

# DEPARTMENT OF DEFENSE OFFICE OF THE INSPECTOR GENERAL

## REPORT OF INVESTIGATION

**CASE NUMBER**  
H04L94024201

**DATE**  
January 27, 2005



ALLEGED MISUSE OF PUBLIC OFFICE:  
DR. JAMES G. ROCHE, SECRETARY OF THE AIR FORCE

**Prepared by Directorate for Investigations of Senior Officials  
Office of the Deputy Inspector General for Investigations**

**FOR OFFICIAL USE ONLY**

ALLEGED MISUSE OF PUBLIC OFFICE:  
DR. JAMES G. ROCHE, SECRETARY OF THE AIR FORCE

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address allegations that arose after discovery of a May 2003 electronic message (email) exchange between Dr. James G. Roche, Secretary of the Air Force, and Ms. Robin Cleveland, Associate Director for National Security Programs, Office of Management and Budget (OMB). The email exchange at issue was provided by OMB to the Senate Armed Services Committee (SASC) as part of the Committee's review of the Air Force pilot project to lease modified Boeing 767 aircraft to replace the KC-135 tanker fleet.<sup>1</sup>

The email exchange, initiated by Ms. Cleveland, asked Secretary Roche to assist her [REDACTED] in applying for an attorney position with the Northrop Grumman Corporation, where Secretary Roche formerly served as a senior executive. In response, Secretary Roche emailed a former associate at Northrop Grumman to endorse [REDACTED] job application, and so advised Ms. Cleveland by return email. Based on concerns expressed to this Office regarding the email at issue and our preliminary review of the matter, we examined allegations that Secretary Roche:

- Used his official title in recommending a private job applicant for favorable consideration in violation of DoD 5500.7-R, "Joint Ethics Regulation (JER)," Section 2635.702, "Use of public office for private gain";
- Used a Government communications system to transmit the employment recommendation in violation of the JER, Section 2-301, "Use of Federal Government Resources"; and

- [REDACTED]

Additionally, in order to respond to SASC concerns regarding a potential conflict of interest raised by the email exchange, we sought to determine whether Secretary Roche's employment recommendation for [REDACTED] improperly influenced the OMB assessment of the KC-767 tanker lease initiative. As explained further in the Scope section of this report, our investigation into that matter was limited by jurisdictional considerations.

**b7(C)**

---

<sup>1</sup> Additional information concerning the tanker lease project is provided in the Background section of this report.

x

We substantiated the allegation that Secretary Roche's email to a former associate at Northrop Grumman constituted the use of public office for private gain in violation of Section 2635.702 of the JER, because the email implied Air Force sanction for the employment recommendation on behalf of [REDACTED], a person with whom Secretary Roche was affiliated in a nongovernmental capacity. Because Secretary Roche's email violated Section 2535.702(b) of the JER, it also violated Section 2-301 of the JER. That section permits personal use of Government communications only if that use does not "reflect adversely on DoD or the DoD Component." One example of a use that reflects adversely on DoD is a violation of a regulation (e.g., a violation of the JER).

We did not substantiate the allegation [REDACTED]

[REDACTED]

[REDACTED]

By letter dated November 16, 2004, we offered Secretary Roche an opportunity to comment on the results of our investigation. In his response dated December 3, 2004, Secretary Roche strongly disagreed with our conclusion that his email on behalf of [REDACTED] implied Government sanction and, accordingly, argued that the email was permissible under JER guidelines for personal use of Government communications systems.<sup>3</sup>

After carefully considering Secretary Roche's response, we stand by our conclusion that his email to Northrop Grumman violated provisions of the JER that address situations where an employment recommendation may constitute misuse of public office. His email indicated that it originated from his Air Force office and was transmitted over his official signature block ("Dr. James G. Roche, Secretary of the Air Force"). As such, it conveyed a degree of Air Force sanction that is prohibited by the JER for such employment recommendations.

We provided the results of our investigation to Secretary of Defense but made no recommendation for corrective action in view of Secretary Roche's departure from DoD.

**b7(C)**

---

<sup>3</sup> Secretary Roche's response to our conclusions was detailed and extensive. We recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated comments by Secretary Roche throughout this report where appropriate and provided a copy of his response to the Secretary of Defense together with this report.

This report sets forth our findings and conclusions based on a preponderance of the evidence.

## II. BACKGROUND

Secretary Roche assumed the office of Secretary of the Air Force on June 1, 2001. Prior to assuming that office he held several executive positions with Northrop Grumman Corporation from 1984 through 2001, including Corporate Vice President and President, Electronic Sensors and Systems Sector. Prior to joining Northrop Grumman, Secretary Roche was Staff Director of the Senate Armed Services Committee from 1983 through 1984. Secretary Roche's previous public service spanned 23 years in the U.S. Navy, from which he retired in 1983 with the rank of captain. As a naval officer, his assignments included Principal Deputy Director of the State Department's Policy Planning Staff; Senior Professional Staff Member of the Senate Select Committee on Intelligence; and Assistant Director for the Defense Department's Office of Net Assessment.

As Associate Director for National Security Programs at OMB, Ms. Cleveland had occasional professional contact with Secretary Roche on Air Force budgetary issues. According to testimony, Ms. Cleveland and Mr. Roche had been personal acquaintances since 1979 when both individuals worked in staff capacities for the Senate Intelligence Committee. They kept in touch intermittently over the years until both accepted positions in the current Administration, when they increased the frequency of their professional contact and had occasional social engagements.

Section 8159 of the DoD Appropriations Act for Fiscal Year (FY) 2002, January 10, 2002, authorized the Air Force to make payments on a multiyear pilot program for leasing not more than 100 general purpose Boeing 767 aircraft for not more than 10 years per aircraft. Section 133 of the National Defense Authorization Act for FY 2003, December 2, 2002, directed that the Secretary of the Air Force not enter into a lease for the tanker aircraft until:

- The Secretary submitted a report to the congressional Defense committees outlining his plans for implementing a pilot program, and
- Either authorization and appropriation of funds necessary to enter into the lease were provided by law, or until a new start reprogramming notification for the necessary funds was submitted.

In early 2003, the per unit price of aircraft to be leased from Boeing under the pilot program became a contentious issue, with OMB challenging the unit price being offered by Boeing that was under consideration by the Air Force. This put Secretary Roche into a somewhat adversarial professional relationship with Ms. Cleveland. On May 23, 2003, the Secretary of Defense approved the Air Force proposal to award a multiyear pilot program with Boeing for leasing 100 general purpose Boeing 767 aircraft, based on the results of a review of Boeing 767 Tanker aircraft leasing and purchasing options. After the Secretary of Defense approved the pilot program, DoD, Boeing, and OMB reached a complex financing agreement that would have allowed the Air Force to proceed with the lease initiative.

However, because of continuing concerns with the planned leasing program, the National Defense Authorization Act for FY 2004, November 24, 2003, authorized the Air Force to lease no more than 20 tanker aircraft and purchase no more than 80 tanker aircraft under the multiyear aircraft lease pilot program. On May 25, 2004, the Secretary of Defense deferred a decision on the tanker lease initiative until additional studies were completed. On October 7, 2004, House and Senate conferees reached agreement on the FY 2005 Defense authorization bill. The bill authorized a multiyear procurement for 100 new aerial refueling aircraft, prohibited the Air Force from leasing KC-767 tankers, and required that any contract for maintenance and logistical support for new tankers be competitively awarded. This effectively ended the KC-767 tanker lease initiative.

[Redacted]

**b7(A)**

II. SCOPE

We interviewed Secretary Roche, two members of his personal staff, two attorneys from the office of DoD General Counsel, and two attorneys from the staff of the Air Force General Counsel.

[Redacted]

**b7(C)**

[Redacted]

**b7(C)**

[Redacted]

**b7(A)**

<sup>4</sup> Section 6(a)(3) provides that each Inspector General is authorized “to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal, State or local governmental agency or unit thereof.”



b7(A)

IV. FINDINGS AND ANALYSIS

A. Did Secretary Roche use his public office for private gain in violation of the JER when recommending [REDACTED] for a position with Northrop Grumman?

b7(C)

Standards

**DoD 5500.7-R, “Joint Ethics Regulation (JER),” dated August 30, 1993**

Section 2635.702, “Use of public office for private gain,” sets forth the following general standard: “An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity. . . .” This Section then enumerates, in four succeeding paragraphs, specific prohibitions that apply the general standard, noting that those specific prohibitions “are not intended to be exclusive or to limit the application of this section.”

Paragraph 2635.702(b), “Appearance of governmental sanction,” provides, in part, that “an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities.”

This paragraph of the JER specifically addresses the matter of DoD employees who provide letters of recommendation or character references in their official capacity. It permits a DoD employee to sign an employment recommendation with his official title only if: (1) the recommendation is based on “personal knowledge of the ability or character of an individual with whom he has dealt in the course of Federal employment,” or (2) the recommendation is for a position with the Federal Government.

The example provided under Paragraph 2635.702(b) states that a Government employee

who is asked to provide a letter of recommendation for a former subordinate on his staff may provide the recommendation using official stationery and may sign the letter using his official title. If, however, the request is for the recommendation of a personal friend with whom he has not dealt in the Government, the employee should not use official stationery or sign the letter of recommendation using his official title, unless the recommendation



b7(A)

is for Federal employment. In writing the letter of recommendation for his personal friend, it may be appropriate for the employee to refer to his official position in the body of the letter.

### Facts

Secretary Roche told us that during a personal dinner with Ms. Cleveland in April 2003, he learned of [REDACTED] application for an “openly advertised position at Northrop and that it was in compliance.”<sup>6</sup> He recalled that when he took over Northrop Grumman's newly acquired Electronic Sensors and Systems Sector (formerly Westinghouse Electric) in 1996 he faced “a horrible compliance problem.” He thought [REDACTED] job application was an opportunity to help [REDACTED] while alerting Northrop Grumman to a candidate who possessed certain compliance-related skills that might benefit Northrop Grumman.

In her written response to us, Ms. Cleveland corroborated the genesis of Secretary Roche's involvement in her [REDACTED] employment search. She recalled mentioning “that my [REDACTED] was looking for a job,” during an April 2003 dinner with Secretary Roche and that she subsequently decided to ask Secretary Roche for assistance after her [REDACTED] “reminded me that Secretary Roche had worked there [Northrop Grumman] previously.”

By email to Secretary Roche at 3:49 p.m. on Friday, May 9, 2003, from her Government (OMB) email account, Ms. Cleveland forwarded the cover letter and resume that her [REDACTED] had submitted to Northrop Grumman on April 21, 2003, in response to an advertised senior counsel position. Ms. Cleveland commented as follows in her email:

Jim - this is my [REDACTED] stuff. I would appreciate anything you can do to help with NG [Northrop Grumman]. He is an incredibly hard working, disciplined guy - worked full time, with two little kids putting himself through law school at night. Thanks much. Robin.

At 4:20 p.m. that day (May 9, 2003), Secretary Roche sent an email from his Air Force issued Blackberry device to [REDACTED] Northrop Grumman. The “From” line of the email read “James.Roche.pentagon.af.mil.” The subject of the email was “FW: [REDACTED] Resume and Cover Letter Attached for Export/Import Compliance Attorney (DC) Position.” In the message Secretary Roche stated:

[REDACTED], I know this guy is good. His [REDACTED] (Robin) is in charge of defense and intel at OMB. We used to work together in the Senate staff. If [REDACTED] looks good to you, pls add my endorsement. Be well. I've let Rummy con me one more time! Army! Best to [REDACTED]. Jim.

---

<sup>6</sup> The position at Northrop Grumman of interest to [REDACTED] was in the Office of the General Counsel and involved matters of compliance with import/export control regulations and defense security requirements.

**b7(C)**

The foregoing message was transmitted to [REDACTED] over Secretary Roche's official title/signature block, "Dr. James G. Roche, Secretary of the Air Force."

At 5:12 p.m. that day (May 9, 2003), Secretary Roche forwarded Ms. Cleveland the email he sent to [REDACTED], described above. He added the following comments: "Be well. Smile. Give me tankers (oops, did I say that? My new deal is terrific.) :) Jim."<sup>7</sup> Those comments were also transmitted over Secretary Roche's official signature block, "Dr. James G. Roche, Secretary of the Air Force."

By email dated Monday, May 12, 2003, [REDACTED] responded to Secretary Roche's endorsement of [REDACTED] as follows:

I like [REDACTED] resume. I am looking into the available job openings. The job for which he seems particularly suited . . . may have been offered to another candidate, but there are other jobs for which he should be considered. I will call [REDACTED] to set up a time for us to meet.

During his interview, [REDACTED] told us that he had a business and social relationship with Secretary Roche for 15 years and said that, based on Secretary Roche's email recommendation, "I thought I should take a look at this thing [REDACTED] resume]. Jim [Roche] thought he was a good guy and I took it simply as a recommendation to take a look at a worthwhile candidate." [REDACTED] could not recall if he had interviewed anybody else for positions in the general counsel office, but acknowledged "I know I interviewed [REDACTED] I liked him"

By email dated May 15, 2003, [REDACTED] advised his [REDACTED] (Robin) that he interviewed with [REDACTED] at Northrop Grumman that day, indicating that the interview "seemed to go very well." In her email response to her [REDACTED] later that day (May 15), Ms. Cleveland commented, "Great hope it works before the tanker leasing issue gets fouled up."

Sometime after he interviewed [REDACTED] recalled that Secretary Roche called him to "make sure that I didn't -- that he didn't feel like he was pressing me about [REDACTED], and I didn't feel like he was pressing me about this at all, so I said, 'Well, fine.' . . . he tried to make it plain that he was not trying to put any pressure on me about this guy." [REDACTED] stated that [REDACTED] was not selected for employment with Northrop Grumman, opining "I thought he was a good candidate, but I thought there were better candidates."

Secretary Roche testified that he did not have a personal relationship with [REDACTED], had met him once, and would "have a hard time picking [him] out in the crowd right now." Rather his interest in [REDACTED] was based on perceived similarities between the circumstances of [REDACTED] upbringing and the growing up experiences of Secretary Roche's own son, who was the same age as [REDACTED]. In that regard, Secretary Roche told us that he and Ms. Cleveland periodically exchanged information and observations concerning the two men over the years.

**b7(C)**

<sup>7</sup> The colon followed by a closed parenthesis, "(:)," designates a smiley face -- ☺.

During his interview with us, Secretary Roche denied his email to ██████████ constituted a recommendation of ██████████, *per se*. He stated, "I didn't say he was a good lawyer. I can't recommend ██████████ as a lawyer because I can't judge a lawyer. Secondly, I don't say that he's a good businessman." Concerning his email to ██████████, Secretary Roche added

I knew it to be ethically okay as long as I didn't attribute qualities to the kid that I could not back up and as long as I made it clear it's not something -- don't do me any favors. This is something you need to judge. I'm just putting people together.

Additionally, Secretary Roche believed that his email recommendation did not violate the JER because it was not like "writing a letter out on Air Force official letterhead and signing it." Rather, he viewed the email as an informal personal communication that was authorized under Air Force email policy and could not reasonably be viewed as official.

Regarding the matter of his official title, Secretary Roche stated ██████████ "knows exactly who I am. If I had put down King of Siam at the bottom of the tag line he would still know I was Secretary of the Air Force." He added, "I never see that tag line at the bottom [of electronic mail sent from the Blackberry device]. It's put on by the server."

██████████ acknowledged that Secretary Roche's signature block was on the email in question, but denied he inferred that the email constituted an official communication. He testified, "I know Jim socially, and the fact that his official signature is on there made no difference to me." He considered Secretary Roche's email to be simply "a recommendation to take a look at a worthwhile candidate."

We consulted with an DoD information technology specialist who advised that the user of a Blackberry device can change the default signature appended to emails sent from the device. The specialist explained that the user can change or delete a default entry by using a feature in the Blackberry application that is available at the user level.<sup>8</sup>

### Discussion

We concluded that Secretary Roche's email of May 9, 2003, to ██████████ constituted the use of public office for private gain in violation of the JER because the email implied Air Force sanction for the personal employment recommendation on behalf of ██████████, a person with whom Secretary Roche was affiliated in a nongovernmental capacity. Because Secretary Roche's email to ██████████ clearly indicated that it originated from his Air Force office (i.e., from "James.Roche@pentagon.af.mil") and was presented over his official signature block, we consider it analogous to the example contained in Paragraph 2635.702(b) of the JER.

**b7(C)**

---

<sup>8</sup> During our October 20, 2004, interview, Secretary Roche stated "what I've done is since people are raising this, I've removed Secretary of the Air Force, figuring after three years if they don't know who the hell I am the hell with it. It just says James Roche."

Although that example in the JER refers to the situation where a recommendation takes the form of a letter on official stationery and signed using an official title, we concluded that the use of a Government Blackberry with a sending address from the Air Force at the Pentagon and a signature block identifying the office held by the sender is equivalent to the letter format addressed in the JER. That is, the email as formatted conveyed an element of Air Force sanction that would not be present had Secretary Roche made the recommendation on plain paper and signed it without using his Air Force title or sent the message using his personal America Online account. In reaching that conclusion, we considered the JER stipulation in Section 2635.702 that specific prohibitions applying the general standard regarding “Use of public office for private gain” (i.e., the prohibition that included the letter illustration) were not intended to be exclusive or limiting.

While the JER permits DoD employees to refer to their official position in the body of an otherwise personal employment recommendation, such reference does not reasonably convey Government sanction. Conversely, the use of letterhead stationery, or in this case Government originated email, coupled with a signature block can be interpreted to imply Government sanction.

The two conditions that would have permitted Secretary Roche to provide an “official” recommendation on letterhead for ██████████ pursuant to the JER did not exist. That is, Secretary Roche had not dealt with ██████████ in the course of his Government employment and ██████████ was not applying for a Federal position. Accordingly, the recommendation for employment with Northrop Grumman that Secretary Roche made for ██████████ was a strictly personal endeavor that should not have carried the implication of Government sanction that was conveyed by its means of transmission, a Government email system, and sent over Secretary Roche’s signature block.

We acknowledge that Secretary Roche’s signature block was appended automatically to his Blackberry emails. However, he had the option to change or delete the signature block by changing the settings on his Blackberry. He did not do so, and therefore is responsible for the inclusion of his signature block on emails he sent from his Blackberry device. We note that Secretary Roche has since removed his title, “Secretary of the Air Force” from the automated signature on his Blackberry device.

#### Secretary Roche’s response

In his written response of December 3, 2004, to the foregoing conclusion, Secretary Roche did not dispute our factual findings and emphasized his understanding “that public office is a public trust and may not be used for anyone’s private gain.” However, he disagreed with our “interpretation of the regulatory provisions governing employment recommendations,” asserting “There is absolutely no chance, considering the surrounding facts and circumstances, that ██████████ could have reasonably construed my e-mail to be an official Air Force endorsement of ██████████.”

**b7(C)**

In that regard, Secretary Roche considered the email at issue “a personal exchange” that is permitted by the JER.<sup>9</sup> He took exception to our conclusion that his email on behalf of ██████████ was analogous to a recommendation made on official stationery and signed using an official title -- a format which he agreed risked “being misconstrued as an agency communication.” Instead, Secretary Roche argued that his email was a strictly personal communication to a friend outside Government and that it could not be interpreted under any circumstances as indicating an official action or endorsement by the Secretary of the Air Force. He noted that his email included obviously personal comments (“Be well.” “Best to ██████████ ██████████”) and included colloquial speech and humor (“I’ve let Rummy con me one more time! Army!”) that he would never use in an official communication.

Additionally, Secretary Roche argued that our conclusion regarding his email was inconsistent with provisions in the JER that permit limited personal use of Government communications systems. In that regard, Section 2-301.a. of the JER states that Federal Government communication systems “shall be for official use and authorized purposes only.” Authorized purposes include

personal communications from the DoD employee’s usual work place that are most reasonably made while at the work place (such as checking in with spouse or minor children; scheduling doctor and auto or home repair appointments; brief internet searches; e-mailing directions to visiting relatives). . . .

Secretary Roche noted that such authorized personal email from any DoD employee would necessarily bear a Government originated (e.g., “.mil”) address, but would not reasonably be seen as official communication or conveying Government sanction. Secretary Roche further noted that many DoD employees use a computer-generated signature block that is automatically appended to any email they send -- whether official or personal. He argued, “This technique is not intended to characterize every outgoing e-mail as ‘official’, it is simply a tool for effective communication.” In short, Secretary Roche summarized, “we should not elevate form over substance to invent official sanction where none could reasonably be perceived.”

After carefully considering Secretary Roche’s response, we stand by our conclusion that his email to ██████████ violated provisions of the JER that specifically address situations where an employment recommendation may constitute misuse of public office. We make the following points in addition to our discussion above to support this conclusion:

- Because of the unique nature of an employment recommendation made by a Government official, the JER imposes restrictions designed to avoid not only overt and obvious efforts by DoD employees to exploit their official positions when making such recommendations, but also to prevent those situations meeting a lower threshold -- that is, employment recommendations “that could reasonably be construed to imply” Government sanction or endorsement. In our view, Secretary Roche’s email, bearing a Government address and signature block, met

**b7(C)**

---

<sup>9</sup> As discussed more fully below, the JER permits limited personal use of Government email accounts when certain conditions are met.

this lower threshold.

- ██████ took immediate and positive action to act on Secretary Roche's request. He interviewed ██████ 4 working days after receiving the email and, during our interview, was unable to recall any other candidates that he interviewed for the position of interest to ██████. Further, he suggested that ██████ be considered for positions at the Northrop Grumman other than the one for which he applied. In our view, the official format of Secretary Roche's recommendation may have contributed to this swift reaction.
- Secretary Roche felt obligated to call ██████ after sending the email to ensure that ██████ did not feel pressured to take action on behalf of ██████ based on the email recommendation. It is reasonable to suggest that Secretary Roche's concern in that regard may have stemmed, in part, from his recognition that an employment recommendation made by a Service Secretary using his official title to a major DoD contractor may exert influence that a strictly personal communication would not.

We recognize that DoD employees are permitted use of their Government email accounts for personal business, but that use is strictly limited by to communications "that are most reasonably made while at the work place" and that meet several criteria. Included among those criteria, as listed in Section 2-301 of the JER, are communications which "Do not put Federal Government communications systems to uses that would reflect adversely on DoD." Examples of such unauthorized personal uses include, "soliciting or selling," violations of statute or regulation," "uses that are incompatible with public service." The examples given by the JER of personal communications that are authorized (checking in with a spouse or children, scheduling doctor visits, or emailing directions to relatives) are clearly and easily distinguishable from the communication that we consider unauthorized in this case -- an employment recommendation from a DoD official, using his official title, to a DoD contractor.

B. Did Secretary Roche violate the JER by using a Government communications system to transmit the employment recommendation for ██████?

Standard

**DoD 5500.7-R, "Joint Ethics Regulation (JER)"**

Section 2635.704 of the JER, "Use of Government property," paragraph (a), "Standard," states, "An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes." Government property includes telecommunications equipment and automated data processing equipment. "Authorized purposes" are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

Section 2-301.a. states: "Federal Government communication systems and equipment (including Government owned telephones, facsimile machines, electronic mail, internet systems,

**b7(C)**

and commercial systems when use is paid for by the Federal Government) shall be for official use and authorized purposes only.” However, Subsection 2-301.b.(1) of the JER, allows DoD employees to make limited personal use of Federal Government resources other than personnel, including office equipment, if the following criteria are met:

- The use does not adversely affect the performance of official duties by the DoD employee or the DoD employee’s organization.
- The use is of reasonable duration and frequency, and made only during the DoD employee’s personal time, such as after duty hours or lunch periods.
- The use serves a legitimate public interest, such as enhancing the professional skills of the DoD employee.
- The use does not put Federal Government resources to uses that would reflect adversely on DoD or the DoD component (such as uses involving the violation of statute or regulation).
- The use creates no significant additional cost to DoD or the DoD component.

### Facts

Regarding Secretary Roche’s use of a Government Blackberry device to transmit the electronic mail message discussed above, Secretary Roche testified, “We have the following policy. We do not want people plugging in private computers anywhere in the Air Force Headquarters. Therefore we basically tell people use your electronic mail for everything.” Secretary Roche explained his belief that electronic mail is no different than a memo pad, except that electronic mail identifies the sender.

Concerning the use of electronic media to communicate, Secretary Roche testified “I live my life electronically,” and that “friends can get me on AOL [America Online].” However, he added that “everything is channeled so I can do stuff from [the worksite], I can do things from a car, I can do things from the airport.”

### Discussion

Because Secretary Roche’s email to ██████████ violated Section 2635.702 of the JER, as discussed above, it necessarily violated Section 2-301.a. of the JER. That section permits personal use of Government communications only if that use does not “reflect adversely on DoD or the DoD Component.” One example of a use that reflects adversely on DoD is a violation of a regulation (e.g., a violation of the JER).

### Secretary Roche’s Response

As set forth above, Secretary Roche disagreed with our conclusion that his email to ██████████ violated JER restrictions concerning employment recommendations. Accordingly, he

**b7(C)**

disagreed with our conclusion that the email constituted an unauthorized use of Government communications systems.

In his response of December 3, 2004, Secretary Roche noted that JER provisions applicable in this case were established before the onset of dramatic enhancements in communication alternatives made available to Government employees for conducting official business (e.g., cellular telephones, global email accounts, personal digital assistants). As a result, Secretary Roche opined that the email exchange at issue “is being evaluated within a regulatory framework that does not fully anticipate or comprehensively address this fact pattern [referring to the facts and circumstances of the email job recommendation], and thus is a matter of which reasonable minds may presently differ.” However, Secretary Roche continued,

Despite that, I remain sincere in my belief that this [email to ██████████] was a permissible, limited personal use of government communications systems to transmit a matter that could not have in any way been reasonably interpreted by its intended recipient, or anyone inadvertently receiving it, as an ‘official’ communication, judged in light of the surrounding facts and circumstances. If we find otherwise in this case, we are going to establish a government-wide standard that hamstring and exposes to risk not only senior government officials, but practically every member of government in possession of a government cellular telephone, personal computer, or personal digital assistant.

**b7(C)**

We believe that Secretary Roche’s assertions with respect to whether his email constituted, or was perceived as, an official communication diverts focus from the fundamental JER test applicable here -- whether his recommendation “could reasonably be construed to imply” Government sanction or endorsement, not whether it was official vice personal. As described by the JER, a personal letter of recommendation could imply Government sanction if made in Government letterhead or signed using an official title. We agree with Secretary Roche that he undertook the email as a personal venture. Despite that intent, however, he chose a manner of communication that could reasonably convey some element of Government sanction.

Further, we do not agree with Secretary Roche’s suggestion that all Government employees are at risk of misusing Government communications systems if our interpretation of facts in this case *vis a vis* the JER is correct. The JER does not permit unfettered personal use of Government communications systems. Rather, it imposes strict controls over personal use -- personal communications must: (1) be of limited duration and frequency, (2) be made during the DoD employee’s personal time whenever possible, (3) serve a legitimate public interest, and (4) not involve advertising, selling, or soliciting. The JER examples suggest that personal communications over Government systems should be designed to convey short, timely personal messages to private parties (with no official DoD interests) that are “most reasonably made while at the work place.”

In authorizing the use of Government communication systems for personal business, the JER clearly suggests that DoD employees should exercise discretion and restraint when doing so.

The personal use of a Government system should be avoided when circumstances surrounding such personal use would tend to raise questions regarding its propriety.

C. [REDACTED]

Standard

[REDACTED]

Facts

[REDACTED]

**b7(C)**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**b7(C)**

[REDACTED]

[REDACTED]

[REDACTED]

Discussion

[REDACTED]

[REDACTED]

**b7(C)**

[REDACTED]

[REDACTED]

D. [REDACTED]

Standards

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b7(C)

---

11 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Facts

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b7(C)

[REDACTED]

**b7(C)**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**b7(C)**

Discussion

[REDACTED]

**b7(C)**

---

[REDACTED]

**b7(A)**

[REDACTED]

[REDACTED]

[REDACTED]

V. CONCLUSIONS

A. Secretary Roche used his official title in recommending a private job applicant for favorable consideration in violation of DoD 5500.7-R, "JER," Section 2635.702, "Use of public office for private gain."

B. Secretary Roche violated Section 2-301 of the JER, "Use of Federal Government Resources," by using a Government communications system to transmit the employment recommendation for [REDACTED].

C. [REDACTED]

D. [REDACTED]

VI. RECOMMENDATIONS

**b7(C)**

We make no recommendation for corrective action in view of Secretary Roche's departure from DoD.