authorized by its grant. However, we did observe that a budget cost category of "Other" was high, that it was 31 percent

of the grant for Russia and 25 percent of the grant for Poland, and that it lacked detail.

It was also alleged to us that ICITAP could not account for its Rwanda program expenditures. These allegations were not supported by our review of the records. The OIG reviewed ICITAP's Rwanda program expenditures and found that ICITAP could account for its expenditures.

V. THE HAITIAN POLICE SPECIAL INVESTIGATIVE UNIT

In the course of our investigation, we found documents that suggested that the ICITAP Program Manager in Haiti, Patrick Lang, may have been operationally involved in directing a special section of Haitian police called the "Special Investigative Unit" (SIU).[242] We also found documents that appeared to indicate that the Department of State was using ICITAP money to fund the SIU. If ICITAP was engaged in or funding an operational program, rather than a training and advising program, that may have violated federal law or undermined United States training efforts abroad. See Foreign Assistance Act of 1961, 22 U.S.C. § 2240. To ascertain the nature of the SIU and ICITAP's involvement, if any, in funding the SIU, we interviewed officials at ICITAP, the Department of Justice, and the Department of State.

We concluded that ICITAP was not funding the SIU. Rather, the State Department separately and directly funded the SIU, although from funds that otherwise would have gone to ICITAP.

In addition to funding the SIU, the State Department provided one and sometimes two criminal investigators to the SIU. According to State Department officials, the criminal investigators were to serve as "advisors" to the SIU. They were not themselves to be operational, that is, to engage directly in law enforcement activity. We were told that under Haitian law, there are clear legal constraints that limit the involvement of foreigners in criminal investigations. For example, foreigners cannot interview witnesses. If they do, we were told, then the evidence they gain cannot be used in a Haitian prosecution. The State Department, we were told, had asked ICITAP for recommendations for consultants for the SIU, and ICITAP provided several

[242] We were told that the SIU was created to investigate political murders in Haiti.

names. One of those recommended and hired was Roger Marcoux, a French-speaking former Vermont state police officer.

A State Department official explained that the actual supervision of Marcoux was supervised by Embassy staff and that Marcoux attended weekly or biweekly law enforcement meetings there. OPDAT's Director and former in-country head of its Haiti program, Carl Alexandre, said that ICITAP's Haitian Program Manager, Patrick Lang, was kept informed about the activities of the SIU and that ICITAP provided supplies and equipment to the SIU. Documents we reviewed in Haiti confirmed both that ICITAP donated purchased equipment to the SIU and that Lang was involved in SIU briefings. In addition, ICITAP Deputy Director Edward Bejarano said that Lang briefed him and Stromsem on the SIU.

Lang told the OIG that he was present at meetings with the U.S. Ambassador in Haiti to discuss the SIU, and Lang said that ICITAP Headquarters was aware of his "advisory" role. That, he said, was the limit of his involvement. Lang and Stromsem denied that ICITAP staff actively engaged in any operation**.**

Donations of material to the SIU is consistent with ICITAP's practice of donating American equipment to other branches of the Haitian police. We did not find that ICITAP's Haiti Program Manager's informal advice and review of SIU investigations constituted "operational" work.

VI. CLAIMS OF RETALIATION

We received several allegations that ICITAP, OPDAT, or Criminal Division managers had retaliated against individuals who had complained about actions taken by those or other managers. We did not substantiate the allegations.

A. Martin Andersen

In September 1995, ICITAP hired Martin Andersen as a Program Manager for police development programs in emerging democracies in the Caribbean, Eastern Europe, and Africa. The position, which made Andersen a federal employee, was for a term of two years. Like other term positions it could be renewed or extended for a second term of two years. During his two-year term, Andersen was moved from ICITAP to OPDAT in December 1995, from OPDAT to the Criminal Division's Office of Administration in April

1997, and then to the Criminal Division's Office of International Affairs. Andersen applied for other federal positions but he was not selected, and his term position was not renewed when it expired in September 1997.

In several e-mails to Deputy Attorney General Eric Holder, dated August 22, 1997, Andersen alleged that he had been retaliated against because of whistleblower activity and because he had participated in an OIG investigation. Andersen wrote to Holder that he made disclosures to OPDAT managers in January 1997 regarding an OPDAT cost overrun for translation services and in March 1997 regarding the possible improper conduct of a consultant who worked in Haiti. Beginning in April 1997, Andersen made allegations and disclosures to the Department of Justice Security and Emergency Planning Staff (SEPS), the OIG, and others concerning security violations, mismanagement, misconduct, waste, fraud, and abuse of power at ICITAP, OPDAT, and in the Criminal Division's Office of Administration. Andersen alleged managers retaliated against him by not renewing his appointment as a term employee, by not hiring him for other federal positions for which he had applied, by improperly moving him from one section to another in the Criminal Division, and by improperly denying him a security clearance. Andersen also made a subsequent claim to the OIG that he had been retaliated against because he had filed a sexual discrimination claim with the Equal Opportunity Office (EEO).

The OIG investigated Andersen's allegations that he had been the subject of mistreatment, misconduct, and reprisal.[243] We interviewed Andersen, his supervisors, individuals involved in making personnel decisions that affected the course of Andersen's federal employment, and other workplace colleagues of Andersen's. We also reviewed documents relevant to the renewal of Andersen's employment, Andersen's background investigation for a security clearance, and the timing of events for which Andersen claimed reprisal.

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[243] Andersen also filed a claim with the Office of Special Counsel (OSC), a federal agency with jurisdiction to investigation allegations of retaliation against federal employees who have made certain protected disclosures. His claim before the OSC is pending. Andersen has since found employment outside the Department.

We did not substantiate Andersen's retaliation claims. We conclude that the decision not to retain Andersen preceded Andersen's 1997 disclosures and was independent of those disclosures and his EEO complaint. With respect to Andersen's other claims of retaliation or mistreatment, we did not find sufficient evidence to conclude that Andersen's disclosures were the basis for management's actions.

B. Janice Stromsem

In January 1999, Janice Stromsem, who was then the Director of ICITAP, alleged to Deputy Attorney General Eric H. Holder, Jr. that the Criminal Division was retaliating against her for cooperating with the ongoing OIG investigation. Stromsem claimed that she was being removed from her position as ICITAP Director and that the Criminal Division was "poisoning the well" of other job opportunities because she had disclosed to the OIG that Deputy Assistant Attorney General Mark Richard had failed to adopt a written policy barring the use of ICITAP for intelligence operations. Stromsem raised related claims directly to the OIG. Holder referred Stromsem's allegations to the OIG for investigation.

To assess Stromsem's allegations, we interviewed Stromsem, Richard, and others who had information on the decision to replace Stromsem as ICITAP Director and the timing of that decision, as well as individuals who Stromsem claimed heard Richard or other Criminal Division managers make disparaging comments about her during job negotiations.

We did not find that Richard or anyone in the Criminal Division retaliated against Stromsem for her cooperation with or disclosures to the OIG. The evidence showed that the timing of the decision to remove Stromsem as ICITAP Director preceded Stromsem's disclosure to the OIG regarding the intelligence policy. The evidence also supported Criminal Division managers' contention that Stromsem was removed for reasons relating to her performance as Director and not because of her disclosures to the OIG. We did not find any evidence to support Stromsem's claim that Richard "poisoned the well" of her job opportunities by making negative comments to potential employers.

C. Michael Gray

Michael Gray came from the ABA to OPDAT as a contractor in 1995 and remained with OPDAT as a contractor until June 1997. In February 1999,

the OIG received a letter from Gray in which Gray alleged that he had lost his job working at OPDAT in reprisal for whistleblowing activities. Gray asked for a hearing and to be returned to his work at OPDAT. Gray also noted in his letter that he had filed a complaint with the Office of Special Counsel seeking protection as a whistleblower. We did not find support for Gray's allegations of reprisal or mistreatment at OPDAT.

Gray told the OIG that he disagreed with management on several issues, including Bratt and Lake's resolution of issues with the ABA over its program in Russia and the use of Jo Ann Harris as moderator for the ILEA conference. We did not find that OPDAT improperly discriminated against Gray when it did not keep him after his Aspen contract expired and when it failed to give him a permanent federal position. The evidence was adequate to support management's claim that it decided not to retain Gray for reasons other than his whistleblowing activity.

D. Lisa Konrath

In January 1998, Lisa Konrath wrote the OIG alleging that she had been improperly dismissed from her work as an ICITAP contractor for raising security and other problems about ICITAP's work in Bosnia. According to ICITAP, Konrath and a colleague, Pat Moyer, were sent back to the United States early due to insubordination, discontent, and poor work habits.[244] Neither of these consultants was used again. Upon investigation, we did not substantiate the claim. The central issue in the matter appeared to be a disagreement about performance, not concern about any claim that Konrath raised regarding ICITAP's problems.

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[244] According to ICITAP Assistant Program Manager Victor Perea, Moyer and Konrath were assigned to rewrite a 120-hour block lesson plan on defensive tactics but they took over six weeks to complete approximately 80 hours of the lesson plan and ultimately never completed the project. Additionally, according to Perea, the ICITAP Acting Program Manager for Bosnia, James Tillman, informed Perea that Moyer threatened Tillman. Allegedly Moyer made the statement that he knew people in Washington and that he was the subordinate now but in the future he could be the supervisor.

VII. SPECIAL TREATMENT FOR JILL HOGARTY AS A CONTRACTOR

It was alleged to the OIG by several ICITAP staffers that Jill Hogarty received special treatment as a contractor when ICITAP permitted her to travel from a temporary Haitian police cadet training facility in Missouri to Washington, D.C., on weekends so that she could continue to work as a bartender at Lulu's. An ICITAP employee also alleged that Hogarty was permitted to travel home from Haiti on three or four occasions, even though some people were in Haiti for six to nine months without being allowed to travel home.

Travel records of the two contractors that Hogarty worked for were insufficient to resolve the allegation. Scientific Applications International Corporation's travel records show that Hogarty was at the Ft. Leonard Wood, Missouri, training facility from Tuesday, August 1, 1995, to Thursday, August 3, 1995, and then returned the following Monday, August 7, 1995, to Thursday August 10, 1995. Two weeks later, she again was at the facility between Monday and Thursday. We were unable to obtain any travel records from Ebon for Hogarty's Haiti travel.

Hogarty denied the allegation. Although Hogarty acknowledged that she continued to work at Lulu's while she was an ICITAP contractor, an arrangement that she said had been approved by ICITAP Associate Director Joseph Trincellito, she said that she simply would return home when her work was completed. Hogarty acknowledged that the same allegation had been raised to ICITAP Director Janice Stromsem in 1995 regarding Hogarty's trips home from Missouri. Hogarty said that at the time she responded to the allegation in a memorandum and offered to meet with Stromsem and Trincellito to address it. Stromsem told her, Hogarty said, that no meeting would be necessary since they agreed with her memorandum and there was no problem. Hogarty provided a copy of the memorandum to the OIG. Hogarty said in the memorandum that she would be willing to meet with Stromsem to discuss the issue but otherwise did not address the merits of the allegation.

Stromsem told the OIG that when she heard the complaint in 1995, she talked to Trincellito who denied the allegation. Trincellito, she said, also denied any arrangement with Hogarty to allow her to continue bartending at Lulu's while working as a consultant for ICITAP. Stromsem said she reviewed the travel files and saw that Hogarty only returned once or twice to

Washington. According to Stromsem that was normal for consultants on temporary duty. Stromsem said that other contractors were allowed to return to Washington while on temporary duty in Missouri.

Cary Hoover, ICITAP Special Assistant to the Director, said that Hogarty was permitted to come back from Missouri every weekend to work at Lulu's. Hoover, like Stromsem, claimed that it was the normal practice with ICITAP's contractors to pay for this travel.

Trincellito denied to the OIG that he negotiated with Hogarty anything other than the work that she was to perform; he denied that he negotiated with her about coming home for weekends. Trincellito claimed to have no recollection of whether Hogarty was permitted to return to work at Lulu's.

The travel records were insufficient to show a pattern of travel home on weekends. We did not conduct an examination of other contractors' travel patterns to show whether Hogarty was treated more favorably. Therefore, we did not reach a conclusion as to the merits of the allegation.

VIII. CONDITIONS AT THE HAITIAN POLICE TRAINING ACADEMY IN 1995

A former ICITAP consultant alleged to the OIG that conditions at the Haitian Police Training Academy in 1995 were deplorable and that there were gross inadequacies in the performance in Haiti of ICITAP personnel and ICITAP's contractor, Ebon.[245]

The consultant criticized ICITAP management for failing to provide drinking water and adequate meals, failing to react to students testing positive for TB and AIDS, failing to have sufficient teaching materials such as books and lesson plans, failing to provide adequate sanitation facilities and medical facilities, and for retaining incompetent and unqualified instructors. The consultant also alleged that Ebon overcharged for supplies.

As a result of these and other allegations and problems, Ebon was the subject of an internal 1995 ICITAP review, it was discontinued as an ICITAP

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[245] ICITAP had hired Ebon to establish and operate the Haitian Police Training Academy.

contractor, and an audit was conducted of its performance in Haiti. That audit was ongoing when our investigation began. Former Assistant Attorney General Jo Ann Harris told the OIG that the Haiti program was on the "verge of collapse" and that was part of the decision to put Bratt in charge of ICITAP as Acting Director in 1995. We did not believe that exploring these allegations further would be productive and we did not attempt to do so.

IX. ILLEGAL TRANSPORTATION OF HAZARDOUS MATERIAL BY AIR

It was alleged to the OIG that Interlog and ICITAP employees knowingly took and sent hazardous material by air and by post to Haiti in violation of law. The same allegation had been earlier made to the Deputy Director, Eastern Region, of the Federal Aviation Agency (FAA). The FAA told the OIG that it had investigated these allegations and that its investigation included surveillance of particular flights that it had been told would involve the illegal transportation of hazardous material. Nonetheless, it had been unable to substantiate any of the information. The FAA did not have records indicating the date of the investigation but based on information provided through interviews, the investigation possibly occurred in 1994 or 1995.

CHAPTER ELEVEN: RECOMMENDATIONS AND CONCLUSIONS

I. RECOMMENDATIONS REGARDING DISCIPLINE AND REPAYMENT OF FUNDS

As the evidence that we set forth throughout the report has shown, we found that managers in ICITAP, OPDAT, and the Office of Administration violated government regulations relating to travel, security, the use of contractors, and the hiring and promotion of federal employees, among others. Some of these violations were issues of performance that should be addressed through training and counseling; in some instances, however, the violation rose to the level of misconduct that warranted the imposition of discipline.

In our recommendations, we have taken into consideration the facts found in this investigation and the seriousness of the misconduct.[246] As part of the analysis, we have considered the employee's position in the Department of Justice, his level of culpability for the misconduct, the extent to which the employee involved others in misconduct, and the extent to which an employee acknowledged misconduct or cooperated with the OIG.

A. Criminal Division Executive Officer Robert K. Bratt

We found that former Criminal Division Executive Officer Robert K. Bratt repeatedly engaged in substantial misconduct while serving as the Executive Officer of the Criminal Division and while he was responsible for overseeing ICITAP and OPDAT. We found that Bratt put his own interests ahead of the interests of the government and the interests of his subordinates for whom his conduct was a model. We therefore believed that Bratt's conduct warranted severe discipline under the Department's Standards of Disciplinary Offenses and Penalties, including possible termination from the Department of Justice.

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[246] While we rely primarily on the facts described earlier in our report, where necessary to make clear the basis of our assessments of responsibility we refer to facts not contained elsewhere in the report.

However, Bratt retired on August 1, 2000, and is no longer subject to discipline by the Department. At the time of his retirement, Bratt's security clearance was suspended. Because Bratt may seek to work on matters that require a security clearance, we discuss our assessment of whether Bratt has the requisite qualifications or judgment to receive a security clearance.

First, we concluded that Bratt committed egregious misconduct by using his government position to improperly procure visas for two Russian citizens, Yelena Koreneva and Ludmilla Bolgak. We found that Lake improperly used the referral process on Bratt's behalf, that Bratt was aware of Lake's actions, that Bratt knew the referral process required a government interest in the visa applicant's visit to the United States, and that no such government interest existed for either Koreneva's or Bolgak's visit.

Bratt's involvement with Koreneva also raised significant security concerns. Bratt held an SCI clearance and had access to highly classified material. Bratt, as the Criminal Division Executive Officer, had distributed to all Criminal Division personnel a brochure reminding employees that foreign intelligence threats often occurred in an "unobtrusive and non-threatening fashion …." Yet, Bratt asked to meet an unmarried Russian woman, engaged in a romantic relationship with her, invited her and a friend to visit the United States and tour his office, and improperly used his influence to obtain visas for the two women. He failed to timely notify the Department's security office of his relationship as he was required to do by the security regulations and only did so after being prompted by the head of the Department's security office. Even when notifying the Department's security office of the relationship, Bratt did not fully disclose the nature of that relationship. He also attempted to conceal the true nature of the relationship when he was first asked about it by the OIG. These actions left Bratt vulnerable to blackmail by Russian intelligence services or others.

In addition, we found that Bratt committed serious misconduct in connection with his government travel. He knowingly and intentionally violated the government's Travel Regulations. He directed his assistant to book business class flights on government travel when he knew that the trips did not qualify for that class of travel. As a result of his use of business class, Bratt's subordinates also improperly traveled using business class. Bratt also misused for his personal benefit frequent flyer miles he collected on his government travel. The Department has repeatedly advised its employees that

frequent flyer miles belong to the government. As the Criminal Division's top administrative officer, Bratt knew the rules but did not follow them.

In this review, we found a pattern of Bratt blaming his staff for his own misconduct and failures to abide by the rules. According to Bratt, Lake was responsible for improperly obtaining visas for the Russian women, Turcotte was responsible for his misuse of business class, and assorted unidentified Office of Administration, ICITAP, and JMD employees were at fault for either incorrectly informing him that his actions were proper when they were not or because they failed to warn him that his actions violated rules and regulations. We believe that Bratt is the person who should be held accountable for his own misconduct and improprieties. Adding to his culpability is the fact that Bratt involved subordinates in his misconduct. He engaged Lake to improperly submit the referral form on his behalf. He engaged Turcotte to improperly arrange business class on his behalf. In addition, his improper actions caused his subordinates to follow his lead – Stromsem and Hoover used business class because Bratt did.

We concluded that Bratt was not forthcoming and honest during his interviews with us. He repeatedly failed to disclose pertinent facts and made false statements about his role in various events. As a few examples, we concluded that Bratt made false statements about the true nature of his relationship with Koreneva, made false statements about his knowledge of the visa referral process, failed to disclose a conversation he had with Harris when they discussed the potential for her working for OPDAT, and failed to disclose his role in Hogarty's selection as a permanent federal employee.

What emerges from our investigation of Bratt's actions is a supervisor who willfully violated government regulations, who was recklessly indifferent to the security interests of the government, who induced subordinates to aid and abet his misconduct, and who made false statements to the OIG.

In light of these findings, we recommend that SEPS incorporate into Bratt's security file the findings of our investigation and provide them to the Defense Investigative Service Clearance Office (DISCO), which performs background investigations of government contractors. We recommend that any agency that might be charged in the future with determining whether Bratt receives a security clearance – either DISCO or another government agency – carefully consider the findings and conclusions we have made throughout this report in considering whether Bratt has the requisite judgement and

appreciation for security required of someone who is to be entrusted with a security clearance.

Bratt converted frequent flyer miles earned on government travel to his personal benefit and traveled business class at government expense in violation of the Travel Regulations. We recommend that the Department recoup from Bratt the costs of travel improperly borne by the Criminal Division. For the reasons we set forth in Chapter Four, Section IIIC regarding the March 1997 trip, we concluded that Bratt was responsible for the improper travel of Hoover and Stromsem. Therefore, we believe that he should reimburse the Department for the costs of their improper travel as well as his own. We believe that a reasonable estimate of his business class travel can be achieved by comparing the authorized fares for business travel and the actual costs. We calculate that cost as $8815.93. Since Bratt failed to keep the requisite records, reconstruction of his frequent flyer accounts also involves estimates. As we have discussed, Bratt used between 156,000 and 230,000 government earned miles for personal travel. We calculate that value as between $3900 and $5750.[247]

In addition, Bratt should surrender to the Department all remaining miles in his frequent flyer accounts. He has already used for personal purposes more than the total number of personal miles he claimed; the remaining miles are the property of the government.

B. Associate Executive Officer Joseph R. Lake, Jr.

Lake retired from the government on March 31, 1997, and consequently he is not subject to discipline as a federal employee. Lake's security clearance was suspended in March 1998 for his actions relating to the visa matter. In this investigation, we found that Lake committed egregious misconduct by willfully submitting a false statement on the visa referral form. We also believe that his statements to us regarding that matter were not credible. We recommend that SEPS incorporate the findings of our investigation and report in Lake's security file and provide them to DISCO.

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[247] In some instances, frequent flyer miles can be purchased. United charges 2.5 cents per mile, and we used that cost to calculate a value for frequent flyer miles.

In addition, we found that Lake materially violated the terms of his early retirement agreement by performing personal services for OPDAT and INS as a contract employee. Pursuant to the federal law governing the Buyout Program, he should repay $25,000 to the Department of Justice, the amount of his Buyout bonus. If Lake does not voluntarily make the repayment, then we recommend that the Department take action to enforce the terms of his Buyout agreement.

In addition, we recommend that the government recover from Lake the costs of his improper business class travel, $2100, and the costs of personal travel improperly charged to the government, which we calculate at $988. Lake also left the government with substantial frequent flyer miles earned from government travel. Because the miles are government property, the Department should recover the miles that are remaining.

C. ICITAP Director Janice Stromsem

We found that Stromsem repeatedly failed to comply with government regulations and policies while serving as ICITAP Director, even those she established. We consider most grave Stromsem's failure to follow and enforce the government's security regulations. Stromsem represented that she did not understand the gravity of the security problems in her office and that she followed practices established by others. We found these claims unpersuasive. We believe that Stromsem was insufficiently attentive both to following security regulations and ensuring that her subordinates properly handled classified information. We believe that this attitude, along with her widely known failure to correct Trincellito's persistent violations, were directly responsible for the depth and breadth of security violations found by our investigation.

As ICITAP Director, Stromsem had an SCI clearance. We recommend that SEPS evaluate whether Stromsem should continue to have a security clearance, and if so, at what level. We further recommend that at a minimum, Stromsem be re-briefed on security requirements, including how and to whom to report the failures of third parties to follow security regulations.

Stromsem was replaced as ICITAP Director during the course of our investigation and was detailed in 1999 to the United States Agency for International Development. We believe that the Department should carefully evaluate whether Stromsem has the managerial skills to assume a leadership

position in the Department given her failure to comply with regulations governing security, government travel, contracts, and hiring. Stromsem also seemed to have no appreciation for the appearance of favoritism that was created when she participated in personnel matters in which she appeared to have a personal interest.

We conclude that Stromsem's personal violation of the security regulations, her use of frequent flyer miles accrued on government travel for personal benefit, and her involvement in the preselection of Hogarty warrant discipline. We recommend discipline in the range of a written reprimand to a suspension.

In addition, we recommend that Stromsem be ordered to repay the cost of the government frequent flyer miles that she used for impermissible upgrades and for the purchase of upgrade stickers. We calculate that cost as $2500. We also recommend that Stromsem either be required to use the frequent flyer miles that she accumulated on ICITAP travel that remain in her account for future government travel or return them to the Department.

D. Special Assistant to the ICITAP Director Cary Hoover

Hoover was a manager and a long-standing government employee. We believe that Hoover knowingly violated security regulations, both by disseminating classified information to uncleared parties and by removing classified documents to his home. He was a part of an ICITAP management structure that sent the message throughout ICITAP that security was not important. Hoover's security clearance was suspended by SEPS in 1997. We recommend that SEPS take into consideration the findings in this investigation in determining whether or when Hoover's clearance should be reinstated. If reinstated, Hoover should be given extensive and continuing training on security regulations.

Hoover violated the Travel Regulations by improperly flying business class on the January 1997 trip to Moscow and using government frequent flyer benefits accrued from government travel for his personal benefit. The Department should recover the appropriate costs, which we calculate at this time as $1474 for his business class travel. We calculated the value of Hoover's improper use of frequent flyer miles as $ 2075.

Hoover was a part of senior management at ICITAP and someone from whom others took their cues. This leadership position makes all the more

serious his misconduct. We find that Hoover's misconduct should result in discipline. We recommend that Hoover be disciplined in the range of a written reprimand to a period of suspension for his violations of the security regulations. We also recommend that Hoover make available to the Department the frequent flyer miles that he accumulated on ICITAP travel.

E. Associate ICITAP Director Joseph Trincellito

We find that Trincellito's extended and repeated failure to observe fundamental security practices, his deliberate indifference to established security practices, and his hostility to the assistance and reminders that ICITAP's security officers repeatedly offered him warrant discipline. We recommend a period of suspension for this misconduct.

Trincellito's security clearance has been suspended since April 1997. We recommend that SEPS take into consideration the findings in this investigation in determining whether or when Trincellito's clearance should be reinstated. If reinstated, Trincellito should be given extensive and continuing training on security regulations.

F. Acting Director of OPDAT Thomas Snow

Snow violated the Travel Regulations by taking a weekend trip to Frankfurt, Germany, with other ICITAP/OPDAT travelers, which improperly increased the cost of his November 1996 trip. He should be directed to repay the excess cost of this travel, which we calculated as $2140.75.

G. Executive Assistant Denise Turcotte

Turcotte arranged business class travel for Bratt even though she knew that he did not qualify for it under the Travel Regulations, and she worked with the government's travel agency to make it appear that he did qualify. Nonetheless, we do not believe that Turcotte's conduct warrants discipline. We come to this conclusion on the basis of several considerations. Unlike others with whom we spoke, Turcotte immediately accepted full responsibility for her own acts. Even though she neither initiated her misconduct nor benefited from it, she did not attempt to shift responsibility; she understood that when she acceded to Bratt's improper request, she erred. We also recognize that employees like Turcotte who are not in a supervisory position, who are directed or urged by their supervisors to engage in misconduct, feel themselves

to be and are in a difficult situation. Turcotte thought that she would put her job at risk if she refused Bratt's request to find a way for him to fly business class on his government trips.

Notwithstanding this recommendation, we note that Turcotte, and other employees in similar situations, could have availed herself of the resources that are available in the Department of Justice when faced with a supervisor who engages in misconduct. The OIG is available to all employees and constitutes recourse within the Department of Justice where other avenues appear to be unavailable. Complaints can be made either anonymously or confidentially.

II. OTHER RECOMMENDATIONS

In this section, we discuss systemic improvements for the Department to consider as a result of our review.

A. Oversight Committee

In 1998, the Department of Justice and Department of State organized a high-level supervisory working group to coordinate and monitor the work of ICITAP and OPDAT. We believe that the formation of this group was overdue and while it has ceased meeting, we believe that the continuation in some form of a joint oversight committee would benefit the development of the organizations. The Oversight Committee permits policy to be articulated and refined where there is expertise available on international matters and in an atmosphere in which the program interests of both Departments can be heard and accommodated. We note, however, that the Oversight Committee is in addition to, not a substitute for, adequate oversight of ICITAP and OPDAT by the Criminal Division.

B. Follow-up After Investigations

We found that the recommendations and the lessons learned from previous investigations or reviews of ICITAP were generally ignored. In the few instances where some corrective action was instituted, little attention was paid to see if the problem was fixed in the long-term. For example, in a memorandum to the Assistant Attorney General for the Criminal Division following an investigation in 1994, the OIG cautioned that the billing systems used by ICITAP's contractors made it difficult, "if not impossible," for ICITAP to verify the accuracy of invoices and that without a system for

matching delivery orders with invoices, ICITAP was "highly vulnerable to contractor over-charges." Yet, we did not find evidence that any effort was made to remedy this problem until 1997 when ICITAP was unable to provide needed information to the State Department.

The OIG noted throughout the two reports it submitted to the Criminal Division in 1994 that ICITAP's lack of planning resulted in problems. We cited as an example that ICITAP paid more for services related to a training course because ICITAP waited until the last moment when the situation became a crisis. We saw this situation repeat itself with the ILEA conference cost overrun and the development of IMIS. Indeed, the OIG noted in the 1994 reports that recommendations made by JMD following a 1992 review had not been implemented. Security problems continued over the course of years, despite reports highlighting the issues and suggesting ways to resolve the problems. Poor staff morale continued despite a 1995 report by Bratt noting the problem and some of the causes.

Senior Criminal Division management, as well as the management of the office being investigated or reviewed, must take responsibility for ensuring that recommendations resulting from investigations are either implemented or that the failure to implement the recommendations is the result of careful consideration rather than inertia.

C. Security Issues

Given that ICITAP's security violations were long-standing and extensive, we recommend that SEPS continue to monitor ICITAP's progress, including conducting unannounced security reviews, and provide training to both new and experienced staff members who handle classified information. SEPS should also consider whether ICITAP should have a SCIF on its premises.

Our investigation of the security problems at ICITAP leads us to believe that there may be broader security issues beyond failures on the part of individual ICITAP managers. For example, SEPS did not seem to have a mechanism for ensuring that ICITAP had in fact remedied its long-standing security violations. In addition to the training given when employees receive a security clearance, refresher training in security practice may also be appropriate. We, therefore, are considering initiating a review of security practices within the Department of Justice to determine whether some of the

problems we observed at ICITAP exist elsewhere in the Department and whether we can provide recommendations to assist the Department to improve its overall security program.

D. Travel

1. Review of Audit Process

Many of the travel violations that we discovered were apparent on the face of the documents that JMD's travel staff reviewed. For example, airline ticket receipts showed that employees traveled business class when travel was represented as coach class on travel vouchers. We do not know whether a different, less rigorous standard of review is given to certain persons or offices in the Department or whether these violations were not identified for other reasons. We recommend that JMD review its auditing process to determine whether changes are warranted, such as additional training for auditors or periodic reviews of audits conducted.

2. Training

We recommend that on an annual basis, the Department offer training on government Travel Regulations to Department employees. We believe that Department employees who travel regularly, such as attorneys in litigating sections, as well as the secretarial or clerical staff who are often given the responsibility of completing the travel forms and supervisors who are responsible for authorizing travel and approving travel vouchers, would benefit from such training. This would give both new and seasoned travelers and staff who must arrange government travel a forum in which to learn and raise questions about the regulations. We have found from this review and others, as well as from the personal experience of individuals who worked on this investigation, that Department employees too often learn only about travel regulations informally from other personnel in their own offices and as a result often learn incorrect or improper practices.

3. Frequent Flyer Miles

We have found in this investigation and in prior investigations that the collection of frequent flyer miles by government travelers creates the opportunity for an undue number of travel violations. We understand that the government has an interest in the savings that these miles might represent.

However, the Department's actual savings from the use of frequent flyer miles appears to be so insignificant that it raises the question of whether to continue to permit employees to collect frequent flyer miles on government travel.

The Department has put in place a program, called the Gainsharing Program, to share its savings from various travel cost cutting measures with employees as an incentive to encourage employees to use frequent flyer miles and other cost saving measures for the government's benefit. The Gainsharing Program was implemented in 1995 at the direction of the Attorney General. Under the program, employees who use or transfer to another employee frequent flyer miles may earn up to 50 percent of the government's savings when those miles are used for government business.

According to Mark Rodeffer, savings to the Department of Justice from the Gainsharing Program were as follows: [248]

FY 1996	$ 70,494.56
FY 1997	201,946.98
FY 1998	44,796.81

The Department should consider whether the Gainsharing Program needs improvement through increased publicity or whether other issues are hampering its use. The Department should also consider whether the opportunity for misconduct is so substantial when compared to the insignificant cost benefit the Department receives that it warrants eliminating having employees collect frequent flyer miles. Another alternative would be to assist employees to maintain separate frequent flyer accounts. The refusal of airlines to allow separate accounts for personal and business travel creates problems for employees. We suggest that the Department press the airlines, or recommend

[248] Rodeffer said that if in its discretion an office did not make any award when frequent flyer miles had been used, JMD would have no record of the savings to the government. The Criminal Division did not participate in the Program in Fiscal Years 1997 or 1998. Rodeffer said that one concern of the Criminal Division was the apparent inequity of a program that would only benefit some, but not all, employees.

to the General Services Administration to press the airlines, to allow separate frequent flyer accounts for personal and governmental travel.

E. Training on Ethical Issues

The Department requires mandatory ethics training of its employees. However, we found in this investigation that managers had little appreciation for ethical issues beyond the most obvious situations involving financial conflicts of interest. Therefore, the Department should revise its ethics training material to include other more difficult and less obvious situations, such as situations involving the appearance of a conflict of interest. The training should also advise managers on the appropriate course of action, such as obtaining a written waiver of the conflict.

F. Performance Evaluations

We observed during the course of the investigation that Criminal Division managers did not complete performance evaluations for many of their subordinates and that many ICITAP, OPDAT, and Office of Administration managers did not have performance evaluations in their files. In some instances, when we did find performance evaluations, employees were rated "outstanding" although their supervisors had complained to us about their performance. The Department should remind managers to complete performance evaluations for all subordinates, including subordinate managers, on a yearly basis and that the evaluations should reflect an honest appraisal of employees' performances.

G. Re-employment Issues

In the event that a future Buyout bonus is offered to Department employees, the Department should provide training to the administrative officers regarding the requirements of the program. If other type of retirement programs, such as early out programs, also contain restrictions on employees' ability to return to government service or work as contractors, the Department should ensure that administrative officers are trained and alert to the issues involving returning employees.

III. CONCLUSIONS

This report discusses in detail a disturbing history of managers who knowingly committing misconduct and willfully violated rules and regulations

they acknowledged they knew. In other instances, senior managers professed ignorance of long-standing rules that others in the Department routinely abide by. Many subordinates who witnessed the improprieties of the managers either also became lax about their own conduct or became cynical about the ethics of the Department as a whole, believing that certain favored managers could get away with improper conduct.

It would be tempting to conclude that the problems lie solely with the individual managers and that with their transfers or retirements the problems have been fixed. We believe that such a conclusion would only focus on part of the problem and would ignore the long-term lessons that could be learned from this investigation.

As we noted in the Introduction to this report, ICITAP had a troubled history before becoming part of the Criminal Division in 1994. Yet, between 1995 and 1997, rather than providing increased supervision of the office, the Criminal Division seemed to provide even less. We found that at various periods between 1995 and 1997, none of the Criminal Division's managers with the closest connection to ICITAP believed that they were responsible for supervising ICITAP. ICITAP's Director did not understand to whom she was to report. In some part, this lack of supervision may have been the result of the fact that the State Department rather than the Criminal Division provided ICITAP and OPDAT's funding. It also may have been that Criminal Division managers considered the decision to put Bratt in charge as in effect providing supervision. Even if Bratt had been an exemplary manager, ICITAP and OPDAT would have benefited from attention and guidance by senior Criminal Division managers as it made its way in its new home in the Department.

As we have seen, however, Bratt was far from an exemplary manager, and the failure to adequately supervise his conduct added fuel to ICITAP's preexisting problems. We do not believe that all of ICITAP's difficulties and Bratt's and other managers' improprieties could only have been ferreted out by an OIG investigation. Some of them, particularly security and travel issues, should have been apparent to anyone taking the time to look. The fact that the Criminal Division did not follow up to ensure that recommendations from other OIG or internal investigations had been implemented is an example of the lack of adequate oversight.

There is new management at ICITAP and OPDAT, and our sense is that improvements have been made in various areas, such as security. However, we

did not review the current management and the changes it has made. Moreover, we believe that it is still too soon to tell whether ICITAP has moved away from its previous attitude that it was "different" and "unique" and that therefore the rules applicable to other Department employees do not apply to its personnel. Attitudes and practices that have been engrained for years are not likely to disappear with the introduction of a few new personnel, even if those personnel are managers. Consequently, managers at ICITAP and OPDAT must be vigilant in ensuring that ICITAP and OPDAT staff adhere to Department rules and standards.

Another lesson to be taken from this investigation is the ease with which managers can slip from carelessness to misconduct. In this investigation, and others, we found some employees rationalized their conduct by noting that they worked hard, they were overburdened with work, they were focusing on other issues, they deserved certain benefits, or that the regulations were burdensome. We found during this investigation that the occasional "bending of the rules" became a way of doing business. We believe that Department managers need to be vigilant to avoid the attitudes that can easily lead to the problems we found during this investigation.

September 5, 2000

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