

DLD-254

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 18-2573 & 22-2186 (Consolidated)

ANTHONY L. VIOLA, Appellant

VS.

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.

(W.D. Pa. Civ. No. 1:15-cv-00242)

Present: MATEY, Circuit Judge

Submitted are:

- (1) Appellant's motion for appointment of counsel, filed 1/05/2021; and
- (2) Appellant's motion for appointment of counsel and to Refer Government Misconduct to the DOJ Inspector General, filed 7/06/2022

in the above-captioned case.

Respectfully,

Clerk

ORDER

Upon consideration of the factors set out in *Tabron v. Grace*, 6 F.3d 147, 155–56 (3d Cir. 1993), Appellant's motions for appointment of counsel are granted. The Clerk is directed to locate and appoint counsel for Appellant and then issue a new briefing schedule. Similar to our prior order, in addition to any other issues the parties wish to address in their briefs, the parties shall address: (1) whether the District Court properly considered documents outside the pleadings in ruling on the Task Force's motion to dismiss, *see* Fed. R. Civ. P. 12(d); *Rose v. Bartle*, 871 F.2d 331, 339 n.3 (3d Cir. 1989); *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993); and (2) whether the District Court provided a sufficiently detailed analysis in granting the FBI's and DOJ's

motion for summary judgment, in order to establish that a careful de novo review of the agencies' disclosure decisions has taken place, *see Van Bourg, Allen, Weinberg & Roger v. NLRB*, 656 F.2d 1356, 1358 (9th Cir. 1981) (per curiam); *Founding Church of Scientology of Washington, D.C., Inc. v. Bell*, 603 F.2d 945, 950 (D.C. Cir. 1979)). Appellant's motion to refer Government admissions and misconduct to the DOJ inspector general is referred to the merits panel.

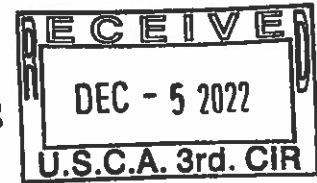
By the Court,

s/ Paul B. Matey

Circuit Judge

Dated: December 5, 2022

nmb/cc: Anthony L. Viola
David R. Roth, Esq.
Tadhg Dooley, Esq.
Laura S. Irwin, Esq.
Sharon Swingle, Esq.
Daniel Winik, Esq.



UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

ANTHONY VIOLA,)	District Court Case No. 1:15-cv-242
)	
Plaintiff - Appellant)	Court of Appeals Case No. 18-2573
)	
-vs. -)	RENEWED MOTION
)	FOR THE APPOINTMENT
)	OF COUNSEL and to
U.S. DEPARTMENT OF JUSTICE,)	REFER GOVERNMENT
Et. al.,)	MISCONDUCT TO THE DOJ
)	INSPECTOR GENERAL
Defendants - Appellees)	

On June 28, 2022, the undersigned Plaintiff – Appellant Anthony Viola respectfully requested this Court appoint counsel and refer this matter to the Department of Justice’s Inspector General. This request followed both this Court and the District’s Court’s previous appointment of counsel, Tabron v. Grace, 6 F.3d 147, 156 (3d Cir. 1993), as well as extraordinary admissions by both the FBI and Department of Justice that each made materially false statements in a series of sworn affidavits during this litigation, and the FBI informed this Court that it was unaware of nearly 10,000 records in its own record system for nearly a decade, Document 99, page 2, 6/29/2020.

In September, 2022, the District Court was presented with additional information, including a sworn statement by the Chairman of a multi-jurisdictional Task Force that stated employees were permitted to remove hard drives and evidence in federal criminal cases from the Task Force, as well as an investigation by the Justice Department that led to current disbarment proceedings against former federal prosecutor Mark Bennett, **Exhibit I**.

During this litigation, DOJ officials blamed Mr. Bennett for any inaccurate statements about evidence, **Exhibit II**, while the DOJ itself claims Bennett “lacked candor” during its investigation into his misconduct, **Exhibit III**. Judicial notice of the full Inspector General report – which the Justice Department possessed for two years but failed to provide this Court – is in the interests of justice and appropriate,

especially given the admissions by the government in this case, In re Indian Palms Assoc. Ltd. , 61 F.3d 197, 205 (3d Cir. 1995).

Finally, kindly note that this matter is now entering its second decade and that the undersigned has been prejudiced by delays in this case, which the government has acknowledged resulted from its own false statements about records. Accordingly, the Plaintiff – Appellant respectfully submits that further delays in advancing this case towards a conclusion should be avoided.

WHEREFORE, Plaintiff Appellant respectfully renews his earlier request this Court appoint counsel, refer the government’s misconduct on this record to the Inspector General, and any additional relief deemed equitable.

Thank you very much for your consideration.

Respectfully Submitted,



Anthony Viola
2820 Mayfield Road # 205
Cleveland Heights, OH 44118
MrTonyViola@ICloud.com
(330) 998-3290
November 30, 2022

CERTIFICATE OF SERVICE

I, Anthony Viola, hereby swear and affirm that I caused a copy of the foregoing, and all of its attachments, to be served upon the following individuals, via regular U.S. mail, postage prepaid, on this 30th day of November, 2022:

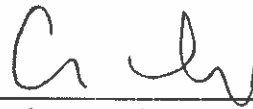
Mr. Michael Colville, Esq.
Assistant U.S Attorney
700 Grant Street -- Suite 4000
Pittsburgh, Pa 15219

Mr. Jake Elliot, Esq.
Counsel for Mortgage Fraud Task Force
1200 Justice Center – 8th Floor
Cleveland, Ohio 44113

Kathryn Clover, Pro Se Defendant
206 Springdale
Oxford, Ohio 45056

Mr. Daniel Winik, Esq.
Appellate Staff
Civil Division, Room 7245
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Respectfully Submitted,



Anthony Viola

EXHIBIT I

Anthony Viola
2820 Mayfield Road # 205
Cleveland Heights, Ohio 44118
(330) 998-3290 MrTonyViola@icloud.com

September 13, 2022

Hon. Susan Paradise Baxter
United States District Court Judge
Western District of Pennsylvania
17 South Park Row
Erie, PA 16501

RE: Viola v. U.S. Department of Justice, et. al., District Court Case Number 15-cv-242; Third Court of Appeals Number 18-2573

Dear Judge Baxter,

As you know, the matter captioned above has taken an inordinate amount of the Court's time and attention. This month, however, the government has made admissions that relate directly to this case and I feel compelled to provide the Court and all parties to this litigation with these new materials. Kindly note that:

1. The former Director of the Task Force, Donald Cleland, has stated under oath that Dawn Pasela possessed all of the Task Force files in all of the criminal cases the Task Force prosecuted, and that this evidence was missing for many months. Mr. Cleland also stated that federal officials were part of the Task Force, **Exhibit A**.
2. The Department of Justice has found that former Assistant US Attorney Mark Bennett "lacked candor" in its investigation into his misconduct, and Mr. Bennett is now undergoing proceedings by the Ohio Disciplinary Counsel which could lead to a suspension or revocation of his law license, **Exhibit B**.
3. The parents of the late Dawn Pasela have called for a new investigation into the death of their daughter, who died shortly after her scheduled testimony at my second trial. The Medical Examiner may now change the cause of Dawn's death, **Exhibit C**.

I defer to the Court and counsel for the Defendants as to what actions may be appropriate under the circumstances, but felt it necessary to alert the Court about recent developments. Thank you very much for reviewing the enclosed materials.

Respectfully Submitted,

Tony Viola
Tony Viola

cc: Mr. Daniel Winik and Mr. Michael Colville – Counsel for US Department of Justice
Mr. Jake Elliott – Counsel for Mortgage Fraud Task Force
Ms. Kathryn Clover - Defendant

Exhibit A

STATE OF OHIO)
)SS.
CUYAHOGA COUNTY)

Now comes Donald Cleland who first being duly sworn, affirmed and cautioned according to law deposes and says:

1. Affiant has personal knowledge of all facts related in this Affidavit and is competent to testify.

2. Affiant is retired Cuyahoga County Sheriff's deputy having achieved the rank of Sargent prior to my retirement in 2014.

3. I was director of the Cuyahoga County Mortgage Fraud task force from 2009 until the task force was dissolved in 2013. I investigated Dawn Pasela for violations of Ohio's Confidentiality statute.

4. The Task force was located at a secret location, and its location and access to said location was limited to law enforcement personnel only as in Police Officers, Federal Agents, Prosecutor's and support staff.

5. Pursuant to Ohio Law, the Task force director and investigatory staff had the powers of a peace officer throughout the county or counties in which the investigation is to be undertaken. The task force had the authority to conduct investigations through the issuance of subpoenas and subpoenas duces tecum.

6. Pursuant to Ohio Revised Code Section 177:03 the referral of information by a task force to a prosecuting attorney, to the attorney general, to the commission, or to a special prosecutor



under this division, *the content, scope, and subject of any information so referred, and the identity of any person who was investigated by the task force* shall be **kept confidential** by the task force and its director, investigatory staff, and employees, by the commission and its director, employees, and consultants, by the prosecuting attorney and the prosecuting attorney's assistants and employees, by the special prosecutor and the special prosecutor's assistants and employees, and by the attorney general and the attorney general's assistants and employees until an indictment is returned or a criminal action or proceeding is initiated in a court of proper jurisdiction. Dawn Pasela was bound by this requirement to maintain confidentiality as provided above. Dawn Pasela was aware of this statute and the confidentiality requirement.

7. As the Ohio Organized Crime Commission Cuyahoga County Mortgage Fraud task force director I was responsible for and did secure documents, files, computers and evidence. All such documents, files, computers and evidence were secured pursuant to Ohio law and good police practice.

8. In order to gain access to the Ohio Organized Crime Cuyahoga County Mortgage Fraud Task Force office a person had to be provided a key. Only Law Enforcement or law enforcement staff could possess a key. No cooperating witnesses were provided with a key or access to the Task Force office, files in the office or material in the office. The Task Force location was confidential by law and secure.

9. All evidence seized by a search warrant or received pursuant to a subpoena was kept in a locked evidence room. A log was kept of the evidence possessed by the task force of which I was responsible for. No person ever forged any portion of any evidence log or logs. No computers that came into possession of the Cuyahoga County Mortgage Fraud Task force during the time I was its director was lost or destroyed. Lay witness interviews or lay witness trial preparation

involving lay witnesses including Steve Newcomb of Argent or Kathryn Clover never occurred at the Task Force location as such would violate Ohio's Confidentiality statute.

10. Dawn Pasela was an employee of the Cuyahoga County Prosecutor's office when I became the Director of the Task Force. Dawn Pasela was the office manager of the Task Force office. Dawn Pasela ordered supplies, performed support staff services. Dawn Pasela was a student at Cuyahoga County Community College and wanted to be an investigator. I am aware that in 2011 she failed to appear for work, she was AWOL and that at least on one occasion a well check was performed on her by agents of the task force to ascertain if she was ok.

11. After Anthony Viola was indicted he held a public fundraiser at a local restaurant. The fundraiser was advertised and his attorney was present. Without being asked Dawn Pasela VOLUNTEERED to attend the fundraiser and VOLUNTEERED to wear a recording device to obtain information and to donate money from her checking account to the event. She understood that the TASK FORCE would reimburse her for the donation. Dawn Pasela never went to another of Anthony Viola's fundraisers on behalf of the Task Force as part of any investigation as far as affiant knows Dawn Pasela never contacted Anthony Viola while she was an employee of the Cuyahoga County Prosecutor's office.

11. Dawn was permitted by the Ohio Organized Crime Commission to take home with her a backup hard drive of the computer/server holding the files of the task force. The back up hard drives contained confidential information and data on it. Dawn Pasela was required by law to maintain the confidentiality of whatever was on the back up drive consistent with Ohio Law.

12. When Dawn Pasela was fired by Mike O'Malley the then First Assistant of the Cuyahoga County Prosecutor's office for refusing to take a drug test she took with her the backup

hard drive and was out of town for a period of time. The back up hard drive could not be located for that period of time.

13. For a period of time during the late fall/early summer of 2011 Dawn Pasela did not return the backup hard drive to the Ohio Organized Crime Commission Mortgage Fraud Task Force. The drive was the property of the Ohio Organized Crime Commission and contained confidential records and information.

14. I went to her apartment to try and secure the hard drive. I was not successful as she was not home.

15. After a period of time Dawn Pasela returned the hard drive to another member of law enforcement.

16. In January of 2012 I learned that Dawn had communications with Anthony Viola. I informed the Director of the Organized Crime Commission of such communications at which time he asked me to investigate whether or not Dawn Pasela had provided any confidential information to anyone in violation of Ohio law. Dawn Pasela was required Ohio Revised Code Section 177.03 to maintain confidentiality. During the spring of 2012 leading up to her death in April of 2012 I was actively investigating Dawn Pasela for violating the confidentiality of the Ohio Organized Crime Commission Cuyahoga County Mortgage Fraud Task Force pursuant to the above-mentioned statute.

17. During this investigation I subpoenaed her phone records, other records and interviewed witnesses. I learned from her phone records and from a witness that Anthony Viola had contacted her on the phone during 2011 after Dawn Pasela was fired. I learned from her phone records and from a witness that after Viola called her, Dawn Pasela called a former senior staff

member of the Ohio Organized Crime Commission and talked to that person. I interviewed that person and learned that Anthony Viola wanted to meet with Dawn Pasela but the, former senior staff member of the Ohio Organized Crime Commission advised her not to meet with Viola because to do so may violate Ohio law and to provide Viola with any information concerning the Task Force may also violate Ohio law, specifically Ohio's Confidentiality law. I learned from that senior staff member that Dawn Pasela told the former OCIC staff member that she would not meet with Viola. I later learned from reading a pleading that Anthony Viola filed in his Federal Court Criminal case shortly before he was sentenced to prison by Judge Donald Nugent in Federal Court that the two never met.

18. At the time of her death Dawn Pasela was under an active investigation by myself on behalf of the Ohio Organized Crime Commission for violating Ohio Revised Code Section 177.03C(4). When I learned that she died on or about August 25, 2012 I closed the investigation. If any person suggests that she was not under investigation that person is either unaware of the investigation or misleading whomever such person is talking to.

FURTHER AFFIANT SAYETH NAUGHT.


DONALD CLELAND

SWORN to before me and SUBSCRIBED in my presence this 30 day of September, 2022.



NICHOLAS J. BRYSON
Notary Public, State of Ohio
My Comm. Expires 08/19/2024
Recorded in Cuyahoga County


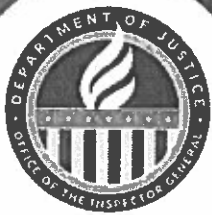

NOTARY PUBLIC

Exhibit B



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

INVESTIGATIVE SUMMARY | 21-005

Findings of Misconduct by an Assistant United States Attorney for Sexually Inappropriate Comments to Multiple Individuals, Inappropriate Touching of an Intern's Breast, and Lack of Candor to the OIG

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the Executive Office for United States Attorneys (EOUSA) alleging that an Assistant United States Attorney (AUSA) may have physically and verbally sexually harassed an Intern in the United States Attorney's Office (USAO), including deliberately running his arm across the Intern's breast without her consent.

During the course of the investigation, the OIG found indications that the AUSA also made sexually suggestive comments to three other individuals, including another AUSA, a Federal Bureau of Investigation (FBI) Forensic Analyst, and a U.S. Postal Inspection Service (USPIS) Postal Inspector. In addition, the OIG found indications that the AUSA lacked candor during an OIG interview.

The OIG investigation substantiated the allegations that the AUSA engaged in sexually harassing conduct by making sexually inappropriate comments to the USAO Intern, the AUSA, the FBI Forensic Analyst, and the USPIS Postal Inspector, all in violation of federal regulations regarding sexual harassment and employee conduct, as well as in violation of DOJ policy prohibiting sexual harassment in the workplace. The OIG further concluded that the AUSA inappropriately touched the Intern's breast, in violation of state law. The OIG further found that the AUSA lacked candor in his OIG interview, in violation of DOJ policy.

Federal and state criminal prosecution of the AUSA was declined.

The OIG has completed its investigation and is providing this report to the EOUSA and DOJ's Office of Professional Responsibility for appropriate action.

★ ★ ★

Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether Department of Justice personnel have committed misconduct.

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO**

FILED

AUG 18 2022

Disciplinary Counsel

Relator,

BOARD OF PROFESSIONAL CONDUCT

v.

Case No. 2022-034

Mark Bennett, Esq.
Attorney Registration No. 0069823

Respondent.

Waiver of Probable Cause

Under Gov.Bar R. V(11)(B), respondent stipulates that there is probable cause for the filing of a complaint and waives the determination of probable cause by a Probable Cause Panel of the Board of Professional Conduct.

Dated:

7-21-22

Richard Koblentz / by NEF
Richard Koblentz, Esq.
Counsel for Respondent

Exhibit C

From: Charles Snyder <Charles.Snyder@OhioAGO.gov>
Sent: Monday, August 29, 2022 3:33 PM
To: Lt. D. Ciryak <Dan.Ciryak@Parmajustice.net>
Cc: Roger Davis <Roger.Davis@OhioAGO.gov>
Subject: Constituent Inquiry #2022-1467 - Dawn Pasela (Decedent)

LT. Daniel Ciryak:

Allow this e-mail to serve as confirmation of our earlier telephone contact reference the captioned matter and received communications from Ed Pasela. As I have previously explained to Mr. Pasela, Ohio BCI only conducts investigative assistance upon formal request of our law enforcement partners. As indicated, I'm willing to meet with you at a mutually acceptable time to discuss this matter at your convenience.

Respectfully,



Special Agent Charlie Snyder
Ohio Attorney General's
Bureau of Criminal Investigation
Cold-Case Investigations
Office: 330-884-7529
Cell: 330-233-0532
Fax: 866-679-2056

EXHIBIT II

The FOIA contact also reached out to AUSA, Mark S. Bennett and informed him of the FOIA request and the specific records being sought. (ECF 154-2, ¶ 26). AUSA Bennett's legal assistant then conducted a search of the electronic folders and database for responsive records. (ECF 154-2, ¶ 26). AUSA Bennett, his legal assistant and the FOIA contact also conducted a search specifically for emails pertaining to Dawn Pasela and Kathryn Clover by searching the electronic database and AUSA Bennett's Outlook messages. (ECF 154-2, ¶ 27). In this regard, EOUSA staff verified with USAO/OHN that their search located no additional information regarding Kathryn Clover or Dawn Pasela. (ECF 154-2, ¶ 30). The FOIA contact pulled all records from the storage boxes, scanned the records, and uploaded them into EOUSA's previous FOIA review platform, AccessPro. The FOIA contact also uploaded all records located on electronic platforms and provided all identifiable records related to Anthony Viola and Realty Corporation of America on or about June 7, 2016. (ECF 154-2, ¶ 28). On November 10, 2016, the Court ordered "expedited production of tapes and/or transcripts of tapes of Dawn Pasela and emails from and to Kathryn Clover, to the extent they exist and are releasable." (ECF 42). In this regard, EOUSA staff verified with USAO/OHN that the search located no additional information regarding Kathryn Clover or Dawn Pasela. (ECF 154-2, ¶ 30). EOUSA also verified with the district that no such records were located. *Id.* The district indicated that they previously informed the Plaintiff and the Court via multiple filings, that USAO/OHN has no tapes, transcripts, or recordings, regarding the Plaintiff, Dawn Pasela, or Kathryn Clover. *Id.* Moreover, EOUSA does not have, nor does it maintain records that may be held at the state prosecutor's office regarding Mr. Viola's state case or other DOJ components. *Id.*

THE UNITED STATES ATTORNEY'S OFFICE
NORTHERN DISTRICT *of* OHIO

[U.S. Attorneys](#) » [Northern District of Ohio](#) » [News](#)

Department of Justice

U.S. Attorney's Office

Northern District of Ohio

FOR IMMEDIATE RELEASE

Thursday, April 23, 2015

AUSA Mark Bennett honored for prosecuting mortgage-fraud cases

Assistant U.S. Attorney Mark S. Bennett was honored this week for his work prosecuting mortgage-fraud cases by the United States Department of Housing and Urban Development – Office of Inspector General.

Bennett has prosecuted nearly 100 defendants involved in mortgage fraud. Northeast Ohio is recognized as one of the areas hardest hit by the mortgage-fraud crisis that swept the country in the early 2000s.

"Your efforts have truly made a difference to the public," Nicholas Padilla, Jr., the deputy assistant Inspector General for HUD, said in presenting the award.

"Mark has been tenacious in seeking justice for the victims of mortgage fraud, and those who caused so much hardship in our city," said U.S. Attorney Steven M. Dettelbach.

Among the cases Bennett has prosecuted:

United States v. Thomas France: France, of Strongsville, was sentenced to more than 10 years in prison and ordered to pay more than \$3 million in restitution for fraud involving six properties in Medina. France was part of a group that sold the homes at fraudulently inflated purchase prices. All the homes eventually went into foreclosure, resulting in a loss of approximately \$3.3 million.

United States v. Anthony Viola and Uri Gofman: Viola, a real estate company owner from Cleveland Heights, was sentenced to more than 12 years in prison and real estate owner Uri Gofman, of Beachwood, was sentenced to more than eight years in prison. A jury convicted Viola and Gofman of multiple counts related to the fraudulent sale of 34 homes, resulting in a loss of more than \$3 million.

United States v. Romero Minor, et. al: Minor, of Macon, Georgia, was sentenced to nearly six years in prison for fraud involving \$7.5 million and 48 properties in Mahoning and Trumbull Counties. Minor recruited straw buyers to "purchase" properties in their names. Minor represented to the straw buyers that he needed individuals like them with good credit to apply for mortgage loans on properties in their names as a way of helping other individuals in the community with bad credit who could not purchase homes in their own names. He then conspired with others to prepare and submit fraudulent mortgage loan applications to various mortgage lenders knowing that they contained false information. Minor received thousands of dollars at closing from the mortgage proceeds with the assistance of the title agents. Overall, nine people were convicted of crimes for their roles in the scheme.

Bennett, 45, joined the U.S. Attorney's Office in 2007. He previously worked for the Ohio Attorney General. He is a graduate of Baldwin Wallace College and the Cleveland-Marshall College of Law and serves on the Legal Aid Society's board.

EXHIBIT III

DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

REPORT OF INVESTIGATION

SUBJECT [REDACTED] Assistant United States Attorney [REDACTED]		CASE NUMBER [REDACTED]
OFFICE CONDUCTING INVESTIGATION Detroit Area Office		DOJ COMPONENT Executive Office for United States Attorneys
DISTRIBUTION <input checked="" type="checkbox"/> Field Office CFO <input checked="" type="checkbox"/> AIGINV <input checked="" type="checkbox"/> Component EOUSA <input type="checkbox"/> USA <input type="checkbox"/> Other	STATUS <input type="checkbox"/> OPEN <input type="checkbox"/> OPEN PENDING PROSECUTION <input checked="" type="checkbox"/> CLOSED PREVIOUS REPORT SUBMITTED: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Date of Previous Report:	

SYNOPSIS

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the Executive Office for United States Attorneys (EOUSA) alleging that from [REDACTED], United States Attorney's Office (USAO) [REDACTED] Assistant United States Attorney (AUSA) [REDACTED] may have physically and verbally sexually harassed, to include deliberately running his arm across the breast of, then USAO [REDACTED] Intern [REDACTED]

During the course of the investigation, the OIG found indications that [REDACTED] may also have made sexually suggestive comments to USAO [REDACTED] AUSA [REDACTED] sent sexual comments over social media to Federal Bureau of Investigation (FBI), [REDACTED], Forensic Analyst [REDACTED]; and made sexual comments to U.S. Postal Inspection Service, [REDACTED], Postal Inspector [REDACTED]. In addition, the OIG found indications that [REDACTED] may have lacked candor during an OIG interview when questioned about using his government laptop computer to access social media sites.

The OIG investigation substantiated the allegations that [REDACTED] engaged in sexually harassing conduct by making sexually inappropriate comments to [REDACTED] and [REDACTED], all in violation of federal regulations regarding sexual harassment and employee conduct, as well as in violation of DOJ Policy prohibiting sexual harassment in the workplace. The OIG also concluded that [REDACTED] unwelcome touching of [REDACTED] breast violated [REDACTED], Sexual Imposition, a misdemeanor. The OIG further found that [REDACTED] lacked candor in his OIG interview, in violation of DOJ policy.

DATE	November 5, 2020	SIGNATURE	[REDACTED]
PREPARED BY SPECIAL AGENT [REDACTED]			
DATE	November 5, 2020	SIGNATURE	<i>William Hannah</i>
APPROVED BY SPECIAL AGENT IN CHARGE William J. Hannah			

Digitally signed by WILLIAM HANNAH
Date: 2020.11.05 17:02:38 -0600

The USAC [REDACTED] was recused from the investigation. The USAO [REDACTED] and the [REDACTED] Prosecutor's Office declined criminal prosecution of [REDACTED].

The OIG has completed its investigation and is providing this report to the EOUSA and DOJ's Office of Professional Responsibility for appropriate action.

Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether DOJ personnel have committed misconduct. The Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C. § 7701(c)(1)(B); 5 C.F.R. § 1201.56(b)(1)(ii).

DETAILS OF INVESTIGATION

Predication

The Department of Justice (DOJ) Office of the Inspector General (OIG) initiated this investigation upon the receipt of information from the Executive Office for United States Attorneys (EOUSA) alleging that from [REDACTED], United States Attorney's Office (USAO) [REDACTED] Assistant United States Attorney (AUSA) [REDACTED] may have physically and verbally sexually harassed, to include deliberately running his arm across the breast of, then USAO- [REDACTED] Intern [REDACTED].

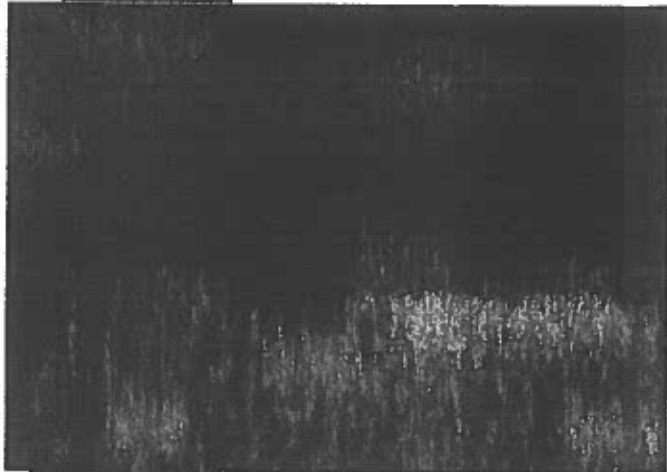
During the course of the investigation, the OIG found indications that [REDACTED] may also have made sexually suggestive comments to USAO [REDACTED] AUSA [REDACTED]; sent sexual comments over social media to Federal Bureau of Investigation (FBI), [REDACTED], Forensic Analyst [REDACTED]; and uttered sexual comments to U.S. Postal Inspection Service, [REDACTED], Postal Inspector [REDACTED]. In addition, the OIG found indications that [REDACTED] may have lacked candor during an OIG interview when questioned about using his government laptop computer to access social media sites and claiming to have informed other colleagues at the USAO [REDACTED] about his concerns regarding [REDACTED] allegedly filing a false sexual harassment allegation against him.

Investigative Process

The OIG's investigative efforts consisted of the following:

Interviews of the following USAO-NDOH personnel:

- [REDACTED], AUSA



AUSA

(former) Intern



Interviews of the following FBI [REDACTED] personnel:

[REDACTED]
[REDACTED]
Financial Investigative Analyst

Interviews of the following personnel:

[REDACTED]

Review of the following:

- Cyber Investigations Office (CIO) forensic analysis of [REDACTED] government laptop computer.
- Justice Security Operation Center (JSOC), Internet History Logs for [REDACTED] government laptop computer.
- Verizon Wireless records for [REDACTED] personal cell phone.
- Training information from the Offices of the United States Attorneys, National Advocacy Center.
- Training records from the USAO-[REDACTED]
- Facebook Messenger and Instagram Messages the OIG received from [REDACTED]
- Emails, text messages, Skype messages, Facebook Messenger messages the OIG received from [REDACTED]

Background and Authority

[REDACTED] Sexual Imposition (misdemeanor), prohibits engaging in sexual contact with another, either knowing or recklessly disregarding that the contact is offensive to the other person. The Penal Code defines sexual contact to include touching of another's breast.

29 C.F.R. § 1604.11, "Sexual Harassment," states in pertinent part the following:

(a) Harassment on the basis of sex is a violation of section 703 of title VII. 1 Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

...

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

...

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

5 C.F.R. § 735.203, "Employee Responsibilities and Conduct" states in pertinent part the following: "an employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government."

The DOJ, Office of the Attorney General, Prevention of Harassment in the Workplace, Policy Memorandum 2015-04, states in part:

The Department of Justice will maintain a zero tolerance work environment that is free from harassment (including sexual harassment) based on sex, race, color, religion, national origin, gender identity, age, disability (physical or mental), genetic information, status as a parent, sexual orientation, marital status, political affiliations, or any other impermissible factor. . . . Harassing conduct is defined as any unwelcome verbal or physical conduct that is based on any of the above-referenced characteristics when this conduct explicitly or implicitly affects an individual's employment; unreasonably interferes with an individual's work performance; or creates an intimidating, hostile, or offensive work environment.

The DOJ Memorandum for Heads of Department Components Regarding Sexual Harassment and Sexual Misconduct, dated April 30, 2018, sets forth policies and procedures to ensure that: (1) substantiated allegations of sexual harassment or misconduct result in serious and consistent disciplinary action, (2) components report allegations of sexual harassment or misconduct to the Office of Inspector General and the components' security divisions when appropriate, (3) components appropriately consider allegations of or disciplinary actions for sexual harassment or misconduct in making decisions about awards, public recognition, or favorable personnel actions, and (4) components can be held accountable for their handling of allegations of sexual harassment and misconduct.

Sexual Harassment and Unwelcome Sexual Touching of

The information provided to the OIG alleged that from may have physically and verbally sexually harassed

told the OIG that from, made several inappropriate sexual comments to her, and on one occasion, touched her breast. explained that their communication with each other started out as jovial, back-and-forth banter. However, told the OIG that, as time went on, sexual comments increased, made her feel uncomfortable, and often interfered with ability to complete her work. said that talked about his sexual relationship with his wife, and on another occasion, he asked if sex with was "that good." stated that made comments about physique, and on one occasion, he sent a social media message to ask her why she haunted his dreams. stated that sent pictures to her, via either text message or through a social media platform, of himself working out in a tank top t-shirt in one photo and in his bathroom without a t-shirt in another photo. said that during another occasion brushed his arm against breast while reaching for a law book and stared at her the entire time. said that behavior made her uncomfortable and caused her to move from her assigned workstation to other employees' work areas to avoid him.

told the OIG that told him that felt uncomfortable around and that tried to avoid while in the. said that he noticed frequented the Office's front desk instead of getting her work done. said that told him about a conversation had with concerning an alleged relationship had with an. said that he thought this was an inappropriate topic for to discuss with. said that told him in a later conversation that he had screwed up by sending text messages in which he indicated his willingness to engage in a sexual relationship with her. However, stated that denied, in an unsolicited comment, that he groped.

told the OIG that told her that had touched her breast while they

worked in the [REDACTED]. [REDACTED] said that she read Facebook Messenger messages [REDACTED] received from [REDACTED] and although [REDACTED] could not remember the specific content of the messages, she believed they were inappropriate and flirtatious. [REDACTED] said that [REDACTED] told her [REDACTED] behavior made her uncomfortable. [REDACTED] described one occasion when [REDACTED] came into [REDACTED] office and closed the door soon after [REDACTED] arrived at the [REDACTED] Office in order to avoid him. [REDACTED] thought [REDACTED] behavior towards [REDACTED] interfered with [REDACTED] ability to get her work done as an intern.

[REDACTED] told the OIG that [REDACTED] told her that [REDACTED] sent [REDACTED] sexual messages on various social media platforms and tried to pursue her. [REDACTED] said that [REDACTED] told her that she did not want to report [REDACTED] behavior because she was concerned it may have a negative effect on her ability to obtain future employment at the USAO. [REDACTED] believed [REDACTED] made [REDACTED] uncomfortable, and that his behavior towards [REDACTED] created a situation where [REDACTED] could not work at her own station because she wanted to avoid [REDACTED]. [REDACTED] said that [REDACTED] began sitting with [REDACTED] at her desk location to hide from [REDACTED].

[REDACTED] told the OIG that [REDACTED] told him that, while at the USAO, [REDACTED] stood over her and tried to look down her shirt. [REDACTED] said that [REDACTED] also described an incident in which [REDACTED] brushed up against her breast while in the [REDACTED]. [REDACTED] recalled [REDACTED] receiving several messages from [REDACTED] that were sexual in nature, either via text or Facebook Messenger. [REDACTED] stated that, in one of the messages, [REDACTED] implied [REDACTED] should provide him with a sexual favor in exchange for a letter of recommendation, and in another message [REDACTED] commented on [REDACTED] physique and told her how good she looked. [REDACTED] vaguely recalled [REDACTED] telling him about a social message she received from [REDACTED] in which [REDACTED] asked [REDACTED] why she haunted his dreams. [REDACTED] told the OIG that he advised [REDACTED] to report [REDACTED] inappropriate behavior.

[REDACTED] the OIG conducted consensually monitored cell phone text communications between [REDACTED] and [REDACTED]. In these communications, [REDACTED] texted [REDACTED] that he was surprised [REDACTED]. [REDACTED] made references to [REDACTED] buttocks, including comments about their size and that [REDACTED] could not wait to "have them." [REDACTED] condemned [REDACTED] for making him think about it (sex) again, as he had tried to put her out of his mind. [REDACTED] stated he was going for a run and ended their conversation.

In a voluntary interview, [REDACTED] told the OIG that he worked with [REDACTED] from [REDACTED], and admitted he was sexually attracted to her. [REDACTED] stated that he and [REDACTED] discussed her romantic relationships, but he said that was not inappropriate because [REDACTED] initiated the conversations. [REDACTED] stated that he had written a letter of recommendation for [REDACTED] and may have asked her what he would get out of it, but he said he was referring to possibly lunch or drinks with her, not sex. [REDACTED] said that he probably sent messages to [REDACTED] that referenced her physique, and reasoned he tried to help her low self-esteem. [REDACTED] acknowledged that he sent [REDACTED] a Skype message which referred to sex between [REDACTED] and her boyfriend and asked if it was really that good and that he talked to [REDACTED] about his sexual relationship with his wife. [REDACTED] admitted he should not have engaged in this type of communication with [REDACTED] and explained he has a character flaw when women flirt with him. [REDACTED] stated that he did not believe his actions rose to the level of sexual harassment, and he denied touching [REDACTED] breast. [REDACTED] declined to submit to a voluntary OIG-administered polygraph and said he believed the tests were unreliable.

The USAO [REDACTED] was recused from the investigation. The USAO [REDACTED] and the [REDACTED] Prosecutor's Office declined criminal prosecution of [REDACTED].

OIG's Conclusion

The OIG investigation concluded that [REDACTED] sexually harassed [REDACTED] both physically and verbally by conveying sexually charged communications to her and physically touching [REDACTED] breast. The OIG found [REDACTED] account of her interactions with [REDACTED] including that he touched her breast without her consent, to be more credible than [REDACTED] account, particularly in light of the corroboration provided by the OIG's interviews of other witnesses and the consensually monitored text messages. The OIG further credited [REDACTED] account that [REDACTED] conduct caused her to be uncomfortable and interfered with her ability to conduct her work at the USAO. The OIG finds by a preponderance of the evidence that [REDACTED] conduct violated [REDACTED], Sexual Imposition. The OIG further finds that [REDACTED] conduct violated federal regulations regarding sexual harassment and employee conduct, as well as DOJ policy prohibiting sexual harassment in the workplace.

[REDACTED] Sexual Harassment of [REDACTED]

During the course of the investigation, the OIG found indications that [REDACTED] may have made comments to FBI Financial Investigative Analyst [REDACTED] which were sexual in nature and made her feel uncomfortable.

[REDACTED] told the OIG that she attended a retirement gathering for [REDACTED]. [REDACTED] told the OIG that during that gathering [REDACTED] watched [REDACTED] talk in close proximity to a waitress and slap her buttocks as she departed when the conversation ended.

[REDACTED] told the OIG that she was standing next to [REDACTED] while this occurred and that she also witnessed [REDACTED] inappropriate behavior with the waitress. [REDACTED] further stated that [REDACTED] had made statements to her over several years, which [REDACTED] described as comments he probably should not have made which had distracted [REDACTED] from her work at the FBI. [REDACTED] said that some of [REDACTED] comments were flirtatious or contained sexual connotations, such as remarks about [REDACTED] physique and wanting to hold [REDACTED] during yoga. [REDACTED] stated that the comments made [REDACTED] uncomfortable and caused her to re-think her official meetings with [REDACTED]. [REDACTED] said that she subsequently ensured someone else was available to attend any required in-person meetings she had with [REDACTED]. [REDACTED] stated that she did not have this concern with others with whom she had to meet during the course of her official duties at the FBI. [REDACTED] provided the following Facebook and Instagram messages she received from [REDACTED] from [REDACTED]

- So wait...I can do a class (Yoga) when I hold you up and you hold me up, and we are all touching on each other?? Where do I sign up? ☺ ☺
- So u r single...hmmmmm. [sic]
- Did I mention that [REDACTED] and I have been talking about taking a break and I do Yod. Yog. Yoga. [sic]
- You are gorgeous...U know that. [sic]
- U r brilliant. And you have a body that does not quit...[sic]
- Yeah...Get that. But think of all the strange you are going to get...
- Not a guy on this planet u can't get.? [sic]
- Nothing better than pleasing a woman.
- Just know I think u r amazing. And hope u find a guy who realizes that and u think the same about. [sic]
- So who is this new guy? An agent? An AUSA?
- Why t u ignoring me?? [sic]

In a voluntary interview, [REDACTED] told the OIG that he thought [REDACTED] was an attractive woman, but he was not sexually interested in her. [REDACTED] said that [REDACTED], and he knew [REDACTED] was not interested in him. [REDACTED] admitted he sent [REDACTED] the aforementioned messages and knew some of the comments made her feel uncomfortable. [REDACTED] stated that he believed he apologized to [REDACTED] for the comments. [REDACTED] stated that he was not sure why he continued to send [REDACTED] these types of messages after she sent him several subtle messages asking him to stop sending them. [REDACTED] said it may have been late at night or after he had a

couple of drinks (alcohol) when he sent them. [REDACTED] declined to submit to a voluntary OIG-administered polygraph and said he believed the tests were unreliable.

OIG's Conclusion

The OIG investigation concluded [REDACTED] sent [REDACTED] messages of a sexual nature which interfered with [REDACTED] work environment. The OIG found that [REDACTED] account of [REDACTED] conduct was corroborated in large part by the messages [REDACTED] provided to the OIG, and the OIG credited her statement that [REDACTED] conduct made her feel uncomfortable being alone with him. The OIG therefore found that [REDACTED] actions constituted administrative misconduct in violation of federal regulations regarding sexual harassment and employee conduct as well as DOJ policy prohibiting sexual harassment in the workplace.

Sexual Harassment of [REDACTED]

During the course of the OIG's investigation, the OIG found indications that [REDACTED] may have also made inappropriate comments to AUSA [REDACTED], by suggesting that she was having a sexual affair with another AUSA [REDACTED].

[REDACTED] told the OIG that [REDACTED] voiced concerns that [REDACTED] made her feel uncomfortable. However, [REDACTED] could not recall the specific details of the incident(s) [REDACTED] recounted. [REDACTED] recalled the conversations she had with [REDACTED] and others started when individuals expressed their general concerns about [REDACTED] elevated intoxication level during a social gathering at a bar and his desire to drive home.

[REDACTED] stated that when she first started at the USAO-[REDACTED] entered her office, looked at a picture of her and her husband, and said [REDACTED] was better looking than her husband, which caused [REDACTED] to feel uncomfortable. [REDACTED] stated that she and [REDACTED] worked together in [REDACTED] to prepare for trial when [REDACTED] had seen the two enter the building during a weekend; [REDACTED] later made comments to both [REDACTED] insinuating that [REDACTED] was having an affair with [REDACTED]. [REDACTED] described [REDACTED] comments as unprofessional and inappropriate, and she again felt uncomfortable. [REDACTED] stated that on another occasion, [REDACTED] told [REDACTED] about a previous sexual harassment complaint filed against him by [REDACTED] in the office. [REDACTED] said that during their conversation, [REDACTED] told [REDACTED] he did not sexually harass the woman as alleged and said he did not think she was attractive. [REDACTED]

However, [REDACTED] said that [REDACTED] purchased a pair of earrings and two necklaces for her, which struck her as odd and made her feel uncomfortable.

[REDACTED] told the OIG that he and [REDACTED] previously worked together at the [REDACTED] and more currently at the USAO-[REDACTED] said that he learned from others about alleged sexual harassment claims against [REDACTED] during his previous employment at a private law firm and while he was employed at [REDACTED]. [REDACTED] said that in [REDACTED], he and [REDACTED] spent a lot of time with each other as they prepared for a trial. [REDACTED] opined that this made [REDACTED] jealous, because [REDACTED] was attracted to [REDACTED]. [REDACTED] said that during that time period, [REDACTED] saw [REDACTED] and [REDACTED] together in a vehicle as they drove into the USAO building, because [REDACTED] forgot her Personal Identity Verification card to gain access through the building's garage. [REDACTED] said that shortly afterward, [REDACTED] texted [REDACTED] suggesting [REDACTED] was having an affair with [REDACTED]. [REDACTED] said that he responded to [REDACTED] by saying he did not need to deal with [REDACTED] texts, because trial preparation was stressful enough. [REDACTED] said that [REDACTED] responded he was just joking. [REDACTED] said that he had a discussion with [REDACTED] about [REDACTED] texts, but [REDACTED] was not sure if [REDACTED] and [REDACTED] talked about the comments.

On [REDACTED] in a voluntary interview, [REDACTED] told the OIG he asked [REDACTED] through either email or text messaging if [REDACTED] was having a sexual affair with [REDACTED] and said he made the comment in jest. [REDACTED]

said that [REDACTED] became very upset with [REDACTED] and told [REDACTED] to stop talking to him during the pendency of a trial. [REDACTED] said that he discussed the comments he sent to [REDACTED] with [REDACTED] but he stated that he could not recall how she responded to the conversation. [REDACTED] said that after he made the comments to [REDACTED] and [REDACTED] he was excluded from the group. [REDACTED] stated that he used to go out for coffee, and sometimes lunch with [REDACTED], and others. [REDACTED] admitted he bought [REDACTED] jewelry [REDACTED] and said he did not think of it as an intimate gift because they were very good friends.

OIG's Conclusion

The OIG investigation concluded [REDACTED] made comments to [REDACTED] and [REDACTED] insinuating they were having a sexual relationship, which made [REDACTED] feel uncomfortable and caused an offensive work environment. The OIG credited [REDACTED] account over [REDACTED] claim that the comment about [REDACTED] and [REDACTED] was made in jest, in large part because of prior inappropriate comments [REDACTED] made to [REDACTED] and the unsolicited gifts he gave to her. The OIG further credited [REDACTED] statement that [REDACTED] conduct made her feel uncomfortable. The OIG found that [REDACTED] conduct violated federal regulations regarding sexual harassment and employee conduct, as well as DOJ policy prohibiting sexual harassment in the workplace.

Sexual Harassment of [REDACTED]

During the course of the OIG's investigation, the OIG found indications that [REDACTED] may have also made inappropriate comments to U.S. Postal Inspector [REDACTED] when he inquired if her husband allowed her to have extra-marital affairs.

[REDACTED] told the OIG that she heard that [REDACTED] had made [REDACTED] uncomfortable, but [REDACTED] did not provide details about the incident.

[REDACTED] told the OIG that she worked an investigative case with [REDACTED] and [REDACTED] in [REDACTED], which was adjudicated in the [REDACTED] Federal Courthouse. [REDACTED] said that she, [REDACTED], and [REDACTED] went to lunch after a court proceeding [REDACTED] said that during the lunch, [REDACTED] asked [REDACTED] if she was married. [REDACTED] said that she replied she was, [REDACTED] [REDACTED] said that [REDACTED] asked her if she had a pass, and [REDACTED] asked for clarification as she did not understand his question. [REDACTED] said that [REDACTED] elaborated that [REDACTED] husband should permit her to have an affair [REDACTED] [REDACTED] opined that even if those comments were made by someone she knew, it would be inappropriate, and since she really did not know [REDACTED] at that time, the comments really caught her off guard. [REDACTED] said that she was uncomfortable with [REDACTED] from that point forward and made sure she was not alone in meetings with him.

[REDACTED] told the OIG that he could not recall the specific comments [REDACTED] made to [REDACTED] nor could he recall how he learned about them. [REDACTED] believed that he learned about the offensive comments directly from [REDACTED] but he could have heard them while at lunch with [REDACTED] and [REDACTED] [REDACTED] recalled that [REDACTED] comments were sexual in nature and pertained to [REDACTED] husband. [REDACTED] said that he knew the comments made [REDACTED] feel uncomfortable, and he believed they had affected her work. [REDACTED] said that [REDACTED] had to schedule another agent to attend any meetings she had with [REDACTED]. [REDACTED] said that he knew someone reported [REDACTED] comments to [REDACTED] to which [REDACTED] and others were assigned. [REDACTED] said that he believed [REDACTED] was removed from the task force after the complaint to [REDACTED] was filed.

[REDACTED] told the OIG that sometime in [REDACTED], he had contacted [REDACTED] regarding his concerns about the inappropriate comments [REDACTED] made to [REDACTED] [REDACTED] recalled that the comments were sexual in nature, but he could not recall the specifics. [REDACTED] said that he had also been made

aware of other complaints by female agents about [REDACTED] inappropriate behavior. [REDACTED] said that [REDACTED] arranged to have [REDACTED] come to [REDACTED] office to discuss [REDACTED] concerns. [REDACTED] said that he met with [REDACTED] and told him he was aware of [REDACTED] inappropriate comments to [REDACTED], and [REDACTED] said [REDACTED] must have misunderstood what he said. [REDACTED] said that he asked [REDACTED] if he would have made inappropriate comments to [REDACTED] and others if his wife had been present. [REDACTED] said that [REDACTED] did not respond. [REDACTED] stated that he told [REDACTED] that if the answer to his question in his head was no, then [REDACTED] should avoid those types of comments in the work environment.

[REDACTED], in a compelled interview, [REDACTED] told the OIG that he learned [REDACTED] filed a complaint with [REDACTED], regarding alleged comments [REDACTED] made to [REDACTED] during lunch. [REDACTED] said that he believed [REDACTED] told [REDACTED] that [REDACTED] comments to [REDACTED] during lunch were inappropriate, and [REDACTED] was too flirtatious with [REDACTED]. [REDACTED] admitted he asked [REDACTED] about her husband during lunch and reasoned they were general, inoffensive questions. [REDACTED] stated that [REDACTED] did not file the complaint against him, rather [REDACTED] took the initiative, and [REDACTED] opined [REDACTED] may have had misplaced motivation to file the complaint based on a past negative encounter between [REDACTED] and [REDACTED].

OIG's Conclusion

The OIG investigation concluded [REDACTED] made comments to [REDACTED] to inquire if her husband would allow her to have a sexual affair while he was away from home, which caused [REDACTED] to feel uncomfortable and interfered with her work environment. The OIG credited [REDACTED] account of [REDACTED] comments, which was corroborated in large part by [REDACTED] the OIG further credited [REDACTED] statement that [REDACTED] comment made her feel uncomfortable and that she did not want to attend meetings alone with him after he made the inappropriate comment to her. The OIG found that [REDACTED] conduct violated federal regulations regarding sexual harassment and employee conduct, as well as DOJ policy prohibiting sexual harassment in the workplace.

Lack of Candor

During the course of the investigation, the OIG found indications that [REDACTED] lacked candor in his voluntary interview with the OIG regarding his access to social media sites on his government laptop.

Justice Manual Section 1-4.200 states in pertinent part:

All Department employees have an obligation to cooperate with OPR and OIG misconduct investigations (28 C.F.R. § 45.13) and must respond truthfully to questions posed during the course of an investigation upon being informed that their statements will not be used to incriminate them in a criminal proceeding. Employees who refuse to cooperate with OPR or OIG misconduct investigations after having been informed that their statements will not be used to incriminate them in a criminal proceeding may be subject to formal discipline, including removal. Employees are obligated to cooperate and respond truthfully even if their statements can be used against them in connection with employment matters.

As noted above, the OIG learned during this investigation about inappropriate messages that [REDACTED] sent to certain individuals via social media sites. In light of this information, the OIG asked [REDACTED] whether he had used his government laptop computer to access those social media sites. [REDACTED] told the OIG that he had not signed into Facebook and Twitter on his government laptop computer and advised he completely avoided those sites on his government laptop computer. [REDACTED] reasoned that they (USAO) have always told personnel that accessing those sites increased the likelihood of viruses on your computer.

The OIG reviewed the JSOC Internet history logs pertaining to [REDACTED] government laptop computer, identified

as Internet protocol (IP) [REDACTED]. The logs showed between [REDACTED], [REDACTED] accessed several social media sites, more than 25 times, to include Facebook and Twitter with his government laptop computer. [REDACTED] advised the OIG that between [REDACTED] had been assigned exclusively to [REDACTED] government laptop.

The USAO [REDACTED] was recused from the investigation. The USAO [REDACTED] declined criminal prosecution of [REDACTED]

OIG's Conclusion

The OIG investigation concluded that [REDACTED] lacked candor in his interview with the OIG when questioned by the OIG about accessing social media sites on his government laptop computer, in violation of DOJ policy. The information was relevant to the OIG investigation in an effort to determine if [REDACTED] used his government laptop during work hours for any inappropriate communications with others he worked with.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 18-2573 & 22-2186

Viola v. United States Department of Justice

To: Clerk

- 1) Motion by Appellant for Appointment of Counsel and to Refer Government Misconduct to the DOJ Inspector General (ECF No. 144)

We note that the foregoing motion was filed in the appeal at C.A. No. 18-2573. As the motion pertains to issues in the appeal at C.A. No. 22-2186 as well, the motion will be considered in support of both of these consolidated appeals.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Dated: September 28, 2022

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