



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

**OVERSIGHT ★ INTEGRITY ★ GUIDANCE**



## **An Investigation of Alleged Misconduct by [REDACTED]**

[REDACTED]

## I. Introduction

In [REDACTED], the Office of the Inspector General (OIG) received several misconduct allegations concerning Executive Office for Immigration Review (EOIR) [REDACTED], including: that he provided [REDACTED] job applicants the interview questions in advance of their interviews; [REDACTED] that at the last minute he replaced a judge on the 3-judge panel that interviewed the female Immigration Judge candidate [REDACTED] that he and two other senior EOIR officials used "code words" to refer to the attractiveness of female candidates; and that he made inappropriate comments in the workplace. This report summarizes the OIG's investigation of these allegations.

Our investigation of the allegations included interviews of [REDACTED] and several current EOIR employees with knowledge relevant to the allegations, including the Immigration Judge candidate [REDACTED]. We also reviewed relevant Department of Justice (Department or DOJ) and EOIR policies, as well as email messages.

## II. Background

EOIR's Office of the Chief Immigration Judge (OCIJ) is based in Falls Church, Virginia, and is responsible for hiring and overseeing Immigration Judges and their supervisors throughout the country. Immigration Judges are supervised in a particular city by an Assistant Chief Immigration Judge (ACIJ). [REDACTED]

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1 [REDACTED]

[REDACTED]

[REDACTED]

**III. Allegations that [REDACTED] Provided Interview Questions to [REDACTED] Applicants**

We received allegations that [REDACTED] provided then-applicant (now Immigration Judge) [REDACTED] the list of interview questions that would be asked in his interview.

[REDACTED]

Immigration Judge candidates are asked a standard set of questions during their initial interview, which is conducted by a panel of three ACIJ's. According to several witnesses, over time the questions had appeared in various places on the internet and, for this reason, EOIR had recently changed the questions around the time of [REDACTED] interview.

**A. Immigration Judge Applicant [REDACTED]**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] told the OIG that the first time he applied to be an Immigration Judge was in [REDACTED]. According to [REDACTED], he was interviewed [REDACTED], but he was not asked to return for the next round of interviews.

[REDACTED] said [REDACTED] he applied again to be an Immigration Judge [REDACTED]. According to [REDACTED], prior to interviewing with EOIR [REDACTED], he spoke with [REDACTED] about navigating the interview process more successfully. [REDACTED] advised that, at some point prior to his interview, [REDACTED] provided him with a set of questions that appeared to be interview questions. [REDACTED] told the OIG that when [REDACTED] gave him the questions, [REDACTED] said something to the effect of "everyone in [the American Immigration Lawyers Association (AILA)] has these." AILA is a national association of immigration lawyers that is open primarily to licensed attorneys in the private sector and academia. Attorneys employed by the federal government are ineligible to apply.

[REDACTED] said that the questions he was eventually asked "tracked" generally with the questions that [REDACTED] had provided him. [REDACTED] said that there were questions concerning docket management and specific examples of controlling a courtroom. [REDACTED] said that he did not believe that [REDACTED] giving him the interview questions in advance was improper because it was something "the other side had," referring to non-government lawyers who represent individuals concerning immigration matters.

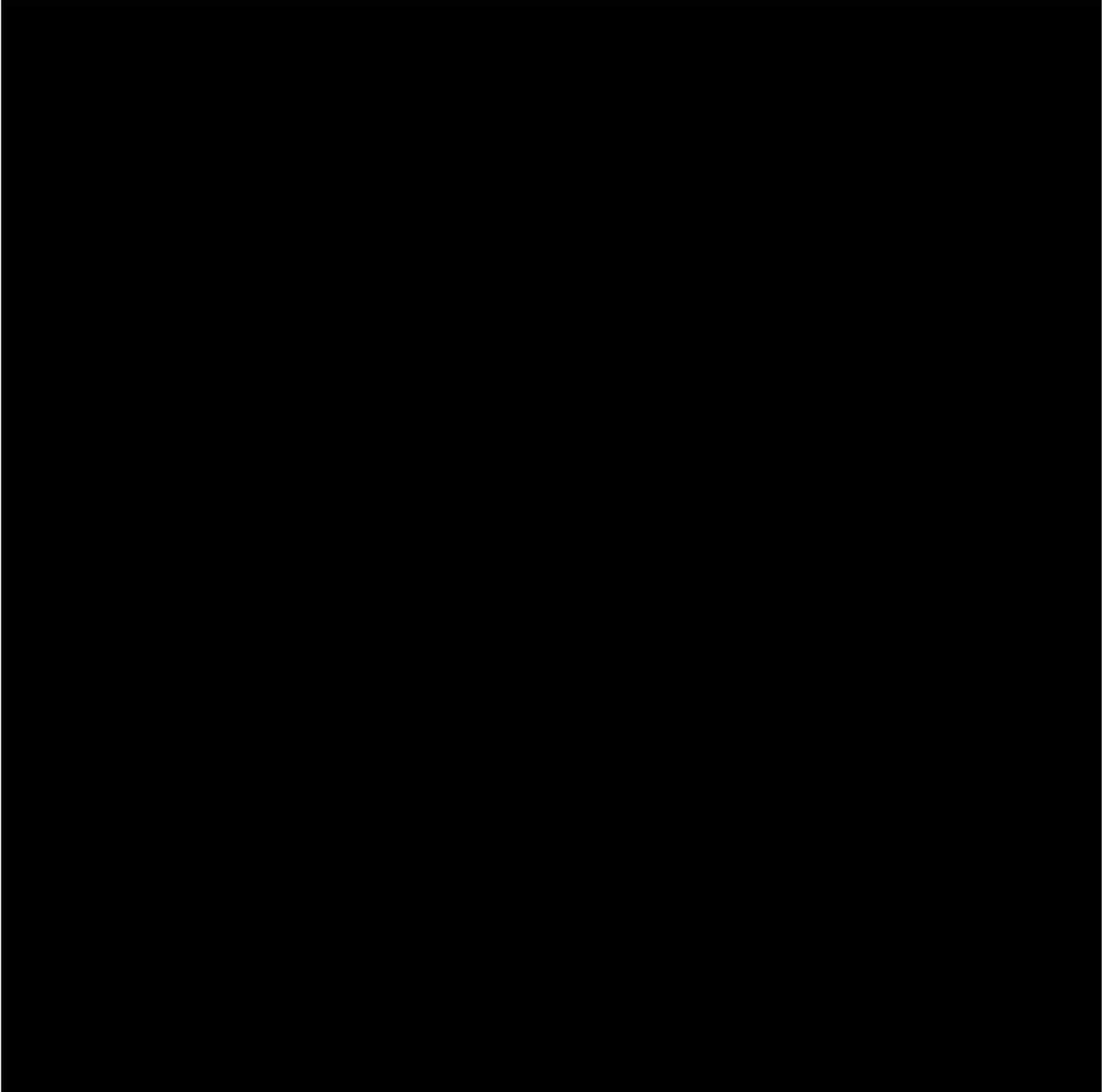
[REDACTED] told the OIG that he did not believe that he had ever given an applicant the interview questions ahead of time. He stated, "I do not remember doing that." [REDACTED] told the OIG that because the questions were accessible on the internet, he did not believe that it was necessarily improper to provide a candidate with the questions in advance. He stated that there are no correct answers to the questions and, for this reason, he did not view having the questions in advance to be "a big advantage." When asked whether he considered [REDACTED] a friend, [REDACTED] replied, "I like [REDACTED]. I see him occasionally, but not that often." [REDACTED] said that he recalled going to lunch with [REDACTED] once. When asked whether he provided [REDACTED] the interview questions in advance, [REDACTED] said that he did not recall doing that.

We sustained the allegation that [REDACTED] provided [REDACTED] the interview questions before his ACIJ panel interview. We found that, by doing so, [REDACTED] engaged in a prohibited personnel practice in violation of 5 U.S.C. § 2302(b)(6). That provision prohibits an official from granting:

any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the

scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

We found that [REDACTED] provided [REDACTED] an improper advantage for the Immigration Judge position when he provided [REDACTED] the interview questions in advance. Even if [REDACTED] believed that AILA members had an advantage over applicants who were not AILA members, he did not attempt to address this perceived advantage by providing all of the Immigration Judge applicants with the interview questions in advance. Instead, he chose to assist only [REDACTED].



#### IV. Allegations Regarding [REDACTED] Conduct Involving Immigration Judge Applicant [REDACTED]

We investigated allegations that [REDACTED]

[REDACTED]

[REDACTED] allegedly took [REDACTED] to his apartment [REDACTED] when interviewed for the Immigration Judge position [REDACTED]. We also investigated allegations that [REDACTED], as the [REDACTED], replaced a judge on the 3-judge panel that interviewed [REDACTED] in order to improve her chances of being hired.

[REDACTED]

[REDACTED] admitted that she went to [REDACTED] apartment with him after her interview at the EOIR offices [REDACTED]. According to [REDACTED] [REDACTED] had offered to escort her to the interview room [REDACTED]. She said that her interview took place on [REDACTED] day off, but he came into the office and that she sat in his office for a few minutes before her interview. When asked what she and [REDACTED] talked about in his office, [REDACTED] said they made fun of the view from his office, but she could not recall what else they discussed. When asked whether they talked about her interview, [REDACTED] said, "No, that would have been improper." [REDACTED] said [REDACTED] escorted her to the interview room [REDACTED]. According to [REDACTED] [REDACTED] "allowed [her] to change at [REDACTED] apartment"



[REDACTED]

When asked whether he took [REDACTED] to his apartment [REDACTED] while she was in the area for her interview, [REDACTED] responded that he had.<sup>8</sup> According to [REDACTED], and the day [REDACTED] interviewed was his day off. Although it was his day off, he went into the EOIR offices in casual clothes and talked to [REDACTED] in his office for approximately 15 minutes before her interview. According to [REDACTED], they discussed going to lunch after she finished her interview. When asked if he and [REDACTED] discussed her upcoming interview, [REDACTED] stated, "No. There [was] nothing to discuss. I had full faith that she was going to do well."

[REDACTED] told the OIG that after [REDACTED] interview, they went to his apartment [REDACTED]

[REDACTED]

[REDACTED] However, we concluded that [REDACTED] used poor judgment in coming to the office on his day off to spend time with an applicant in his office immediately before her interview, escorting her to the interview room, and then taking her to his apartment after she finished her interview. [REDACTED] By coming into the office on his day off, spending time with [REDACTED] in his office before her interview, and then telling at least one colleague that [REDACTED] had gone back to his apartment after the interview, [REDACTED] communicated to everyone in the office that she was a close friend of his and created an appearance that he was providing her preferential treatment based on his relationship with her. Employees involved in the hiring process may have felt pressure to provide her with preferential treatment in order to please him, even if [REDACTED] did not intend to communicate such pressure. [REDACTED] also exhibited poor judgment in discussing [REDACTED] with others in the office while she was an Immigration Judge candidate. [REDACTED]

Although [REDACTED] and [REDACTED] have been friends for several years, [REDACTED] was [REDACTED] an Immigration Judge candidate, and [REDACTED] should have treated her like any other candidate.

[REDACTED]

## **B. Allegations Regarding [REDACTED] Involvement in [REDACTED] Hiring**

We also investigated allegations that [REDACTED] replaced a judge on the 3-judge panel that interviewed [REDACTED]

### **1. Immigration Judge Hiring Process**

[REDACTED] applied to be an Immigration Judge [REDACTED] and was interviewed [REDACTED] by a 3-judge panel [REDACTED]. At the time [REDACTED] applied, applicants applied to be an Immigration Judge in a particular city. Their applications—including required essays and letters of recommendation—were reviewed by a panel of ACIJs who decided which candidates would receive an initial interview.<sup>9</sup> ACIJ panels were put together by the Executive Programs Manager in the Office of the Chief Immigration Judge.

After the panel decided who should be interviewed, the Executive Programs Manager put together “interview panels” that consisted of three ACIJs on each panel. The Executive Programs Manager arranged for ACIJs around the country to sit on these panels and conduct interviews in Falls Church over a 2- or 3-week period. According to the Executive Programs Manager, she would sometimes receive direction from the Chief Immigration Judge or other high-level manager that an ACIJ would not be available and that another ACIJ would fill in for the interview. In other instances, an ACIJ would contact her directly about his or her unavailability for interviews, and she would find another ACIJ to fill in.

As previously mentioned, as part of the interview process, ACIJs were required to ask each applicant a standard set of questions. After the interview, each interviewer wrote a paragraph assessing the candidate and providing a recommendation on whether the candidate should be hired. The Chief Immigration Judge was responsible for providing to the Director the highest-ranking candidates based on the ACIJs’ assessments and the input of the Deputy Chief Immigration Judges. The Director then decided who to recommend for another interview with high-level officials in the Department, including officials in the Office of the Deputy Attorney General (DAG panel interview). Once the DAG panel interviews were complete, the Director made hiring recommendations to the Attorney General.

### **2. Factual Findings and Conclusions**

EOIR records showed that [REDACTED] was originally scheduled to be interviewed by [REDACTED] and

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[REDACTED]

[REDACTED]. The evidence showed that before her interview, [REDACTED] replaced [REDACTED] on [REDACTED] panel. [REDACTED]

[REDACTED] told the OIG that he did not recall being switched out of the interview panel or anything else about her interview panel. [REDACTED]

[REDACTED] told the OIG that he did not specifically recall substituting an [REDACTED] on [REDACTED] panel. [REDACTED]. He told the OIG that he had encouraged [REDACTED] to apply to be an Immigration Judge and that he wrote a letter of recommendation for her.<sup>10</sup> [REDACTED]

[REDACTED] According to [REDACTED] he provided her name to [REDACTED] with a group of [REDACTED] applicants for consideration for a [REDACTED] Panel interview. [REDACTED]  
[REDACTED]<sup>11</sup>

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<sup>10</sup> [REDACTED] confirmed that [REDACTED] wrote her a letter of recommendation. According to [REDACTED], [REDACTED] told her that he was not going to participate in her hiring because he had written a recommendation letter for her.

[REDACTED]

[REDACTED]

However, we concluded that even if [REDACTED] substituted [REDACTED] on [REDACTED] panel for a benign reason, his decision about who would replace the [REDACTED] still constituted participating in the hiring process for [REDACTED]. In addition, we found that his review of the interview panel's assessments of [REDACTED] and inclusion of her in the list of candidates provided [REDACTED] for consideration for a [REDACTED] panel interview also constituted participation in her hiring. We examined whether [REDACTED] should have participated in [REDACTED] hiring process at all.

Section 502 of the Standards of Ethical Conduct for Employees of the Executive Branch directs employees to seek the approval of an agency ethics official or other designee if the employee is concerned that circumstances would cause a reasonable person to question his impartiality in a particular matter.<sup>12</sup> 5 C.F.R. § 2635.502(a)(2). Section 502 also provides that an employee may seek assistance from a supervisor, agency ethics official, or agency designee in considering whether the employee's impartiality might be questioned. Where an employee's participation would raise such a question in the mind of a reasonable person, the agency ethics official or other designee may authorize the employee's participation "based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d).

We believe that [REDACTED] participation in [REDACTED] hiring qualifies as a "particular matter" for purposes of Section 502. We found that [REDACTED] should have been concerned that a reasonable person with knowledge of the relevant facts would question his impartiality and therefore that he should have consulted his supervisor or an ethics official in EOIR before participating in [REDACTED] hiring process. We believe that a reasonable person would question [REDACTED] impartiality given his letter of recommendation for [REDACTED], combined with his activities on the day of her interview (coming into the office on an off day to spend time with her prior to the interview, escorting her to the interview, bringing her back to his apartment to change after the interview, [REDACTED]). These circumstances warranted [REDACTED] seeking authorization from an ethics official before participating in the hiring process for [REDACTED].

## **V. Allegations Concerning Inappropriate Comments**

Finally, we investigated allegations that [REDACTED] made inappropriate comments in the workplace. We received allegations that while he was the [REDACTED]

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<sup>12</sup> The Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635, is a comprehensive set of regulations that sets forth the principles of ethical conduct to which all executive branch employees must adhere. In addition to basic obligations of public service, the regulations address such ethical issues as gifts from outside sources, conflicting financial interests, and impartiality in performing official duties.

██████████ and as the ██████████, ██████████ used "code words" to comment on the attractiveness of female candidates. We also received allegations that while he was the ██████████ often made inappropriate comments in the office.

#### **A. Allegations Concerning the Use of Code Words**

We received allegations that ██████████, along with ██████████, used code words, such as "brilliant" and "smart" to comment on the attractiveness of female candidates and other women.

According to ██████████, on more than one occasion he heard ██████████, ██████████ and ██████████ use words, such as "smart" and "really smart," to comment on the attractiveness of female candidates and other women. ██████████ said that these comments were made in social settings or while they were walking the halls, never in the context of evaluating applicants for jobs. ██████████ said that it was clear from the context that ██████████ were using "smart" to refer to attractiveness and not intelligence. ██████████ said that he would ignore these comments and that he would "not engage."

██████████ told the OIG that she never heard ██████████ refer to female Immigration Judge candidates as "smart," but that on more than one occasion, she heard him refer to women as "smart" when he was indicating that the woman was attractive. According to ██████████, she recalled an instance in which ██████████ and ██████████ were discussing a female political figure, and they referred to her as "really smart." ██████████ said that when she disagreed with this statement, ██████████ and ██████████ said, "She's smart." ██████████ said that "it took [her] a minute" to figure out that ██████████ and ██████████ were referring to her attractiveness. ██████████ told the OIG that because this was the first time she had heard this reference, "it kind of stands out." ██████████ said that she knows that she heard ██████████ make these references on other occasions, but she could not recall to whom he was referring. However, ██████████ told the OIG she does not recall him referring to job applicants or other judges in this manner. According to ██████████, she had only a "few interactions" with ██████████ and "[h]e's never said those things."

██████████ told the OIG that she never heard ██████████ or ██████████ use "code words" to refer to the attractiveness of female Immigration Judge candidates. However, ██████████ told the OIG that "other judges" told her that ██████████ had used the term "smart" as a joke to indicate a woman was attractive. When asked who she heard this from, ██████████ said, "Enough people that I can't remember."

██████████ told the OIG he never heard ██████████ or ██████████ use "code words" such as "smart" to refer to the attractiveness of female Immigration Judge candidates. ██████████ stated, "I never heard anything like that."

██████████ told the OIG that she did not recall ██████████ or ██████████ ever using code words to refer to the attractiveness of female Immigration Judge candidates. ██████████ said that she spent

"a lot of time" with them individually and as a group, and she "never heard them say anything like that." [REDACTED] described [REDACTED] and [REDACTED] as "jokey guys" but said that they never joked in an inappropriate manner. [REDACTED] said that perhaps if she was present for such statements, the statements did not register with her in a way that they may have with someone else. [REDACTED] denied that she ever used the term "smart" or "code words" to refer to the attractiveness of female Immigration Judge candidates. [REDACTED] told the OIG that she would consider the use of "smart" to refer to attractiveness as offensive.

[REDACTED] told the OIG that [REDACTED], he heard [REDACTED] refer to attractive women as smart, but he denied ever making those comments himself. [REDACTED] stated:

So when I got there, they had like this sort of—they got along very well. They had kind of like this running thing that [ ] bugged [REDACTED]. She would make these faces. He would say like, for instance, Sally Yates, he thought Sally Yates was smart. And [REDACTED] would roll her eyes, and over time I figured out what they were doing. It had nothing to do with candidates.

[REDACTED] said that he heard both [REDACTED] and [REDACTED] use the term "smart" in this way, but he stated that he thought [REDACTED] did it "mainly just to poke at [REDACTED]" because they were friends. [REDACTED] said that on one occasion [REDACTED] told him that he thought a female candidate was "smart." [REDACTED] denied making such references himself about anyone, including female Immigration Judge candidates, EOIR employees, or other women.

Based on the evidence above, including [REDACTED] testimony, we concluded that senior managers in EOIR commented to each other on the attractiveness of women. The similarity between [REDACTED] description of [REDACTED] use of the term "smart" to [REDACTED] description of [REDACTED] and [REDACTED] use of that term persuaded us that [REDACTED] more than likely also used the term himself, despite his denial that this occurred. We did not find sufficient evidence to conclude that [REDACTED] used the term "smart" with respect to female candidates; however, we concluded that he participated in conversations in which other senior managers commented on the attractiveness of female candidates. Senior managers commenting on the physical attributes of job candidates could give rise to claims that EOIR engaged in prohibited personnel practices in violation of the merit system principles found in 5 U.S.C. § 2301. Moreover, making such comments about female candidates or women could make a manager vulnerable to claims of sexual harassment, and Department policy requires managers to ensure that their own conduct sets an example in the office.<sup>13</sup> For these reasons, we found that [REDACTED] used poor judgment in commenting on the attractiveness of women in the workplace.

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<sup>13</sup> Harassment on the basis of sex is a violation of § 703 of Title VII of the Civil Rights Act, 29 C.F.R. § 1604.11. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating,

## B. Allegations Concerning Inappropriate Comments by [REDACTED]

We also investigated allegations that [REDACTED] made inappropriate comments in the workplace [REDACTED].<sup>14</sup>

During our investigation, we learned that [REDACTED] developed a close working relationship with a small number of people in the office with whom he also socialized outside the office. According to these witnesses, [REDACTED] would participate in sexual banter and jokes of a sexual nature in the office. [REDACTED]

[REDACTED] According to [REDACTED], they were "pretty bawdy" with each other and with the small number of people who were in the "social circle."<sup>15</sup> [REDACTED]

[REDACTED] told the OIG that [REDACTED] would sometimes comment to him on the attractiveness of female candidates and that, as part of these conversations, [REDACTED] would elaborate on whether he thought the candidate had the ability to do the job or not and why he thought so. [REDACTED]

Similarly, [REDACTED] said that [REDACTED] would sometimes comment on the attractiveness of women or talk about things of a sexual nature, but [REDACTED] would say these things only to people "with whom he had built confidence."

[REDACTED] told the OIG that [REDACTED] behavior in the workplace changed when [REDACTED] and that he became more serious.

Other witnesses we interviewed who were not part of the "social circle" told the OIG that they had never heard [REDACTED] make inappropriate comments and that no one complained to them about [REDACTED] making inappropriate comments. [REDACTED]

According to [REDACTED] would make jokes or comments of a sexual nature, and he would laugh. [REDACTED] also acknowledged that on one occasion when talking to a [REDACTED]

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hostile, or offensive working environment. See Rosenstein, Rod J., *Memorandum for Heads of Department Components, Sexual Harassment and Sexual Misconduct*, April 30, 2018, citing DOJ Order 1200.2 and <https://www.justice.gov/jmd/eeos/sexual-harassment>.

<sup>14</sup> As discussed above, [REDACTED]

<sup>15</sup> [REDACTED]





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