

Report of Investigation into Allegations Relating to the Selection of the U.S. Attorney for Guam and the Northern Mariana Islands



Office of the Inspector General
Oversight and Review Division
June 2006

I. INTRODUCTION

This report describes the Office of the Inspector General's (OIG) investigation regarding allegations raised by Frederick Black, the former interim U.S. Attorney for Guam and the Commonwealth of the Northern Mariana Islands (CNMI). Black alleged that he was replaced as the interim U.S. Attorney because he called for an investigation of Washington, D.C., lobbyist Jack Abramoff and also because he supported applying federal immigration law to the CNMI, a position Abramoff opposed.

Black had served as the interim United States Attorney for Guam and the CNMI since 1991. On November 19, 2002, President Bush nominated Leonardo Rapadas, a lawyer in the Guam Attorney General's office, to be the Presidentially appointed U.S. Attorney for that district. On May 22, 2003, Rapadas was sworn in as the U. S. Attorney and has remained in that position since then.

The OIG learned of Black's allegations in July 2005 from Noel Hillman, at that time the Chief of the Public Integrity Section of the Department of Justice (DOJ). Hillman notified the OIG that Black had recently been interviewed by Federal Bureau of Investigation (FBI) Special Agents assigned to DOJ's investigation into Abramoff's activities. In that interview, Black stated that he believed he had been replaced as the U.S. Attorney because of political controversy he caused in the fall of 2002 by calling for an investigation of lobbying fees that the Superior Court of Guam had paid to Abramoff. Black also alleged that he may have been replaced in order to prevent the implementation of a recommendation contained in a May 2002 security report prepared by a DOJ security specialist regarding the applicability of federal immigration law to the CNMI, which Black supported and Abramoff allegedly opposed. During the FBI interview, Black also raised various concerns regarding the appointment of Rapadas as the U.S. Attorney and the management of the U.S. Attorney's Office in Guam and the CNMI (USAO-Guam) after Rapadas's appointment.

As a result, the OIG opened this investigation into Black's claims that he was replaced as the interim U.S. Attorney in retaliation for bringing allegations involving Abramoff to the attention of DOJ officials. We also investigated Black's suggestion that he was replaced because of his support for the security report recommendation urging that federal immigration law be applied in the CNMI. In addition, we examined Black's allegations that Rapadas's background investigation was insufficient and that his appointment as U.S. Attorney was inappropriate because his uncle was the subject of a public corruption case being investigated by the Guam U.S. Attorney's office. Finally, we briefly examined Black's more general allegations regarding the handling of public corruption cases and other management issues at the U.S. Attorney's office since Rapadas's appointment.

In our investigation, we interviewed approximately 20 witnesses, including Black and current and former DOJ officials involved in the U.S. Attorney selection process, such as Associate Deputy Attorney General David Margolis, former DOJ White House Liaison David Higbee, and former Director of DOJ's Executive Office for United States Attorneys (EOUSA) Kenneth Wainstein. We also interviewed several former White House staff members involved in the U.S. Attorney selection process, including two members of the White House Counsel's office and a member of the White House Office of Political Affairs. In addition, we interviewed current and former members of the Public Integrity Section and the USAO in Guam who worked with Black and handled Guam's public corruption cases. We also interviewed Republican officials from Guam who participated in the decision to recommend Rapadas to the White House. Finally, we interviewed Abramoff and an associate who Abramoff said would know about work done on his behalf in connection with Rapadas's nomination.¹

In addition, we reviewed documents relevant to Black's allegations, including documents related to the selection process for the Guam U.S. Attorney's position and Rapadas's background investigation, and several thousand pages of documents containing many of Abramoff's e-mails from the relevant time period.

This report summarizes the results of our investigation. First, it provides a timeline of events related to the selection of the U.S. Attorney for Guam. Part II provides background information on the Guam U.S. Attorney position (USA Guam) and the U.S. Attorney selection process. Part III describes the factual chronology relevant to Black's allegations. Part IV contains our analysis of the allegations. Part V contains our conclusions.

In sum, we concluded that the evidence does not support Black's assertion that he was replaced as interim U.S. Attorney for Guam because of allegations he raised regarding Abramoff or because of his position on the application of federal immigration law in the CNMI. Rather, we found that DOJ and White House officials selected Rapadas as the nominee for Presidential appointment to the U.S. Attorney's position pursuant to the normal selection process, long before Black raised his allegations against Abramoff and well

¹ In early spring 2004, the DOJ opened an investigation into payments made by certain Indian tribes to Abramoff for lobbying services. That investigation eventually led, according to published reports, to other related inquiries regarding Abramoff, including his activities in the CNMI. In January 2006, Abramoff pled guilty in Washington and Florida to conspiracy, wire fraud, and tax evasion. As part of his plea agreements, Abramoff agreed to assist the government in its ongoing investigation. Pursuant to that agreement, OIG investigators interviewed Abramoff on two occasions. In addition, OIG investigators had access to e-mails and documents of Abramoff and his former colleagues at Greenberg Traurig.

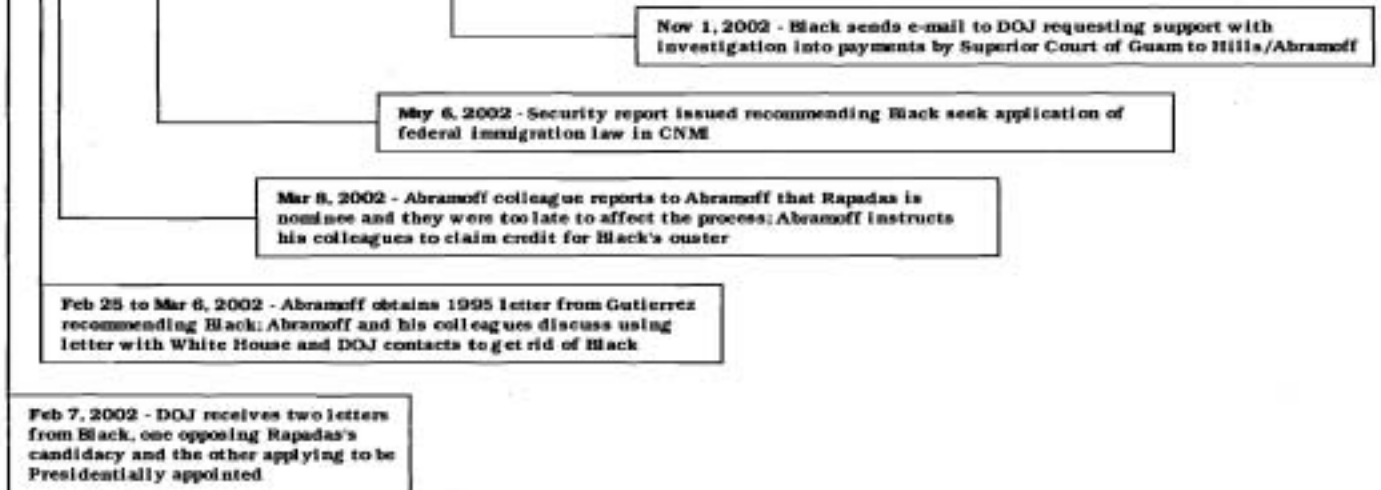
before issuance of the security report recommending the application of federal immigration law in the CNMI. In addition, although the public announcement of Rapadas's nomination was made after Black first raised his allegations against Abramoff, the timing of the announcement was unrelated to those allegations and instead was determined by the completion of Rapadas's background investigation.

In addition, the evidence did not support Black's allegation that Rapadas's background investigation was insufficient and his appointment inappropriate. We concluded that the background investigation was conducted by the FBI in accord with its normal practices, and the concerns Black raised regarding Rapadas were adequately investigated. Moreover, the conflict of interest issue Black identified during Rapadas's background investigation concerning Rapadas's relative resulted in Rapadas's recusal, once he became U.S. Attorney, from certain public corruption cases. The evidence also reflects that those cases were actively pursued by career prosecutors in the Guam U.S. Attorney's office after Rapadas became the U.S. Attorney.

PROGRESS OF RAPADAS APPOINTMENT



4



EVENTS RELATING TO BLACK AND ABRAM OFF

II. BACKGROUND

A. United States Attorneys

United States Attorneys serve as the nation's chief law enforcement officers in their districts. See U.S. Attorney's Manual (USAM) at § 3-2.100. There are 93 U.S. Attorneys stationed throughout the United States, Puerto Rico, the Virgin Islands, Guam, and the CNMI. One U.S. Attorney is assigned to each of the judicial districts, with the exception of Guam and the CNMI, where a single U.S. Attorney serves both districts.

United States Attorneys are appointed by the President, with the advice and consent of the Senate, for 4-year terms. See 28 U.S.C. § 541. Because they are Presidential appointees and not covered by standard civil service removal procedures, U.S. Attorneys are subject to removal at the will of the President. Upon expiration of the 4-year term, a U.S. Attorney normally continues to perform the duties of the office until a successor is confirmed. USAM at § 3-2.120.

In the event a U.S. Attorney position becomes vacant, the Attorney General may appoint an interim U.S. Attorney for that district. During the period under review in this investigation, a person appointed as interim U.S. Attorney could serve up to 120 days, until the nomination and confirmation of a Presidentially appointed U.S. Attorney for that district or until the appointment of another interim U.S. Attorney. If an interim U.S. Attorney appointment expired before a Presidentially appointed U.S. Attorney was nominated and confirmed, the federal district court for that district could appoint a U.S. Attorney to serve until the vacancy was filled. See 28 U.S.C. § 546; USAM at § 3-2.160. However, Section 502 in the USA PATRIOT Improvement and Reauthorization Act of 2005, enacted in March 2006, removed the 120-day time limit and permits the interim U.S. Attorney appointed by the Attorney General to serve until the Presidentially appointed U.S. Attorney is qualified.

B. Selection Process for United States Attorneys

After President George W. Bush was inaugurated in January 2001, his administration sought to nominate new candidates to fill the U.S. Attorneys' positions. Kyle Sampson, who was President Bush's Associate Director for Presidential Personnel until late September 2001 and is now the Chief of Staff to the Attorney General, described the selection process to the OIG.

Sampson said the White House asked for recommendations from political leaders in the various districts for candidates to fill the U.S. Attorney positions. The recommendations generally were submitted by U.S. Senators of the President's party to Sampson or to staff in the White House Office of Political

Affairs (OPA). If no Republican Senator represented a particular judicial district, Sampson or OPA staff contacted whoever OPA designated as the "political lead" for that district. Sampson said the White House generally sought three names for each U.S. Attorney vacancy, although it did not always receive three.

Sampson said the White House forwarded potential U.S. Attorney candidates to the Executive Office for United States Attorney (EOUSA) in the DOJ, with a request that each person be sent an online application form and be scheduled for a panel interview. According to Associate Deputy Attorney General David Margolis, who participated in the U.S. Attorney selection process, Sampson's request to EOUSA to send the application to an individual meant that the person had been "named as a candidate" by the White House. The candidates identified in this fashion would be interviewed by a panel that normally consisted of Sampson; Margolis; David Higbee, Deputy Associate Attorney General and the DOJ liaison to the White House; the Director of EOUSA; and Christopher Bartolomucci of the White House Counsel's office. Sampson described the interview as similar to a regular job interview, with part of the interview focused on whether the candidate had any issues that might arise during the background investigation. After the interviews, the panelists would rank the candidates in order of preference. According to Sampson, if there was only a single candidate, the panel would determine whether the person "me[t] the bar," meaning that the candidate met the minimum level of qualifications for the position of U.S. Attorney.

According to Sampson, the panel usually developed a consensus regarding the strongest candidate. After the panel agreed on a candidate, the panel would seek concurrence from the Deputy Attorney General and the Attorney General. If they concurred with the panel's recommendation, Sampson would seek approval for the nomination from the White House Counsel. Sampson stated that he could not recall any occasion when the Deputy Attorney General, Attorney General, and White House Counsel did not concur with the panel's recommendation for a U.S. Attorney.

Sampson said that after the White House Counsel approved a nomination for U.S. Attorney, Sampson would send an e-mail to EOUSA asking it to prepare the paperwork regarding the candidate for inclusion in a binder submitted to the President containing names of candidates being recommended for appointments as federal judges, U.S. Attorneys, and U.S. Marshals. Sampson said he would then discuss the U.S. Attorney candidate recommendations with the President. If the President agreed with the recommendation, Sampson would inform EOUSA that the President had expressed his "intent to nominate" the candidate pending the successful completion of the background investigation process. However, the "intent to nominate" would not be publicly announced until after the background

investigation process was completed and the candidate's background investigation was "cleared" by the White House Counsel, as described below.

C. The Background Investigation and Confirmation

After receiving notification that the President intended to nominate a candidate, EOUSA would ask the candidate to complete the background investigation forms. The background investigation and confirmation portions of the process were overseen by EOUSA and the DOJ Office of Legal Policy (OLP).

Upon receiving the completed background forms from the candidate, DOJ would request that the FBI initiate the background investigation. Background investigations for U.S. Attorneys included interviews of at least six federal, state, and local judges; three attorneys who are associates of the candidate; three opposing attorneys; six representatives from federal, state, and local government prosecutors' offices; and senators of the state where the candidate would serve. According to Higbee, the FBI generally sought to complete the background investigations within two months. Upon its completion, EOUSA would review the FBI background investigation and prepare a memorandum for Higbee summarizing the results and attaching interview summaries and other material from the background investigation file. Higbee said he would review the memorandum and, if issues arose in the background investigation, discuss them with Margolis. Higbee would then forward the memorandum to Sampson at the White House.

According to Sampson, many background investigation memoranda stated that there were no issues with the candidate. Sampson told the OIG that in such cases the White House Counsel's office would state that the candidate was "cleared." If the candidate had issues, Sampson said he would review the memorandum (and sometimes the file as well) before forwarding the memorandum to the Deputy White House Counsel, who would make the determination whether to clear the candidate. If the Deputy White House Counsel cleared the candidate, the White House informed EOUSA, and EOUSA sent nomination paperwork to the White House. The White House would then publicly announce the nomination or the President's "intent to nominate" the candidate and the White House would forward nomination paperwork to the Senate.²

² Witnesses told the OIG that if the Senate was in session when the candidate was cleared and the White House received the nomination paperwork, then the nomination would be sent to the Senate and the White House press office would issue a release stating, "Today the President nominates" the candidate. If the Senate was out of session and not receiving nominations, or if the nominations paperwork was in progress but not quite ready, the White House would issue a press release stating the President "intends to nominate" the candidate, and the nomination papers would be sent to the Senate at a later date.

While the amount of time varied with each candidate, the time from selection and the beginning of the background investigation to the President's public announcement of his intent to nominate could be substantial.

III. FACTUAL CHRONOLOGY RELATED TO BLACK'S ALLEGATIONS

Guam and the Northern Marianas, which have a combined total population of approximately 250,000 people, are islands in the North Pacific Ocean located about three-quarters of the way from Hawaii to the Philippines. Guam is an unincorporated Territory of the United States, and the Northern Marianas is a Commonwealth in political union with the United States.

The USAO in Guam is both the smallest of the 93 U.S. Attorney's Offices and the one farthest from the mainland United States.³ It has a staff of approximately 12 Assistant United States Attorneys (AUSA).

From 1991 until 2003, Fred Black served as the interim U.S. Attorney for Guam and CNMI. Black started his legal career in 1975 as a Public Defender in Guam and became an AUSA there in 1978. In 1981, he moved to Oregon and worked as the Deputy Federal Defender, then returned as an AUSA in the Guam USAO in 1984 to lead a federal public corruption investigation. In 1989, Black became the First Assistant U.S. Attorney in Guam. In August 1991, after the U.S. Attorney resigned, Black was appointed interim U.S. Attorney for Guam and CNMI and served in that capacity until replaced by Rapadas in May 2003. According to Black, his major prosecutorial focus in Guam was public corruption cases.

A. Potential Nominees from 1991-2000

Between 1991 and 2001, DOJ made repeated attempts to find a suitable candidate for the President to nominate as U.S. Attorney for Guam. Several DOJ officials told the OIG that, due to Guam's small population and remote location, it was difficult to find qualified candidates. The DOJ official responsible for handling U.S. Attorney nominations from June 1993 to January 2001, Bernie Delia, told the OIG that the White House and DOJ made repeated attempts to find a candidate for the position. He said he could recall at least four potential nominees the White House suggested to DOJ who did not make it through the vetting process.

³ The time difference between Guam and Washington, D.C., is 14 hours.

Delia stated it was standard procedure for the person acting as the interim U.S. Attorney to be interviewed about potential nominees for that district. Delia said that in each instance, when the White House suggested a possible candidate for Guam, Black raised objections. In one or two instances, Black sent lengthy written objections stating why he believed the potential nominee was not suitable. Delia stated that Black's objections generally were based on the potential candidate's connections to family members who were suspected of corruption. Delia said that in at least two of these cases, DOJ did not proceed with the potential nominee for reasons other than the objections Black raised. He also said that in no case were Black's concerns the sole reason for the decision not to proceed with a potential nominee.

According to Margolis, who has been involved in the U.S. Attorney selection process for Guam since 1993, Black remained interim U.S. Attorney for over 11 years in part because it took that long to find a political appointee, since Black raised concerns about anyone who was considered as a candidate. Margolis told the OIG that after several failed attempts to appoint potential nominees suggested by the White House, DOJ officials sought a potential nominee from within the DOJ. He said that DOJ recruited a former U.S. Attorney from the mainland United States, but he declined to pursue the nomination after visiting Guam. In addition, DOJ recruited an official from the Deputy Attorney General's Office to be interim U.S. Attorney in place of Black, but the appointment process bogged down because of a disagreement between Margolis and the Chief Judge who held the appointment authority. According to Margolis, during the time he has been involved in the selection process the White House never named Black as a candidate and he was never considered for the Presidential appointment.

Sampson told the OIG that once President Bush was inaugurated in 2001 there was a general decision to replace Clinton-era U.S. Attorneys and that the Bush Administration wanted to "get a fresh team in." Sampson said he was aware that all the territories had U.S. Attorneys who were "acting." Sampson said, "In my mind, as the person who was running the selection of U.S. Attorneys, I never considered Black a candidate. By virtue of the fact that he had been there 12 years . . . he was not going to be a candidate." The fact that Black had been appointed interim U.S. Attorney by George H.W. Bush, as opposed to President Clinton, "didn't make a difference," according to Sampson. Although Sampson did not have a specific recollection of the conversation, he said he thought he and Margolis had a discussion to the effect that Black had been the acting U.S. Attorney for 12 years and the Bush Administration wanted to put its own team in office.

Black told the OIG that he initially did not take any steps to become a Presidentially appointed U.S. Attorney because he was happy doing the job as the interim U.S. Attorney and there was not any competition for the position. He also stated that he did not take immediate steps to obtain a Presidential

appointment because "the kind of people that recommend the U.S. Attorney position are the very people we are investigating." In addition, Black stated that he was "getting the pay" and "doing the work" so he would rather not become the Presidentially appointed U.S. Attorney, given that "when the President leaves, you're out." He said that once others started expressing an interest in the position, however, he "tried to throw his hat in the ring." Black also told the OIG that once, in approximately 1993, he was considered for Presidential appointment as U.S. Attorney or for a federal judicial appointment on Guam (he could not recall which). He stated that he never learned why his interview did not lead to a nomination.

B. Rapadas's Name is Submitted to the White House and Forwarded to EOUSA

In May 2003, Leonardo Rapadas was sworn in as the U.S. Attorney in Guam, replacing Black. Rapadas had worked for the Office of the Attorney General of Guam from August 1989 until 2003. During his 13 years at the Attorney General's Office, Rapadas served as the head of the Violent Crime Unit for 18 months and as Chief Prosecutor for 3 years, in addition to working as a line attorney.

We sought to determine how Rapadas came to be recommended to the White House as a candidate for the position of U.S. Attorney for Guam. Rapadas told the OIG that the Speaker of the Guam Legislature, Antonio Unpingco, first contacted him to discuss the U.S. Attorney position in the summer of 2001. Unpingco told the OIG that after President George W. Bush was elected, he thought it would be a good time to recommend someone for the U.S. Attorney position. At the time, Unpingco was the highest ranking Republican in Guam because the Governor, Carl Gutierrez, was a Democrat. Unpingco also noted that there had never been someone from Guam who served as U.S. Attorney, and Black had been in the position for the "longest time."

Unpingco stated that it was his idea to ask Rapadas to become a candidate for the U.S. Attorney position. Unpingco said he had known Rapadas since childhood. Unpingco stated that he approached Rapadas because he knew Rapadas was a successful prosecutor with the Attorney General's office who had handled high-profile prosecutions and was winning a lot of cases. Unpingco said that the fact that Rapadas was "local" was also a factor.

Unpingco told the OIG that when he asked if Rapadas was interested in pursuing the U.S. Attorney position, Rapadas said he was. Unpingco said he recalls telling Rapadas that he would have to be "Mr. Clean" because the FBI would do a background investigation. Unpingco said he told Rapadas that if he

had any "dirty linen" he should let Unpingco know right away. Unpingco stated that Rapadas did not disclose to him any information of that nature.

Unpingco stated that he did not ask Rapadas any specific policy questions while discussing the U.S. Attorney position. He said he did not discuss with Rapadas issues relating to the application of federal immigration law in CNMI or a jurisdictional dispute between the Guam Superior and Supreme courts. Rapadas also stated that he did not discuss public corruption matters or immigration policy issues with Unpingco. In addition, Rapadas told the OIG that he had never heard the name Jack Abramoff until Black later brought it up to Rapadas during a meeting shortly after Rapadas was confirmed as the U.S. Attorney in 2003.

Unpingco stated that he concluded that Rapadas was the caliber of someone he could recommend, so he wrote a letter to the White House recommending him. Unpingco also told Rapadas that if he was interested in pursuing the position, he should contact David Sablan, the Guam Republican Party Chairman. Unpingco stated that the only other action he took in connection with this nomination was that he contacted Sablan to recommend Rapadas.

Unpingco said he did not recommend Rapadas in order to influence any public corruption case Black was pursuing or to reduce public corruption prosecutions on Guam. Unpingco said that Black is a friend of his, but he did not know what investigations Black was conducting at that time.

Unpingco said he was not contacted by anyone in Rapadas's family or by Abramoff about filling the U.S. Attorney position. Unpingco told the OIG that he has never had any dealings with Abramoff and has never been contacted by Abramoff about anything. He said he would not recognize Abramoff and does not think he has ever spoken to him or met him. The OIG's review of documents did not reveal any indication that Abramoff was in contact with Unpingco.

Guam Republican Party Chairman David Sablan told the OIG that he looked to Unpingco for a recommendation for the U.S. Attorney appointment because Unpingco was the highest-ranking Republican official on Guam at that time. Sablan said he also sought the assistance of Fred Radewegan, a political consultant who lives in the Washington, D.C. area.⁴ After Unpingco

⁴ In 1982, Radewegan founded Pacific Islands Washington Office, Inc., a Washington, D.C.-area governmental relations firm that specializes in strategic planning, international relations, and political affairs. Sablan told the OIG that when he was elected chair of the Guam Republican Party in 2001, Radewegan reached out to him and offered his assistance in helping Sablan understand the national political system. Sablan said he accepted the offer. He told the OIG that Radewegan gave him guidance on Republican National Committee matters he was (continued)

recommended Rapadas, Sablan spoke with Rapadas. Rapadas stated that he could not recall any discussion with Sablan about any individual case, how Rapadas would handle any specific type of case, or Rapadas's views on immigration policy. Sablan subsequently forwarded his name to Radewegan. Sablan and Radewegan also received the concurrence of Republican Party officials in the CNMI and American Samoa regarding Rapadas.⁵ Radewegan then forwarded Rapadas's name to the White House as a candidate for the U.S. Attorney position.

Sablan and Radewegan said that they had no contact with Abramoff about this nomination and that they were not aware that Abramoff played any role in the nomination. In addition, the OIG's review of documents did not reveal any indication that Sablan or Radewegan had contact with Abramoff regarding this matter.⁶

We also sought to determine what happened with the U.S. Attorney recommendation once it reached the White House. We determined that, at the time, White House Office of Political Affairs (OPA) staff member Leonard Rodriguez was assigned to handle appointment issues involving the territories, including the Guam U.S. Attorney's position. Rodriguez said that because there are no U.S. Senators for Guam, it was unclear who would suggest potential nominees. He said he discussed the nomination with people who were "trusted sources" regarding Guam, including Sablan and Radewegan.

Rodriguez received an e-mail from Radewegan on December 11, 2001, recommending Rapadas as the candidate for U.S. Attorney.⁷ Rodriguez said that he forwarded the e-mail the same day to Sampson, the White House Associate Director for Presidential Personnel. E-mail records show that Sampson received the e-mail and forwarded it to EOUSA, also on December 11.

handling in his position as Guam Republican Party chairman, and gave him information about how to make recommendations for federal positions.

⁵ Sablan stated that one of the things that Radewegan advised him was that a one-person recommendation does not carry enough clout, so Sablan might want to submit recommendations for federal appointments that have the backing of several Republican Party officials in the CNMI and American Samoa, which would carry more weight.

⁶ Radewegan also said he did not have any contact with White House advisor Karl Rove in connection with this matter. Radewegan stated that his involvement in the nomination was limited to his discussions with Sablan and the submission of Rapadas's name to the White House, as described above.

⁷ The e-mail states, "Here is another copy of the resume of Leonardo Rapadas, the candidate of the Republican and Bus[iness] leadership on Guam for U.S. Attorney for Guam/CNMI, which has the full backing of the parties in CNMI and American Samoa. Originally transmitted to Clay Johnson's shop [the White House Personnel Office] by Amata [Radewegan's wife] on Sept. 12 but no acknowledgement ever was received."

EOUSA subsequently sent the online application to Rapadas, who completed the application on December 17, 2001.

When we asked Rodriguez why Rapadas was recommended to the White House by Guam officials and why he forwarded the name to EOUSA as a candidate, Rodriguez said he could not specifically recall the discussions he had with the people he consulted about the nomination, but that in general the discussions concerned whether a candidate would fall in line with the President's philosophy. Rodriguez stated that Rapadas was viewed as someone who would be strong on law enforcement. Rodriguez said that he was not aware at the time of any allegations about Abramoff's relationship with the government of Guam, and that he did not recall any discussion of a Guam or CNMI security report during the process of soliciting recommendations for a U.S. Attorney candidate for Guam.

Rodriguez denied that Abramoff or the CNMI immigration issue played any role in his decision to forward Rapadas's name to EOUSA as a candidate for the U.S. Attorney position. However, Rodriguez told the OIG that he kept Abramoff aware of information relevant to Guam, including potential nominees for the U.S. Attorney position. Rodriguez said he did so at the behest of Ken Mehlman, the White House Political Director, who "recommended or suggested that I reach out to make Jack aware" of issues related to Guam.

Rodriguez estimated that he exchanged a total of five e-mails with Abramoff regarding Guam. Rodriguez said he recalled sending one e-mail to Abramoff stating that Rodriguez would be the point person on the U.S. Attorney nomination and if Abramoff had any issues or concerns that he should bring those to Rodriguez's attention. However, Rodriguez stated that Abramoff did not supply any candidate names or provide him with any input into the Guam U.S. Attorney nomination. Rodriguez said he does not recall Abramoff ever contacting him regarding the U.S. Attorney position. Rodriguez stated that when he contacted Abramoff, it was generally to pass on information relevant to Guam, such as the name or names of people under consideration for U.S. Attorney, although not all the e-mails he sent to Abramoff related to the U.S. Attorney position. Rodriguez said that the communications with Abramoff about Guam issues was one-sided. Rodriguez description of these communications was confirmed by our review of Abramoff's e-mails.⁸

⁸ Abramoff's e-mails show that Rodriguez's earliest e-mail communication with him about any positions in Guam occurred well after Rodriguez received Rapadas's name and the White House had named Rapadas as a candidate to EOUSA. On October 23, 2002, Rodriguez sent an e-mail to Abramoff, with a copy to Ken Mehlman, in which Rodriguez stated that he had tried to reach Abramoff by telephone to introduce himself. Rodriguez also stated that he oversaw the U.S. territories for OPA and invited Abramoff to "feel free to contact me directly for any requests from Guam." The OIG found only one e-mail, dated November 19, 2002, between
(continued)

C. Interview Panel's Decision to Propose Rapadas for Nomination

DOJ records reflect that the DOJ panel interviewed Rapadas on December 18, 2001, one week after Sampson sent his name to EOUSA as a candidate for the Guam U.S. Attorney's position. These records also show that DOJ seriously considered one other candidate for the Guam position, an Assistant United States Attorney who had worked in Hawaii. That prosecutor was interviewed by the panel on January 15, 2002. However, according to Sampson, the prosecutor declined to pursue the position after the interview.

The interview panel for Rapadas consisted of Sampson, Margolis, Higbee, Bartolomucci, and Ken Wainstein, then the Director of EOUSA. The OIG interviewed all of these panel members. Although they said they could not recall the specific details of the interview, all stated that they did not remember any discussion regarding Abramoff or a security report when considering Rapadas's candidacy.

In addition, although Black did not make his allegations against Abramoff until November 2002, and the CNMI security report was not issued until May 2002, both well after the panel interview, we asked the interviewers whether Rapadas's position on public corruption prosecutions or the applicability of immigration law to Guam and the CNMI played any role in his selection. They all said they did not recall any discussion of either issue during the interview or subsequent discussions. The panel members all denied selecting Rapadas in order to diminish public corruption prosecutions or to affect federal immigration policy in Guam or the CNMI.

Although the interviewers could not recall their specific discussions about Rapadas's qualifications after his interview, they told the OIG that they believed they developed a consensus that Rapadas "met the bar" and that it would be appropriate to propose him for nomination.

We also sought to determine whether Abramoff had any role in this part of the selection process, and found that he did not. We asked the interviewing officials whether Abramoff contacted them about the nomination, and none recalled any contact with Abramoff about the nomination. Higbee told the OIG that Abramoff did not contact him in connection with the Rapadas nomination. Wainstein stated that he sometimes received calls from people outside DOJ recommending a particular candidate, but that he had no recollection of any

Rodriguez and Abramoff regarding the Rapadas nomination. As described below, on November 19, 2002, the White House publicly announced the President's intent to nominate Rapadas as U.S. Attorney for Guam. In a November 19 e-mail to Abramoff, Rodriguez inaccurately stated that the President would "nominate Leonardo Rapadas for U.S. Marshal in Guam today" (the nomination was for the U.S. Attorney position, not U.S. Marshal).

such call from Abramoff. Margolis said that Abramoff never contacted him. Sampson said he had no recollection of being contacted by anyone outside the government or of anyone mentioning Abramoff in connection with the nomination. Margolis, Higbee, Wainstein, and Sampson added that Abramoff's name would not have meant anything to them at the time. Bartolomucci said he had trouble recollecting the Rapadas interview and told us that he may have interviewed as many as 100 U.S. Attorney and U.S. Marshal candidates. However, he said he did not recollect any contact from Abramoff about Rapadas.

In addition, all of the interviewers said they did not recall being contacted by anyone outside government regarding the selection. Higbee added that there was not really a "push" for Rapadas from anyone. He said that when Rapadas's name came in, the candidate went through the normal selection process.

D. The President's Decision to Nominate Rapadas

The interviewers told us they had no specific recollection of any subsequent discussions about the nomination with the Deputy Attorney General, the Attorney General, or the White House. However, Sampson said that he believes the normal procedures were followed in this case – that is, after the interview panel had agreed to propose Rapadas, the interview panel obtained concurrence from the Deputy Attorney General and the Attorney General.⁹

⁹ Black has also cited press reports which state that Abramoff sent an e-mail to a client in the CNMI in October 2001 in which he discussed his concerns about a federal takeover of immigration law in CNMI, and in which he claimed to have access to Attorney General Ashcroft and his Chief of Staff, David Ayres. Black speculated that Abramoff or his colleagues may have asked Ayres or Ashcroft to take action against Black.

However, Abramoff denied taking any actions to have Black replaced until February 2002, as discussed in Section III.F of this report, and Abramoff stated that the contacts with DOJ officials related to Black that took place at that time were undertaken by his colleagues, not by him personally. In addition, other OIG interviews did not reveal any effort by any Abramoff associate to discuss the Rapadas nomination with Ayres or Ashcroft. Moreover, we did not find any indication in the documents we reviewed that Ashcroft took any action in connection with the Rapadas nomination, beyond approving the nomination.

Moreover, we found no evidence to indicate that Ayres was involved in any decision regarding the Guam U.S. Attorney nomination. Ayres told the OIG that he sometimes participated in meetings at which the Deputy Attorney General and others discussed progress on U.S. Attorney nominations, and Ayres said that these meetings constituted his only involvement in the U.S. Attorney selection process. However, Ayres stated that the only memory he had in connection with the Guam U.S. Attorney nomination was that it was "difficult finding" nominees for the islands outside the continental United States – U.S. Virgin Islands, Puerto Rico, and Guam. He said he thought these nominations were completed towards the end of the U.S. Attorney selections due to the difficulties finding nominees for the islands. Ayres also said that he did not recall either Abramoff or any of his colleagues

(continued)

Sampson said that he believes that after the Deputy Attorney General and Attorney General concurred, he then obtained approval for the Rapadas nomination from the White House Counsel, pursuant to the normal practice.¹⁰ Sampson said he believes he then asked EOUSA to prepare paperwork consisting of a one-page data sheet, a resume, and a picture of the candidate. Sampson said he believes he presented Rapadas's candidacy to the President, and the President approved the nomination, pending successful completion of a background investigation.

E-mail records provided to the OIG by Rapadas suggest that those who submitted Rapadas's name to the White House were kept apprised of the progress on his nomination. An e-mail Sablan sent to Rapadas on February 6, 2002, stated that "word has come back that so far the background investigation on you is going along fine."¹¹ On February 17, 2002, Sablan wrote an e-mail to Rodriguez and Mehlman stating that Radewegan had informed him that Rapadas "got the nod from all concerned."

Other documents reflect that the White House approved the nomination of Rapadas, pending the successful completion of the background investigation process, on March 8, 2002. On March 11, 2002, EOUSA sent the background investigation forms to Rapadas.

E. Black Requests the Presidential Appointment

During this process, Black expressed interest in being considered for the U.S. Attorney's position. On November 21, 2001, he wrote to Sablan asking to be considered for the position. Sablan told the OIG that he let Black know that the Republican Party leaders of Guam had already decided to submit Rapadas's name. However, Sablan also stated that he told Black that, if Rapadas was unsuccessful in getting the nomination and being confirmed, Sablan would have tried to pursue the nomination for Black.

attempting to contact him in connection with the removal of Black or the selection of Rapadas. Similarly, no other witnesses we interviewed recalled any discussions with Ayres, Attorney General Ashcroft, or the Deputy Attorney General relating to Rapadas.

¹⁰ As noted above, Sampson stated that he could not recall any occasion when the Deputy Attorney General, Attorney General, and White House Counsel did not concur with the interview panel's recommendation for a U.S. Attorney candidate.

¹¹ Sablan told the OIG that his reference to "background investigation" in this e-mail was a reference to the general vetting process, rather than the portion of the process in which the FBI conducts interviews for a formal background investigation. As discussed in section H, it was not until June 3, 2002, that DOJ and the White House Counsel's office requested the FBI to begin its background investigation work on the Rapadas nomination.

On January 16, 2002, Margolis sent Black an e-mail stating that DOJ was considering two "very serious candidates" for the Guam U.S. Attorney position. Margolis told the OIG that he wanted to find out early on what Black's position would be with respect to the potential candidates, given Black's repeated, strong opposition to previous candidates. Margolis stated in the e-mail to Black that the two candidates were Rapadas and a prosecutor from Hawaii (who subsequently withdrew his name from consideration for the position). Black responded to Margolis that Rapadas was "unsuitable" and that he had had only limited contact with the other candidate. Black also attached to his response a letter dated January 7, 2002. In the letter, which was addressed to the Attorney General, Black asserted that "the local power brokers" had proposed Rapadas in an "attempt to neutralize" the U.S. Attorney's office regarding public corruption matters. He raised concerns about Rapadas's family connections and raised the likelihood of a recusal of Rapadas or the entire office from a major corruption investigation if Rapadas was appointed. Black also stated that the Guam Attorney General's Office, where Rapadas worked, had "impeded federal investigations."

In a second letter, dated January 17, 2002, which was also addressed to the Attorney General, Black stated that he was a Republican Party member and "would like to apply to be the Presidentially appointed United States Attorney" for Guam and the CNMI.

Margolis told the OIG that DOJ did not take action on Black's request to be considered as the U.S. Attorney because it was not the manner in which candidates for the U.S. Attorney position entered the selection process. As noted above, candidates for political appointments were determined by the White House, not the DOJ. DOJ's role was to participate in interviews and the decision as to whether or not a candidate put forward by the White House was qualified and likely to successfully complete the background investigation process.

The DOJ did not provide a written response to Black's January 17 letter. Rather, according to DOJ records, the matter was "handled via telephone" by an EOUSA official.

On November 8, 2002, the Governor-elect of Guam, Felix Camacho, wrote to the White House to seek the President's "favorable consideration in continuing the appointment of Attorney Fred Black for the position of United States Attorney for Guam and the Northern Marianas." However, as noted above, at this point Rapadas had already been selected as the nominee.

F. Abramoff's Involvement with the Guam U.S. Attorney Nomination

We also attempted to determine independently, through interviews with Abramoff and review of his e-mails, whether he was involved with any attempt to influence the nomination for the Guam U.S. Attorney position. We determined that by the time Abramoff became involved in trying to influence the nomination, Rapadas had already been selected. Then, when Abramoff was informed of the White House's decision, he attempted to take credit with his Guam contacts for the selection of Rapadas, even though he played no role in it.

Abramoff had represented the CNMI government since 1995 and worked to prevent federal immigration and minimum wage laws from being applied in the CNMI.¹² Abramoff told the OIG, and documents confirm, that prior to 2002 Abramoff was aware that Black, as the interim U.S. Attorney for Guam and the CNMI, took the position that federal immigration law should apply in the CNMI. However, Abramoff told us that he did not recall attempting to influence who held the position of U.S. Attorney in Guam prior to 2002, and we found no evidence to the contrary.¹³

Abramoff told the OIG that he recalled becoming involved in attempts to influence the Guam U.S. Attorney nomination beginning in February 2002. At that time, Abramoff was pursuing a \$1.3 million contract with the government of Guam to represent its interests, including attempting to increase airplane flights to and from Guam. As part of his efforts to obtain the contract, Abramoff met with the Democratic Governor of Guam, Carl Gutierrez, at a dinner in Washington, D.C. Abramoff, who had previously worked on behalf of Gutierrez's Republican opponents, said he was aware at that time that Gutierrez wanted Black removed from his position in part because of an ongoing corruption investigation Black's office was pursuing into the activities

¹² Abramoff told the OIG that one of his primary strategies in representing the CNMI involved bringing members of Congress and Congressional staff on trips to the CNMI. Abramoff stated that he wanted them to see first-hand the island and its businesses, and in particular the conditions of those working on CNMI. He stated that these trips were successful in helping to prevent Congress from imposing federal immigration laws or the federal minimum wage on CNMI.

¹³ Abramoff told the OIG that, in connection with this work on the CNMI minimum wage issue, he had taken some action that could have affected the jurisdiction of the U.S. Attorney in Guam. He said that in 1998 he learned that money had been appropriated by Congress to fund an office that would handle complaints from garment workers on CNMI. Abramoff said he opposed this appropriation as harmful to the economy in the CNMI. Abramoff said that because it was too late in the appropriations process to remove the funds from the bill, he sought to have them designated instead for a separate U.S. Attorney for the CNMI, a position that did not exist. However, that legislation was never enacted.

of certain members of the Gutierrez administration. Abramoff told us that, at the dinner, Gutierrez mentioned a letter he had written many years earlier on Black's behalf in which he had stated that Black was a "good Democrat." Gutierrez and Abramoff discussed using this letter to assist in removing Black from his position.

Abramoff's e-mails confirm that in late February 2002 he became involved on Gutierrez's behalf in a plan to oust Black from the interim U.S. Attorney position. According to the e-mails, on February 25, 2002, Abramoff obtained the Gutierrez letter, which was addressed to President Clinton and dated January 12, 1995. In the letter, Gutierrez had referred to Black as a good Democrat and recommended that he be "re-appointed" to the position of U.S. Attorney for Guam.¹⁴

Upon receiving the letter, Abramoff sent it by e-mail to four members of his lobbying team at the Greenberg Traurig law firm who handled Guam and CNMI issues: Michael Williams, Tony Rudy, Kevin Ring, and Todd Boulanger. Abramoff stated in the e-mail that Black was a "total commie and has been bashing the CNMI non-stop in the past. . . . We need to get this guy sniped out of there." In subsequent e-mails, Abramoff's colleagues discussed using the Gutierrez letter to "stop [Black's] nomination." On February 26, 2002, Williams sent Abramoff an e-mail stating that Rudy was ready to speak to the White House about "killing the US Attorney candidate [Black]," but that Williams thought they should be prepared to suggest a good Republican alternative.

Abramoff told the OIG that it took some time for Williams to obtain the name of a candidate who was favored by both Gutierrez and Abramoff's main contact on Guam, Guam Democratic Senator Mark Charfouros.¹⁵ Abramoff's e-mails reflect that by March 4, 2002, Williams had learned that Gutierrez and Charfouros favored an attorney from the Washington, D.C. law firm Patton, Boggs for the Guam U.S. Attorney position. Abramoff told the OIG that the attorney had worked with Gutierrez's son-in-law on a business matter.

On March 4, 2002, Williams reported to Abramoff in an e-mail that he had spoken with the attorney and the attorney was on the candidate list but

¹⁴ Black told the OIG that Gutierrez previously had shown him such a letter, possibly in 1995. Black stated that he did not request the letter from Gutierrez, and did not know if it was ever sent to the White House. Black stated that he believed the letter was an attempt by Gutierrez to curry favor with him due to his position as interim U.S. Attorney.

¹⁵ We found one January 2001 e-mail from Charfouros to Abramoff stating that Governor Guterrez would be unofficially "funneling" his candidates for U.S. Attorney and judiciary appointments through Abramoff's office. However, Abramoff's February 2002 e-mails were the earliest we found indicating that Abramoff or his colleagues took any action in connection with the U.S. Attorney position.

had yet to be interviewed. However, the OIG found no record this attorney's name was forwarded to EOUSA as a candidate and there is no record that he was ever interviewed for the position.

On March 6, 2002, Williams sent a follow-up e-mail to Ring and Rudy stating that he needed them to "talk with the political folks" at DOJ and the White House to make sure that Black was ousted as soon as possible and to push the Patton, Boggs attorney for the position. Williams wrote that Black was "an enemy of the Governor" and was using his office to "harass" Gutierrez. Williams also wrote that Gutierrez and Charfouros favored the Patton, Boggs attorney for the position, and that "the other two" candidates were Rapadas and an Assistant U.S. Attorney from Hawaii. In the e-mail, Williams laid out arguments in favor of the Patton, Boggs attorney, including that he could "clean up the corruption in Guam and return respect to the Guam U.S. Attorney's office." Williams reminded Ring and Rudy to provide a copy of the Gutierrez letter to DOJ officials.

Ring responded in an e-mail on March 6, 2002, to Abramoff, Williams, Rudy, and Boulanger: "Just to be clear, we are lobbying in favor of the Dem[ocratic] Gov[ernor]'s choice against the White House's and local GOP's pick?" Abramoff responded, "We are opposed to Black. He has been screwing us for years on the CNMI, so this is good payback. I don't care if they appoint bozo the clown, we need to get rid of Fred Black."

Yet, as described above, unbeknownst to Abramoff and his colleagues, by this time the White House had already made the decision to nominate Rapadas. On March 8, the same day EOUSA was informed by the White House that the President had made the decision to nominate Rapadas, Williams sent an e-mail to Abramoff reporting that he had just learned about Rapadas's nomination from Rudy, who had spoken to Carl Thorson, then Deputy Assistant Attorney General in the DOJ Office of Legislative Affairs. Williams stated that although the "good news" was that Black would be out soon, the "bad news" was that the Patton, Boggs attorney did not make the final cut. Williams said that Thorson told Rudy that Rapadas was "the pick" and that unless something came up in the completion of his background check, he would be formally nominated. In addition, Williams stated that Thorson said they were "too late" to affect the process.

In response to Williams's March 8 e-mail, Abramoff instructed Williams to tell their contacts in Guam the "good news" that "Black is gone." He told Williams that he should "play it" as though Black had been under consideration for the position but their lobbying efforts had "killed" Black's nomination. Abramoff also told Williams he should say that Black and Rapadas had been the final two candidates when they "killed Black," so Rapadas would probably get the nomination. Abramoff added in the e-mail

that they should tell them that the Patton, Boggs attorney was "out of the process already. Spin spin spin."

Abramoff told the OIG that he did not recall taking any further action to influence the selection of the U.S. Attorney for Guam because they understood that the process had concluded.¹⁶ Abramoff told us that he did not provide any direct input to Rodriguez, the White House, or DOJ regarding the USA-Guam position. However, he said another associate might know more about any work done on his behalf in connection with Rapadas's nomination. The OIG contacted that person, and was able to corroborate the description given by Abramoff of his firm's failed attempt to influence the U.S. Attorney nomination. Neither Abramoff nor any other witness interviewed by the OIG recalled any efforts to affect the Guam U.S. Attorney nomination prior to February 2002, and the OIG has not found evidence to suggest that they made any other efforts.

In sum, the OIG has not uncovered any evidence to suggest that Abramoff or his colleagues had any knowledge of or involvement in the Rapadas nomination until after February 2002, by which time it was too late to affect the selection.

G. May 2002 Security Report

Black also alleged that he may have been replaced as interim U.S. Attorney in order to prevent the implementation of a recommendation contained in a May 2002 security report regarding the applicability of federal immigration law to the CNMI, which Black supported and Abramoff opposed. In this section of the report, we address the question of whether Black was replaced in order to prevent implementation of this recommendation.¹⁷

¹⁶ However, Abramoff and Williams continued to track the nomination of Rapadas as it proceeded through the confirmation process. In addition, in one e-mail to a Senate staffer in April 2003, Williams offered to provide the Gutierrez letter about Black to the staffer. Another e-mail reflects that Williams was told on May 7, 2003, by his congressional contacts that Rapadas was on the Judiciary committee docket the next day and was expected to be "reported favorably" by the committee. Williams told Abramoff that he would inform Gutierrez's son-in-law of the development. On May 9, after the full Senate voted to confirm Rapadas, Williams e-mailed the news to the Governor's son-in-law and asked that the Governor be notified.

¹⁷ In addition, Black has alleged that the security report was improperly leaked to Abramoff, that the author of the report (Meissner) was re-assigned in retaliation for his work on the report, and that the contents of the report were suppressed because of Abramoff's opposition and influence. As noted above, in early spring 2004 the DOJ opened an investigation into Abramoff's lobbying activities. Charges filed in that investigation confirm that the investigation eventually led to other related inquiries regarding Abramoff, including his activities in the CNMI. We have referred to the FBI and the Department of Interior OIG the allegations of unauthorized disclosure of this report to Abramoff and other related matters, (continued)

The CNMI security report was written in early 2002 by Robert Meissner, a DOJ Regional Security Specialist who advised the Guam U.S. Attorney's Office regarding building security and other security-related issues.¹⁸ In February 2001, Black wrote to EOUSA requesting a "security assistance visit" due to a recent security incident and other threats to his district.

On May 6, 2002, Meissner sent a letter to Black attaching a 34-page report summarizing the results of his security review. In the report, Meissner wrote that the federal government did not maintain control of customs and immigration on Guam and the CNMI. He stated that the lack of such control, "coupled with a long history of deliberate territorial indifference to corrective action," fostered "criminal activity and public corruption . . ." Meissner also stated that a complete, in-depth review of policies concerning the relationships between the U.S., Guam, and the CNMI governments was urgently needed.

Meissner's report made 28 recommendations covering a broad range of issues, including extending federal control over immigration in the CNMI, increasing federal jurisdiction over customs on Guam and the CNMI, establishing effective Coast Guard patrol and interdiction capability, creating a multi-use federal compound that meets specific security requirements, establishing an on-island detachment of the Department of Homeland Security, opening U.S. Customs and Internal Revenue Service offices in the CNMI, expanding "passenger verification" by Customs officers, and other major security initiatives.

Abramoff's e-mail records indicate that by late June 2002 he had obtained a copy of the report from an official at the Department of the Interior.¹⁹ However, as described above, by the time Abramoff received the report he had already been told that a decision had been made to replace Black as U.S. Attorney.

On July 11, 2002, Black wrote to the Deputy Attorney General stating that he was "recently informed" of congressional interest in the Meissner report. Black stated that he recently provided the report to the Department of

including whether any government officials took actions at Abramoff's behest in connection with that report or whether Abramoff had an impact on the handling of the May 2002 security report by government officials.

¹⁸ Regional Security Specialists are EOUSA employees who evaluate and integrate information security, communications security, physical security and personnel security programs at U.S. Attorney's offices.

¹⁹ As noted above, we have referred issues relating to the unauthorized disclosure of the report to the FBI and the Department of Interior OIG.

Justice and Department of the Interior (DOI). He summarized the issues in the report that he believed should be addressed, and he requested working-level meetings to address short- and long-term solutions to the security issues.

DOJ records reflect that in August and September 2002 EOUSA attempted to determine what actions had been taken on the recommendations, and the director of EOUSA met with DOI officials to discuss the report.

Abramoff's e-mails reflect that in September 2002, he received an e-mail from a DOI official stating that Meissner's report, which the official noted had been requested by Black, was being used to promote the application of federal immigration law in the CNMI. The e-mail also mentioned that Black would be traveling to Washington, D.C., in October 2002 to promote the expansion of federal immigration law to CNMI. Abramoff sent an e-mail to a Greenberg Traurig colleague on September 6, 2002, stating that they would have to "activate" on the CNMI very soon. Abramoff also told the colleague in the e-mail that he would be "leading the charge" to "assault" Black in the press, and that Black was a "villain" who was hated by "our Guam friend" Charfourous. In a separate e-mail that same day, Abramoff stated, "We have to make sure this Black guy is smeared into the ground." In response, the colleague stated that he would get someone on it right away.

However, while it is evident that Abramoff was angry about the CNMI security report and wanted to attack Black because of it, we found that neither the report nor Abramoff affected the selection of Rapadas as Guam U.S. Attorney, an issue that had been determined months earlier.

H. Rapadas's Background Investigation

On May 2, 2002, Rapadas sent a letter to EOUSA enclosing a copy of the forms he had been asked to complete in connection with his background investigation. On June 3, 2002, the DOJ and the White House Counsel's office both sent paperwork to the FBI requesting that the background investigation be initiated. Because of Black's allegations that the Rapadas background investigation was insufficient, we examined the background investigation process in detail.

FBI records reflect that Rapadas's initial FBI interview took place on June 18, 2002. The FBI interviewed Black in connection with the Rapadas background investigation on June 22, 2002. In the interview, Black provided his assessment of Rapadas's qualifications. According to FBI records, Black stated that if the issue does not involve local politics, then Rapadas can be fair. However, Black said that politics in Guam is controlled by essentially a criminal enterprise. He said that the Guam Attorney General's Office is the facilitator for much of the procurement fraud on the island, which makes Rapadas a witness to almost all public corruption cases being investigated.

Black said that the appointment of Rapadas would hinder the only "effective" prosecutors on Guam, namely the federal prosecutors.

Black also provided a harsh assessment of Rapadas's legal and personal qualifications. He described Rapadas as "lazy and incompetent," lacking integrity, of "weak character" and "not to be trusted." He asserted that Rapadas was "easily influenced by local political forces." Black also alleged to the FBI that Rapadas had "very close ties" with Tommy Tanaka, the subject of an ongoing public corruption investigation by the Guam USAO. Black stated that he thought Tanaka had used his political influence to get Rapadas the nomination so that Tanaka's criminal matter would "disappear."²⁰ Black stated that he had never watched Rapadas try a case and had never read any of Rapadas's legal submissions, although he stated that Rapadas had "won cases" in the local Guam courts.

As mentioned previously, DOJ policy requires that U.S. Attorney or high-level DOJ candidate background investigations must include interviews of at least six federal, state, and local judges; three associate attorneys; three opposing attorneys; six representatives from federal, state, and local government prosecutors' offices; and U.S. Senators of the state where the candidate will serve. By August 28, 2002, the FBI had completed most of this background investigation work, and on that date, the FBI's Office of Special Investigations and General Background Unit (SIGBU), the unit responsible for coordinating FBI background investigations, sent a memorandum to DOJ enclosing the partial results of the background investigation on Rapadas.

The FBI's August 28 memorandum summarized the "derogatory" information revealed by the investigation up to that point. The memorandum noted that, as Black had said, Rapadas's uncle Tommy Tanaka was one of the subjects of a broad public corruption investigation by the Guam USAO's office. The memorandum also stated that the FBI intended to conduct further interviews in connection with an allegation relating to Rapadas's personal conduct, the alleged conflict of interest involving Tanaka, and an allegation that Rapadas knew of alleged "cover-ups" at the Guam Attorney General's office related to Tanaka and Gutierrez.

On September 20, 2002, the FBI field office in Honolulu, which handled part of the background investigation, sent a memorandum to SIGBU describing the interviews of Rapadas's co-workers and other investigative steps taken to resolve the outstanding issues. The memorandum stated that the investigation had concluded that the allegations regarding Rapadas's personal conduct "could not be used to coerce" Rapadas. The FBI's memoranda of witness

²⁰ During the course of our investigation we found no evidence that Tanaka was involved in the Rapadas nomination.

interviews reflect that agents interviewed all the relevant parties related to the personal conduct allegation, including those identified as likely witnesses, and were unable to corroborate the allegations. The memorandum also stated that the FBI's investigation revealed no evidence that Rapadas was involved in the public corruption allegations related to Tanaka. After receiving this information from the Honolulu field office, SIGBU forwarded the information to the DOJ and closed the background investigation.

On September 24, 2002, EOUSA submitted a memorandum to DOJ White House Liaison Higbee summarizing the Rapadas background investigation. The memorandum stated that all the law enforcement agencies recommended appointment, flagged the derogatory information contained in the background investigation, and summarized other results of the investigation.

In his interview with the OIG, Higbee said that he would describe the background investigation as "marginal" from a clearance standpoint, meaning that it raised some issues of concern. However, Higbee stated that he thought it contained nothing that precluded the Rapadas nomination from going forward. All the law enforcement agencies recommended appointment, which Higbee said he viewed as very important. With respect to Rapadas's professional qualifications, Higbee told the OIG that one way of addressing any concerns about a U.S. Attorney's abilities was to require that EOUSA appoint a strong First Assistant United States Attorney (FAUSA) for the office. Similarly, Sampson told the OIG that nothing in the September 24, 2002, summary of the background investigation would have led Sampson to conclude that Rapadas should not be nominated.

DOJ records reflect that on November 12, 2002, DOJ or White House staff requested additional information regarding Rapadas's personal finances, including one closed bank account and the status of a mortgage. The background investigation was re-opened by the FBI and Rapadas and the FBI provided the necessary information to address those questions by November 15, 2002. That information was forwarded to the White House by DOJ that same day and the FBI then closed the background investigation for the second time.

On November 19, 2002, the White House issued a press release announcing the President's intent to nominate Rapadas as U.S. Attorney.

However, after the President's announcement, Black continued to express concerns about Rapadas. For example, on November 19, 2002, Black sent an e-mail to EOUSA stating that he received the "unexpected" message that Rapadas would be nominated. In the e-mail, Black stated that Rapadas had a conflict of interest with regard to his uncle, Tanaka. In response to these concerns, the FBI again re-opened the background investigation. During

another interview with the FBI on December 17, 2002, Black stated that Gutierrez attempted to corruptly influence Rapadas by asking one of Rapadas's relatives to speak to Rapadas about the public corruption case involving the Gutierrez Administration. That same day, Black sent an e-mail to Margolis noting that Congress had adjourned without acting on the nomination and requesting that the President be informed of Black's objections to Rapadas's nomination. On January 7, 2003, Black sent another letter to the Attorney General regarding Rapadas's selection of the U.S. Attorney for Guam. In the letter, Black outlined his reasons why Rapadas was not the best candidate for the position, including Black's concerns about Rapadas's competence, conflicts of interest, and additional allegations about Rapadas's personal conduct.²¹

On January 9, 2003, the FBI field office forwarded the summary of the December 17, 2002, interview of Black to SIGBU, and SIGBU closed the background investigation for the third time. However, that same day the FBI received a memorandum from DOJ stating that Black had reported that another individual had something to add to Rapadas's background investigation. Based on this memorandum and additional information about individuals who might have pertinent information, on January 13, 2002, the FBI re-opened the Rapadas background investigation again.

After conducting further interviews, the FBI agent assigned to this matter stated in an e-mail that "there are no new revelations which have not already been addressed. Just new people repeating the same old rumors." The background investigation was closed for the fourth and final time on January 22, 2003.

Rapadas was re-nominated on January 28, 2003 (shortly after a new Congressional session began). In March 2003, the Senate Judiciary Committee requested a letter from Rapadas outlining how he would deal with the conflict of interest issue raised in his background investigation. In April 2003, Rapadas and Margolis each sent a letter to the Judiciary Committee discussing the conflict issue and the plan to recuse Rapadas from certain investigations if Rapadas was confirmed.

On May 9, 2003, the Senate voted to confirm Rapadas, and he was sworn in as U.S. Attorney on May 23, 2003.

²¹ Black sent a second, similar, letter to the Attorney General on March 28, 2003.

I. Black's Allegations Regarding Abramoff's Relationship with the Superior Court of Guam

Black has also alleged that he was replaced as U.S. Attorney for Guam in retaliation for allegations he raised to the DOJ regarding lobbying fees Abramoff received from the Superior Court of Guam. In addition, Black made more general allegations that he was replaced as the interim U.S. Attorney to prevent a full investigation of these and other public corruption matters in Guam and the CNMI. In this section, we discuss in more detail the allegations Black raised about the lobbying fees and the DOJ's investigation of those allegations.

Black first brought allegations regarding Abramoff to the attention of DOJ officials in November 2002, as Rapadas was undergoing final review by DOJ and White House officials. On November 1, 2002, Black sent an e-mail to DOJ Public Integrity Section Chief Noel Hillman and other DOJ officials, including Associate Deputy Attorney General Margolis, requesting support from the Public Integrity Section regarding an investigation of Alberto Lamorena, the Presiding Judge of the Superior Court of Guam. Black attached documents which he alleged demonstrated that Lamorena was involved in a \$500,000 "smurfing" scheme with Abramoff. Black alleged the scheme involved a series of payments from the Superior Court of Guam to attorney Howard Hills in \$9,000 increments.²² Black also stated that Lamorena was one of several local judges who sat on the federal bench when Guam's sole federal district court judge, John Unpingco (Antonio Unpingco's relative), was off the island.

Black stated in the November 1 e-mail that legislation pending in the U.S. Congress would place the Supreme Court of Guam in charge of the entire court system in Guam, including the Superior Court. He stated that the bill had "bipartisan support" but that due to Abramoff's influence, it was never voted on. Black alleged that the press spokesman for the Superior Court first denied knowing about payments to Abramoff, then said that the money was used to hire Hills, who then hired Abramoff.²³ Black also said that although the press spokesman claimed that Hills and Abramoff worked to obtain \$9 million in federal grants for the Superior Court, Abramoff said he received \$400,000 to lobby against the bill that would have placed the Supreme Court

²² "Smurfing" is a slang term for making a series of small transactions to escape the regulatory notice a single larger transaction might attract. Investigators call "hopping from bank to bank" with cash amounts just under the \$10,000 limit "smurfing" after the children's cartoon in which little blue characters hop around.

²³ Abramoff told the OIG that in the spring of 2002, after a Congressional hearing was scheduled on the Guam court legislation, he was contacted by Hills, met with Hills and Judge Lamorena, and agreed to lobby against the bill. Lamorena had testified at the hearing in opposition to the bill.

of Guam in charge of the Superior Court. Black said he did not know whether federal funds were used to hire Abramoff.

Black also alleged in the e-mail that Abramoff worked for Governor Gutierrez. Black said his office had "major corruption investigations" ongoing regarding certain Gutierrez Administration officials, including one that was linked legislatively to a bill that kept the Superior Court of Guam in charge of its own administrative affairs. In the e-mail, Black also mentioned other corruption cases ongoing in his office.

Margolis said that after he received the November 1, 2002, e-mail from Black, he contacted Hillman to ensure that Black would get the support from the Public Integrity Section that Black requested. Margolis also forwarded the e-mail to the section's Principal Deputy Chief, Stuart Goldberg, who handled allegations related to federal judges. Hillman told us that he discussed the matter with Goldberg, who had spoken with the U.S. Attorney's Office in Guam in the past. Goldberg told the OIG that Margolis was concerned there might be a recusal issue since Black's e-mail suggested that Lamorena might be called to sit on federal cases while the investigation of his conduct was pending.

According to Goldberg, on several occasions Black contacted him, Hillman, or others to seek help from the Public Integrity Section. Goldberg told the OIG that it was often hard to determine whether Black wanted help with a specific case or help with general corruption problems in Guam. Goldberg said Black often mentioned pieces of different cases in the same conversation and it was hard for a Guam outsider to see the connection between the cases. Goldberg said that Black's allegations were very general and broad, which made it hard for Goldberg to figure out what assistance to provide. Goldberg stated that the Public Integrity Section is a small section with limited resources and that he needed specific details in order to decide when and what help to send. Nevertheless, Goldberg said that on two previous occasions the Public Integrity Section had sent experienced trial attorneys to meet with the prosecutors and agents in Guam to help assess the public corruption situation and to provide advice about how to deal with it.

Goldberg said that in this instance he first tried to answer Margolis's question regarding the recusal issue. Goldberg told the OIG that he spoke with Joseph Wilson, who was then the Criminal Chief of the Guam USAO. Their conversation took place on November 14, 2002, according to Goldberg's contemporaneous notes. Goldberg and Wilson decided that the Guam USAO could avoid using Lamorena for federal matters while the investigation was pending. Goldberg sent Margolis an e-mail the next day informing him of this decision.

Goldberg and Wilson also talked about the "smurfing" allegations raised by Black. Goldberg described the conversation with Wilson as a brainstorming

session. Goldberg said he did not think the facts described by Black constituted a "smurfing" scheme because all the money was going into one account and consequently there was a paper trail. He said he thought there might be an administrative procurement violation if the person writing the checks was authorized only to sign checks under \$10,000 and was structuring the payments to avoid the procurement regulations. Goldberg said he also told Wilson that Wilson should try to figure out what funds were being expended to determine if there was a federal crime. He said he and Wilson discussed a possible violation of 18 U.S.C. § 666, which applies to funds stolen or misused from a program receiving federal funds. Goldberg told the OIG that he believed at the time that the participants may have been trying to avoid some kind of Guam procurement regulation rather than a federal statute.²⁴

In an e-mail to Margolis the next day, Goldberg said that the Guam USAO would do some preliminary investigation regarding the Superior Court checks. Goldberg added, "If it appears there is some there there, they will contact us, and we will get actively involved at that point. I made clear, however, we were available to consult at any time on the prelim. or any other matter"

Documents reflect that the Guam USAO began looking into the allegations and took investigative steps to gather relevant information.

As part of the OIG's investigation, we requested that the Guam USAO and the FBI produce any documents obtained in connection with the investigation into this allegation. However, the USAO and the FBI told the OIG that they were unable to locate any responsive documents.²⁵

²⁴ A December 2005 audit of these payments by the Office of the Public Auditor of Guam found that the Superior Court used monies from its local "general fund" appropriation to pay the lobbying fees for Hills. The audit found that the Guam judicial procurement regulations did not provide guidelines for the procurement of professional services, making such procurements discretionary, and it recommended that the rules be changed to ensure competitive procurement for all supplies and services. See www.guamopa.com, audit entitled "Superior Court of Guam Judicial Building Fund Performance Audit October 1, 1999 through September 30, 2004 OPA Report No. 05-08" at pages 20, 27-28.

²⁵ The Guam USAO reported that copies of the documents received in connection with this matter were not retained by the USAO-Guam.

The FBI office in Guam said it was unable to provide any documents reflecting any investigation into this matter for the period 1999 through 2004. The FBI also searched its electronic database for any references to the relevant parties, such as the Superior Court of Guam, Howard Hills, and Alberto Lamorena. FBI employees also manually searched the general public corruption case file for Guam open at that time. In addition to searching the main investigative file, the FBI searched the subfiles, which were created to store investigative efforts regarding particular individuals such as the Governor's associates. Nothing was found through any of these searches.

An April 2003 e-mail from Black to Hillman reflects that the Guam USAO and the FBI did not continue to investigate the Superior Court checks allegation. At the time he wrote the April 2003 e-mail, Black was still serving as interim U.S. Attorney pending Rapadas's Senate confirmation. In the e-mail, Black stated, "Supposedly, the money was used to lobby against the planned bill to place Guam's Supreme Court in control over the lesser Superior Court. This matter is on the back burner for now." Black also described in the e-mail other USAO and FBI investigative priorities that prevented the FBI from focusing on this matter.

We asked Wilson why the investigation into the Superior Court checks was put on the "back burner," as characterized by Black. Wilson stated that at the time the Guam Public Corruption Task Force was investigating allegations of corruption by certain officials within the Gutierrez Administration.²⁶ The investigation included allegations regarding Tommy Tanaka and Gutierrez's chief of staff, Gil Shinohara.

Wilson told the OIG that he tried to find out something about the "smurfing" allegations without straying too far from the main focus of the Gutierrez Administration investigation. Wilson said that Black generally wanted more to be done about the smurfing allegation and appeared to believe that there was something to the allegations. However, Wilson said that he and Goldberg did not want to pursue this matter further because of the press of cases regarding the Gutierrez Administration and concerns about a lack of federal nexus or readily apparent federal felony offense.

Black told the OIG that at the time he did not press for additional investigation into the matter because he did not want to get "sidetracked" on a case that was a misdemeanor. However, he said that he wanted to conduct some investigation so that information relevant to these allegations would be available at some point in the future.

All of the witnesses we interviewed about the matter told us they could not recall any connection between the allegations regarding Abramoff's involvement with the Superior Court payments and the nomination of Rapadas. For example, Margolis said that at the time Black initially made his allegations about the smurfing scheme, the name Abramoff "meant nothing" to him. Similarly, Goldberg told the OIG that before receiving a copy of Black's

²⁶ According to Black, the task force, which was created in the early 1980's to combat public corruption in Guam, was comprised of a variety of federal law enforcement agencies. The FBI was the lead agency, and the U.S. Attorney's office participated as well. At various times, DOI, the IRS, and Federal Emergency Management Agency personnel participated in the task force.

November 1, 2002, e-mail to Hillman, he was not aware of any public corruption issue concerning Abramoff and the Superior Court of Guam, and Goldberg said he had not yet heard of Abramoff.²⁷

Moreover, Wilson told the OIG that he does not believe that the announcement of the Rapadas appointment had any impact on the investigation of the smurfing allegations. Wilson said that after the Rapadas appointment, the Guam investigative team continued to be focused on the case against certain Gutierrez Administration officials and others connected to Gutierrez, including Tanaka. The Gutierrez Administration investigation ultimately led to the Shinohara's conviction for conspiracy, bank fraud, and money laundering, and Tanaka's conviction for misprision of a felony.

Margolis and other officials involved with the selection process also told the OIG that the timing of the November 19, 2002, public announcement of Rapadas's nomination was determined by the completion of the background investigation, not by any allegations Black raised involving Abramoff.

J. Discussions of Interim Appointment and Recusal

Soon after the President's intent to nominate Rapadas was announced in November 2002, DOJ officials discussed whether Rapadas should be appointed as interim U.S. Attorney. As noted above, interim appointments by the Attorney General expire after 120 days. At that time, if the person had not been confirmed by the Senate, the local federal court could appoint someone to serve in an interim capacity.

DOJ decided not to appoint Rapadas as interim U.S. Attorney. Margolis stated that on a prior occasion the Guam District Judge had declined to appoint someone to be interim U.S. Attorney in place of Black. In addition, Margolis said that he planned to pursue a recusal of Rapadas from the investigation concerning Tanaka because of Black's allegation that Rapadas's relationship to Tanaka created a conflict of interest. Margolis said that for these reasons Rapadas was not given an interim appointment.

During the early part of December 2002, DOJ officials discussed the potential need to have Rapadas recused from the Tanaka investigation. On December 3, 2002, Margolis, the DOJ's deciding official on conflict matters, sent an e-mail within DOJ discussing the potential recusal issue. In addition,

²⁷ Goldberg stated that although he knew Black was serving as the interim U.S. Attorney, he was not aware that DOJ was selecting a Presidentially appointed U.S. Attorney for Guam. Goldberg also told the OIG that he learned about Black's concerns regarding Rapadas's nomination when he received an e-mail from Black objecting to the nomination, after Rapadas was nominated.

Margolis sought Black's input in these discussions. For example, on December 12, 2002, Margolis sent an e-mail to Black asking if the Tanaka portion of the investigation could be severed from the rest of the case so that Rapadas could be recused from that portion rather than the whole case. In a December 3, 2002, e-mail to other DOJ officials about the recusal, Margolis stated that he wanted to make sure that the overall investigation did not suffer and the office did not make any prosecutorial decision regarding Rapadas's uncle.

In a memorandum he sent to Margolis on December 23, Black described the Guam USAO's ongoing public corruption investigations in detail, including alleged connections between Rapadas and persons within the scope of the investigations. In his memorandum, Black recommended that control of the entire Gutierrez Administration investigation go to Public Integrity, but that Guam prosecutors remain on the case. He also recommended that Rapadas be recused and a "Chinese wall" be put in place so that Rapadas would not receive any information about or have any supervisory control over the investigation. Public Integrity Section Deputy Chief Goldberg stated that he concurred with this resolution of the conflict. Margolis approved the recusal.

In March 2003, as a result of some of these concerns, the Senate Judiciary Committee requested a letter from Rapadas outlining how he would deal with the conflict of interest issues. Rapadas provided the letter on April 7. Later that month, Margolis also wrote a letter to the committee addressing the conflict question.

As noted above, on May 9, 2003, the Senate voted to confirm Rapadas's nomination, and he was sworn in as U.S. Attorney on May 22, 2003. Since then, he has been recused from cases involving Tanaka or the investigation involving the Gutierrez Administration.

K. Effect of Rapadas's Appointment on Public Corruption Cases in the District of Guam

Black also alleged that Rapadas and First Assistant United States Attorney Russell Stoddard were selected to end Black's pursuit of public corruption cases in Guam and the CNMI. Black stated that after Rapadas was appointed and Stoddard arrived on Guam, Black was removed from handling public corruption cases.²⁸

²⁸ Black also raised concerns about the manner in which Stoddard has been paid for his "temporary duty assignment" in Guam over the last three years. In addition, Black said that Stoddard has not managed the office well, causing several qualified attorneys to leave. These allegations are discussed in the next section of this report.

Black claimed that, as a result of these actions, the investigation into certain officials in Governor Gutierrez's Administration and other public corruption matters have not been pursued to the degree they should have. Black said that yearly statistics reflect that public corruption prosecutions are declining on Guam. Black also asserted to the OIG that "Prior to May of 2003 we had five attorneys working public corruption in Guam. Now we have only one." In addition, Black has asserted that there have been "no new corruption investigations in three years."

The OIG examined Black's allegations that Rapadas and Stoddard were selected in order to curtail the Guam USAO's pursuit of public corruption cases. We found no evidence to support this assertion.

First, as noted above, we did not find any evidence that the individuals in the Rapadas selection process discussed Rapadas's views on or intentions relating to public corruption matters during that process. Second, Stoddard's selection was handled by EOUSA and Rapadas. Margolis told the OIG that given Black's reluctance to relinquish his position to the new U.S. Attorney, and given Margolis's assessment that Rapadas was competent but not exceptional, Margolis believed that a top-notch First Assistant United States Attorney would be needed in Guam. He said he asked EOUSA to find one for Guam. The Director of EOUSA suggested two people to Rapadas, and Rapadas told the OIG that he ultimately selected one of the recommended candidates, Stoddard, an AUSA from the U.S. Attorney's office for the Middle District of Florida. Stoddard is a career prosecutor with no significant prior ties to Guam. During our investigation, we found no evidence that Stoddard was selected based on any particular views he held regarding public corruption cases.

The OIG also examined Black's allegations regarding a reduction in public corruption investigations by the Guam USAO after Rapadas became U.S. Attorney.

First, USAO statistics provided by Guam to the Public Integrity Section do not demonstrate that during the time that Rapadas has served as the Guam U.S. Attorney and Stoddard has served as First Assistant they failed to pursue

public corruption matters.²⁹ While the number of public corruption convictions for 2004 (9) reflect a reduction from 2003 (16), the numbers for 2004 are significantly higher than the number of convictions by the Guam U.S. Attorney's office in 1995 (1) through 1999 (7), a time when Black was the U.S. Attorney. While the numbers are highest between 2000 (19 cases) to 2003 (16 cases), Goldberg explained that it may take 2 to 3 years to bring a case to fruition, so the number of convictions can vary dramatically from year to year. He stated that he would become concerned only if he saw no cases, or only a few, for several years. Goldberg stated that since former Guam USAO criminal chief Wilson left Guam in 2005, Goldberg has had no direct contact with the USAO so he is not aware of the specific cases they are pursuing. He said, however, that the change from 16 to 9 cases would not cause him concern that there was a lack of focus or willingness to investigate public corruption cases in Guam.

Second, we found that after Rapadas was appointed, the USAO continued to pursue the investigation into the Gutierrez Administration under the direction of Public Integrity Section Chief Hillman, who acted as U.S. Attorney for Guam due to Rapadas's recusal from the case. As previously mentioned, those investigations resulted in the conviction of both Shinohara and Tanaka in 2003.

Third, the FBI Special Agent who has led the public corruption task force on Guam since 1999 told the OIG that the U.S. Attorney's office on Guam has not shifted its focus away from public corruption matters since Rapadas's appointment. He said that the only major change that occurred when Rapadas was appointed was that there was increased paperwork for Wilson due to the involvement of the Public Integrity Section in Washington, D.C. However, he said he does not believe anything else changed in the way of investigative priorities. He said that while the number cases have gone down, that is due to

²⁹ The Public Integrity Section's annual Report to Congress on its Activities and Operations for 2004 shows the following number of Guam public corruption convictions (by year):

YEAR	Number of Convictions
1995	1
1996	3
1997	7
1998	6
1999	7
2000	19
2001	19
2002	13
2003	16
2004	9

the normal "cycle" of cases. The Special Agent stated that the task force focused its energy on the Gutierrez Administration cases, and had now reached the end of that road so it was necessary to build up some new cases.

The FBI Special Agent also provided several reasons why the conviction rate had declined that had nothing to do with Black. For example, he noted that the Federal Emergency Management Agency and the Department of the Interior no longer have agents assigned to the task force, which means that the FBI and Internal Revenue Service agents must handle all investigations. He also stated that when there was a change in the gubernatorial administration on Guam, the number of public corruption referrals went down.

The FBI Special Agent told the OIG that the appointment of Rapadas has not had any effect on the pursuit of public corruption matters. He told the OIG that Stoddard is the individual with the authority to approve or decline new public corruption matters, and Stoddard has never said "no" to a public corruption matter brought to him by the task force. The FBI Special Agent said he believes the U.S. Attorney's office has re-opened some old public corruption matters and has also opened some new ones. He also stated that he believes Stoddard is trying to open more public corruption matters. The Special Agent added that while he believes that Black was a "valuable" part of the task force team, he also believes Black wanted to keep the job of U.S. Attorney and is now "flinging mud" at those in charge of the office.

Fourth, Stoddard denies refocusing resources away from public corruption, as alleged by Black. Stoddard stated that public corruption is still the "most significant thing we do" and is the type of case that has the "greatest impact" on the District. He told the OIG that during the first year and a half he served as First AUSA in Guam, public corruption resources were focused primarily on the Gutierrez Administration cases. Given that two of the trials in that investigation took place in San Francisco, the task force was unable during that time to focus on other matters.

Stoddard denied that the Guam USAO has only one person assigned to public corruption matters on a full-time basis, as alleged by Black. He stated that all three attorneys assigned to the Saipan office work on public corruption cases full time, that another AUSA in the Guam office spends over half his time on public corruption, and that the other public corruption cases are spread out among some of the remaining attorneys. In addition, Stoddard stated that he expects a new Criminal Chief will be hired soon to replace Wilson, which will increase the number of attorneys available to handle public corruption matters.

Stoddard stated that he believes the U.S. Attorneys office in Guam has opened a total of 29 matters involving public corruption since Rapadas's

appointment.³⁰ Stoddard told the OIG that he has never “turned down” a public corruption matter “brought to the door.” He stated that he has held meetings with law enforcement officials to try to increase the number of public corruption matters they pursue. Similar to the FBI Special Agent, he noted that there has been a reduction in the number of investigative agents assigned to the task force.

Stoddard told the OIG that his decision to remove Black from the task force was based on his belief that Black’s lack of focus was not helpful to other task force members. Stoddard told the OIG that this re-assignment was made in order to improve the functioning of the task force, not to hamper its progress on the Gutierrez Administration investigations. Stoddard stated that prior to his arrival in Guam he was not directed by anyone as to how he should run the office. He stated that he believes, based on his discussions with others on the task force, that he made the right decision about Black’s involvement on the task force.

In sum, our interviews and review of documents did not reveal evidence that would support a conclusion that Rapadas or Stoddard were selected in order to diminish public corruption prosecutions on Guam.

L. Allegations Involving the First Assistant U.S. Attorney for Guam

Black has also raised questions about the propriety of Stoddard’s per diem arrangement. He also alleged that Stoddard has mismanaged the office, including by causing talented public corruption prosecutors to leave the Guam USAO, further diminishing the office’s ability to pursue public corruption cases. Documents relating to Stoddard’s per diem arrangement reflect that DOJ continued to pay Stoddard’s meals and incidental expenses during the second year of his assignment. This practice was contrary to EOUSA general policy to pay meals and incidental expenses for temporary assignments for one year, absent specific justification. However, when the error was discovered at the end of the second year of Stoddard’s assignment, EOUSA notified the U.S. Attorney’s Office in Guam. Rapadas provided a letter requesting that EOUSA continue to pay for Stoddard’s meals and incidental expenses for a third year, and EOUSA agreed. The request letter did not contain a specific justification for those payments.

While paying per diem for more than a year is not unprecedented in the DOJ, we have referred the issue of Stoddard’s per diem to EOUSA for its review and appropriate action. While we did not conduct a formal audit of all EOUSA

³⁰ Stoddard stated that some of the matters to which he referred involve public corruption but may not be categorized as such in EOUSA’s computer database.

payments to Stoddard, we did not find other evidence of errors or overpayments in the paperwork we reviewed. We also referred Black's more general allegation that Stoddard has mismanaged the office to EOUSA for its review.

IV. OIG ANALYSIS

A. Alleged Connection Between Rapadas's Selection and Black's Allegations to DOJ Officials about Abramoff

We found no evidence to support a conclusion that the selection of Rapadas to be the United States Attorney for the District of Guam and CNMI was the result of any retaliation against Black for raising allegations against Abramoff.

First, our review of how Rapadas's name was recommended to the White House revealed no involvement by Abramoff, and we found no evidence that the individuals who recommended Rapadas to the White House did so to prevent any investigation of Abramoff. Moreover, when Rapadas was interviewed by the DOJ interview panel, it determined in December 2001 that Rapadas was qualified. Sampson stated that he could not recall any occasion when the Deputy Attorney General, Attorney General, and White House Counsel did not concur with the panel's recommendation for a U.S. Attorney. Thus, it appears for practical purposes the decision to select Rapadas was made by the interview panel prior to February 2002. In addition, the President had decided to nominate Rapadas, pending the completion of a background investigation, on March 8, 2002, well before Black raised any allegations about Abramoff to the DOJ.

The OIG's investigation revealed that Black first raised his allegations to DOJ officials regarding payments by the Superior Court of Guam to Hills and Abramoff by e-mail to Public Integrity Section Chief Hillman dated November 1, 2002. Although the Rapadas nomination was not publicly announced until November 19, 2002, we found no evidence to suggest that Black's e-mail affected the nomination or the public announcement of the nomination. Rather, the timing of the nomination was determined by the completion of the FBI background investigation and the review of that investigation by DOJ officials.

We also found that in response to Black's e-mail requesting assistance with regard to a potential investigation related to Abramoff, DOJ provided the assistance that Black requested. In his November 1, 2002, e-mail describing the "smurfing" allegation involving Abramoff, Black requested support from the DOJ Public Integrity Section. Specifically, Black requested that Hillman "designate an attorney we can consult with" and suggested that Guam

Criminal Chief Wilson would be an appropriate contact person for the matter. Contemporaneous notes reflect that as a result of Black's request, Public Integrity Deputy Chief Stuart Goldberg consulted with Wilson. Goldberg told the OIG that as a result of Black's e-mail he suggested that the Guam USAO conduct further investigation and contact him again if there was some "there there." Wilson confirmed that the Guam USAO conducted further investigation and then decided not to pursue the matter for reasons having nothing to do with Rapadas or Abramoff.

We found that the allegations of improper payments by the Superior Court of Guam to Hills and Abramoff were not pursued in late 2002 and early 2003 for two main reasons. First, the U.S. Attorney's Office in Guam was at that time focusing on other pressing matters involving the Administration of Governor Gutierrez. Indeed, Black himself wrote to Public Integrity Section Chief Hillman in April 2003 and stated that because of other investigative priorities, the question of the \$9,000 checks to Hills was on the "back burner." Second, Wilson and Goldberg believed the allegations did not present facts easily susceptible to a federal corruption charge. In fact, a December 2005 audit conducted by the Office of the Public Auditor for Guam concluded that the payments to Hills came from local appropriations rather than from federal funds.³¹

We also note that the DOJ has demonstrated no reluctance to pursue allegations against Abramoff. Indeed, to date the investigation of Abramoff and his colleagues has resulted in four guilty pleas, including pleas by Abramoff to conspiracy, wire fraud, and tax evasion.

The evidence does show that Abramoff and his colleagues wanted Black removed from his position as interim U.S. Attorney. However, the evidence demonstrates that by the time Abramoff became involved in an effort to remove Black, neither Black nor the candidate Abramoff was supporting were under consideration for the presidential appointment, and that Rapadas had already been selected. When Abramoff's colleague contacted DOJ official Thorson about the matter, Abramoff's colleague was informed that the President had already made the decision to nominate Rapadas pending completion of the background investigation. According to Abramoff's e-mails, Thorson told Abramoff's colleague that they were "too late" to affect the process and that

³¹ Although the audit revealed that the Superior Court did not issue a required IRS form to Hills for payments and neither Hills nor Abramoff filed a lobbying registration on behalf of the Superior Court, the money paid by the Superior Court to Hills was from local appropriations. See www.guamopa.com, audit entitled "Superior Court of Guam Judicial Building Fund Performance Audit October 1, 1999 through September 30, 2004 OPA Report No. 05-08" at 27. Therefore, Goldberg's suspicion that the case might not be easily susceptible to a federal charge turned out, in our judgment, to be reasonable.

Rapadas was "the pick." In response, Abramoff attempted to "spin" that he had something to do with the selection, when he clearly understood that he had no involvement.

Given Abramoff's instruction to his subordinates to claim credit for Black's replacement, Black's belief that Abramoff had influenced the nomination is not unreasonable. However, Abramoff's e-mails – and the other evidence – makes clear that he was attempting to take credit for a decision he played no role in influencing.

B. The May 2002 Security Report

The evidence also does not support Black's allegation that the selection of Rapadas was linked in any way to the recommendation in a security report that federal immigration laws be applied in the CNMI. The report was not provided to Black until May 6, 2002, and the President had already stated his intent to nominate Rapadas by March 8, 2002, pending successful completion of the background investigation. Thus, the security report and its contents did not affect the decision of DOJ officials to recommend Rapadas or the President's decision to nominate Rapadas upon successful completion of a background investigation. While the documents indicate that in September 2002, Abramoff lobbied against the report and the legislation supported by the report, that was after Rapadas already had been selected. As noted above, the OIG has referred the allegations relating to how Abramoff obtained the security report and how that report was handled, including any corrupt influence brought to bear on the issue by Abramoff or others in association with Abramoff, to the Department of the Interior OIG and the FBI.³²

However, we concluded that the evidence does not support Black's more general allegation that Rapadas was selected to undercut support for application of federal immigration laws in Guam and CNMI. The DOJ and White House officials who interviewed Rapadas denied choosing Rapadas because of his position on that issue and said they did not recall any discussion of the issue during the selection process. In addition, we found no documents suggesting that those involved in the selection of Rapadas were focused on this immigration issue.

³² In addition, the question of whether federal immigration law should apply in the CNMI is a contentious policy issue that is beyond the scope of the OIG's investigation. While Black strongly supports such legislation, witnesses and documents reflect that the issue has been the subject of much debate and proposed legislation on multiple occasions. Although Black has a strong view on the merits of this issue, we have not in this report examined the that policy or the various efforts to influence that policy

C. Public Corruption

We also concluded that the evidence does not support Black's more general allegation that Rapadas was selected to end Black's pursuit of public corruption cases. The person who initiated Rapadas's candidacy, Antonio Unpingco, and the members of the panel who recommended Rapadas for the position said they could not recall any specific discussion of public corruption matters during the interview or selection discussions. Further, they denied selecting Rapadas in order to diminish public corruption prosecutions in Guam, and the evidence showed that DOJ continued public corruption investigations after Rapadas's appointment.

Black's allegation that the U.S. Attorney's Office on Guam is no longer focused on public corruption matters is not supported by the evidence. The FBI Special Agent in charge of the public corruption task force for the last six years told the OIG that he does not know of any public corruption matter declined by the U.S. Attorney's office since Rapadas was appointed. He stated that the fluctuations in the number of public corruption convictions is due to the normal cycle of cases. Similarly, Stoddard told the OIG that he is actively seeking public corruption matters, and that he believes 29 new matters which have public corruption aspects have been opened since Rapadas became the U.S. Attorney.

In sum, we did not find sufficient evidence to support Black's allegations that there has been any intentional effort to diminish public corruption cases by appointing Rapadas or Stoddard.

D. Rapadas's Background Investigation and Recusal

Finally, we concluded that the Rapadas background investigation was conducted in an appropriate and methodical manner by the FBI. At each point where Black raised additional concerns, they were investigated by the FBI and addressed by DOJ officials. Furthermore, the recusal of Rapadas from the investigation into the Gutierrez Administration was ultimately resolved in the manner consistent with Black's recommendations. In addition, the conflict of interest issue was raised to and evaluated by the Senate Judiciary Committee before it voted to confirm Rapadas. Based on the forgoing, we did not find evidence to conclude that the background investigation was insufficient or was handled inappropriately.

V. CONCLUSION

In sum, we found that DOJ and White House officials selected Rapadas as the nominee for Presidential appointment to the U.S. Attorney's position pursuant to its normal selection process, long before Black raised his allegations against Abramoff and well before issuance of the security report recommending the application of federal immigration law in the CNMI. The evidence does not support Black's assertion that he was replaced as interim U.S. Attorney for Guam because of allegations he raised regarding Abramoff or because of his position on the application of federal immigration law in the CNMI. Although the public announcement of the nomination was made after Black first raised his allegations against Abramoff, the timing of the announcement was unrelated to those allegations and instead was determined by the successful completion of Rapadas's background investigation.

We also concluded that the background investigation was conducted in accord with normal practices, and the concerns Black raised regarding Rapadas were investigated. Moreover, conflict of interest issues Black identified during Rapadas's background investigation concerning Rapadas's uncle resulted in Rapadas's recusal, once he became U.S. Attorney, from certain public corruption cases. The evidence also reflects that those cases were pursued by career prosecutors in the Guam U.S. Attorney's office after Rapadas became the U.S. Attorney. In addition, the evidence did not support Black's allegation that Rapadas's background investigation was insufficient.