

**STATEMENT OF**

**RICHARD L. DELONIS**

**PRESIDENT  
NATIONAL ASSOCIATION OF ASSISTANT  
UNITED STATES ATTORNEYS**

**HEARING ON  
THE EXECUTIVE OFFICE FOR U.S. ATTORNEYS**

**BEFORE THE  
COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON COMMERCIAL  
AND ADMINISTRATIVE LAW**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**JUNE 25, 2008**

Madame Chairman and Members of the Subcommittee. On behalf of the National Association of Assistant United States Attorneys (NAAUSA), thank you for holding today's oversight hearing on the nation's United States Attorney Offices. As the nation's principal litigators, the 93 United States Attorneys and 5,600 Assistant United States Attorneys serve on the frontline of our justice system. They are integrally involved in the ongoing efforts to fight terrorism, gangs, drug trafficking and other crimes. They also vigorously defend the nation's interests in civil litigation where the United States is a party.

My testimony today focuses on three points: first, the distinct improvements that have occurred in the management and funding of the United States Attorney's Offices over the past year; second, the need for improvements in the compensation of Assistant United States Attorneys, both in their pay and retirement benefits; and thirdly, the collateral need for improving the safety and security of Assistant United States Attorneys.

### **The Role of United States Attorney's Offices**

I'd like to first step back for a moment and underscore the critical role that these extraordinary men and women called United States Attorneys and Assistant United States Attorneys play in the nation's law enforcement system. Each United States Attorney is the chief federal law enforcement officer within his or her particular jurisdiction. United States Attorneys conduct most of the trial work in which the United States is a party. According to the United States Attorneys Annual Statistical Report for 2006, Assistant

United States Attorneys constituted 56 percent of all DOJ attorneys and 70 percent of DOJ attorneys with prosecution or litigation responsibilities.

The United States Attorneys have three statutory responsibilities under Title 28, Section 547 of the United States Code:

- The prosecution of criminal cases brought by the Federal government;
- The prosecution and defense of civil cases in which the United States is a party;  
and
- The collection of debts owed the Federal government which are administratively uncollectible.

### **Recent Management and Funding of United States Attorneys Offices**

Since his arrival at the Department last November, Attorney General Mukasey has done a commendable job in restoring relations with the United States Attorneys' offices around the country and improving morale, both at Department of Justice headquarters and in the field. Recent appointments to senior-level positions within the Department have also helped to reestablish credibility and a sense that the department and its prosecutorial operations are once again being run fairly and professionally, without suggestion of partisanship.

The management and administration of the Executive Office for United States Attorneys deserves special mention. The leadership of EOUSA by Kenneth Melson, a 25-year veteran of the Department and a seasoned prosecutor, has provided widely-

respected stability and evenhandedness to the Office's administrative oversight of the U.S. Attorneys' offices across the country. Our Association has been appreciative of the consultative relationship that it has maintained with Mr. Melson and EOUSA since he assumed the directorship of EOUSA a year ago.

Progress has been achieved in the funding and budget situation of many United States Attorney offices. As you know, budget constraints over the past several years severely affected operations in the U.S. Attorneys' offices and had diminished the numbers of cases brought. Funding and staffing shortages in United States Attorney offices had meant that there were not enough Assistant United States Attorneys to prosecute wrongdoers, despite significant parallel increases in federal law enforcement funding. As one United States Attorney noted, "Fewer cases were getting charged and bigger investigations were taking longer because there weren't enough prosecutors to do them."

Over the past year, however, the situation has improved markedly, due largely to a six percent increase in the Fiscal Year 2008 appropriation for United States Attorneys offices. This infusion of new funding has helped to restore some of these earlier cuts, provide for the filling of vacancies through new hiring, and pay for basic litigation requirements, such as photocopying documents and obtaining deposition transcripts.

### **Improving the Pay and Retirement Benefits of Assistant U.S. Attorneys**

With regard to morale, inequity in compensation undermines the morale of Assistant United States Attorneys more than any other factor. The lack of equity in the pay and retirement benefits of our nation's top litigators should not be tolerated by Congress and should be cured.

The pay levels of Assistant United States Attorneys is set and constrained by statutory limits that prevent the pay of AUSAs from staying even with other attorneys with litigation responsibilities in the Department of Justice, as well as their private sector counterparts, especially in high-cost metropolitan areas of the country. Under current law, the salary of Assistant United States Attorneys cannot be higher than the United States Attorneys to whom they report, creating a growing pay compression problem within the ranks of Assistant U.S. Attorneys. United States Attorney salaries are set by the Executive Schedule under law, while the pay of Assistant United States Attorneys is statutorily guided and administratively determined under a pay plan shaped and administered by the Department of Justice.

The statutory barrier that keeps Assistant U.S. Attorney salaries from rising above those of U.S. Attorneys prevents a growing numbers of Assistant U.S Attorneys from receiving their full annual cost-of-living adjustment, as well as the full locality pay increase to which they would otherwise be entitled. This is especially detrimental to the morale of AUSAs in high-cost metropolitan areas. A letter I recently received from a 26-year veteran Assistant United States Attorney in Los Angeles underscores the frustration

of the pay compression problem and its impact upon morale. She pointed out that this year, for the first time, she will not receive a full cost-of-living increase in pay nor receive the full locality pay increase for her geographic area, despite living in Los Angeles, one of the highest cost-of-living areas in the country. She also noted that last November, while serving as a judge at the University of Davis law school moot court competition, she learned from one of the law students that the student would be earning more than \$160,000 as a first-year associate at a San Francisco law firm. That salary is on par with the starting salaries of major firms and far above the salaries of our government's best litigators, like her, possessing as much as three decades of litigation experience, most of it as an Assistant U.S. Attorney.

As if there were any doubt as to the impact of this situation upon morale, she added:

“I can speak for others in my office who feel the same way. The morale among the older experienced attorneys is at an all-time low. I have friends in the USA offices in San Francisco and San Diego and those AUSA's feel the same. The cynics among us wonder whether DOJ secretly hopes we will all quit and DOJ can then replace us with \$80,000/year newbie's.

I would quit if I could—but I am 55 and have two kids in college (both private...\$\$\$) and I am the primary breadwinner in the family. So I will stay until I can retire—all the while wondering why I didn't leave years ago. I enjoy my work but I can't afford the pleasure.”

What should Congress do? Congress should relieve the salary compression problem affecting the salaries of Assistant United States Attorneys and repeal the salary cap. This is same approach that Congress has provided on various occasions to alleviate

salary inequity afflicting other attorneys and professionals in the federal government, including lawyers at the federal financial regulatory agencies and physicians at the National Institutes of Health.

Low morale among AUSAs is triggered not only by an inequity in pay. It also is prompted by inequity in their retirement benefits, which contributes to the inability of the Department to retain some of its finest litigators. As you know, Madame Chairman, the retirement benefits of AUSAs are significantly lower than the law enforcement officers with whom AUSAs work.<sup>1</sup> The average AUSA remains with DOJ for only eight years, and these early departures cause a critical loss of litigation skill and experience to the Government. The retention problem varies from district to district, and is most dramatic in higher-cost districts. In the larger offices and in the metropolitan areas, USAOs have become training grounds for the litigation divisions of private law firms, the very same law firms that utilize their trained former AUSAs in litigation against the government.

DOJ internal studies and surveys have identified the AUSA retention rate as a significant problem and the enhancement of the AUSA retirement benefit as the foremost remedy. A 1989 report of the Attorney General's Advisory Committee concluded: "Clearly, career AUSAs should be authorized to receive retirement benefits afforded all of the other members of the federal law enforcement community since the majority of

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<sup>1</sup> These include Special Agents of the FBI, Secret Service, IRS and DEA, deputy U.S. Marshals, U.S. Postal Inspectors, probation and pretrial service officers and all Bureau of Prison employees.

AUSA responsibilities relate to the investigation, apprehension or detention of individuals suspected or convicted of criminal laws of the United States." The original reason for the disparity between law enforcement officer and AUSA retirement benefits – the status of AUSAs as political appointees -- has long been superseded by the hiring of AUSAs under a merit-based appointment process.

Pending legislation -- "The Assistant United States Attorney Retirement Benefit Equity Act," H.R. 2878 – would equitably provide AUSAs with the same retirement benefits enjoyed by all other federal law enforcement officers.<sup>2</sup> Bringing the pension benefits of Assistant United States Attorneys into line with the retirement benefit package received by the other tens of thousands of federal law enforcement employees, would prompt significant numbers of younger AUSAs to remain with the Department for a career. This process would help assure the government's retention of a greater number of skilled litigators to handle increasingly complex cases. Numerous United States Attorneys informally have praised the legislation. We are confident that the costs of the legislation will be offset by the collections reform proposals formulated by the National Association of Assistant United States Attorneys and will, additionally, improve the

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<sup>2</sup> The legislation provides to AUSAs the same retirement benefit that law enforcement officers receive: for those under FERS, a basic annuity of 34% of salary after 20 years of service at age 50; and for those under CSRS, an annuity of 50% of salary, with no social security benefits, after 20 years of service at age 50. AUSAs under FERS currently receive a basic annuity of 20% of salary after 20 years of service at age 60; those under CSRS receive an annuity of 36.25% of salary, with no social security benefits, after 20 years of service at age 60.



Department of Justice's capacity to collect restitution and civil and criminal judgments and increase federal revenues.

### **Improving the Safety of Assistant United States Attorneys**

We also are concerned about the adequacy of safeguards to protect Assistant United States Attorneys and their families. As the Government's principal litigators, the 93 United States Attorneys and 5,600 Assistant United States Attorneys risk their lives every day in their service on the front lines of the justice system. Federal prosecutors increasingly are high-profile targets because of the persons they bring to justice. AUSAs zealously prosecute the most dangerous criminals in our society, including terrorists, gang and organized crime members, violent gun offenders, international drug traffickers and major white collar criminals. Some AUSAs handling civil matters also encounter threats of reprisal and assaults from defendants, especially in bankruptcy and other property-taking actions. In addition, Federal prosecutors, as part of their duties and responsibilities, are often called upon to work in high-crime areas, visiting crime scenes, interviewing witnesses and otherwise aiding in the investigation of criminal acts, where they can encounter threats and assaults upon their lives.

The administration of justice requires that prosecutors discharge their responsibilities without fear of violence or reprisal. Yet the unsolved murders of Tom Wales, an Assistant United States Attorney in Seattle Washington in 2001, and Jonathan Luna, a federal prosecutor in Baltimore, Maryland in 2005, underscore the potential for

reprisal. Tom Wales was shot to death as he sat in front of a computer in the basement office in his home. Jonathan Luna was stabbed 36 times and then drowned, according to local authorities in Lancaster County, Pennsylvania who ruled it a homicide.

Sadly, death threats and assaults against AUSAs are far too common, not only upon AUSAs, but their families as well. And these threats are skyrocketing. According to the Department of Justice Executive Office of United States Attorneys, threats against United States Attorneys and Assistant United States Attorneys tripled between 2002 and 2007.

Department of Justice statistics demonstrate that AUSAs are among the most frequently assaulted and threatened group of employees within the Department. If anyone harbors any doubt of the seriousness of the threats and assaults against AUSAs, they should review the Appendix attached to this statement, which presents a sampling of the personal, first-person accounts of the serious threats and assaults that AUSAs have encountered. Upon reading these accounts, one cannot but be impressed by the deep courage and dedication that AUSAs bring to their jobs, as well as the unrelenting need for decisive and expanded action by the Congress and the Department of Justice to improve the safety of federal prosecutors.

A survey of the AUSA workforce, conducted by NAAUSA earlier this spring, documented the broad concern by AUSAs regarding their safety and their widespread desire for improvements. The survey registered these important findings:

- At least one out of every two Assistant U.S. Attorneys (55 %) have been threatened or assaulted at some point during their tenure as an AUSA.
- Over 80 percent of the AUSAs reported that at least one AUSA in their office had been threatened or assaulted.
- Over ninety-percent of AUSAs believe that the Department of Justice should make training available to all AUSAs on personal security issues (including issues like home security measures, family safety, mail handling, counter-surveillance and self-defense tactics). Three-quarters believe this should be required on an annual basis, with the same regularity as is applied to training on computer security.
- Nearly sixty percent of AUSAs believe that the Department of Justice should provide secure parking to every AUSA carrying a high vulnerability caseload, regardless of the existence of a pre-existing threat.
- Eighty percent of AUSAs believe that AUSAs who carry high vulnerability caseloads should be authorized by DOJ to carry firearms, if they so choose, if they are trained and demonstrate a proficiency in the use of firearms.

A summary of the survey results is attached as an appendix to this statement.

We believe that the solutions to the security problems that threaten the lives and safety of Assistant U.S. Attorneys lie in a variety of measures, including:

- Annual delivery of personal security training to all AUSAs, with the same frequency and attention that is applied to computer security training

- Availability of financial assistance in the installation of home alarm systems in the homes of AUSAs, under the same approach that made such systems available to federal judges
- Secure parking for AUSAs, especially those carrying high-vulnerability caseloads
- Improvement in the Marshals Service threat assessment process, both in quality and timeliness
- Broader DOJ deputization of Assistant United States Attorneys to carry firearms, especially those carrying high-vulnerability caseloads, with necessary training and certification in the carrying and use of firearms.

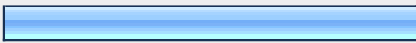
We look forward to working with the Department of Justice in securing these improvements, with the ongoing concern and support of this Subcommittee.

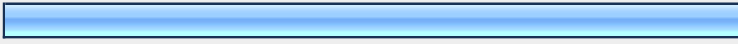

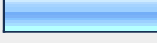
Madame Chairman, thank you for your leadership and concern for the challenges facing federal prosecutors. The National Association of Assistant United States Attorneys is deeply appreciative of your efforts and pledges its continued support of to work with you and other members of the Subcommittee to address the matters outlined in my statement.

I will be happy to answer any questions you have.




# NAAUSA Security Survey

1. How would you rate the importance of each of the following AUSA security improvements.					
	Very important	Somewhat important	Not too important	Not at all important	Response Count
Secure parking	78.6% (988)	16.5% (207)	4.1% (52)	0.8% (10)	1257
Home alarm systems	42.2% (530)	37.8% (475)	17.3% (218)	2.7% (34)	1257
Deputization to carry firearms	35.3% (444)	28.3% (356)	23.8% (299)	12.6% (158)	1257
Annual personal security training	43.2% (543)	40.1% (504)	13.1% (165)	3.6% (45)	1257
Other security improvement (please specify)					124
<i>answered question</i>					1257
<i>skipped question</i>					3






2. Have you, or a member of your immediate family, ever been threatened or assaulted because of your job as an AUSA?			
		Response Percent	Response Count
Yes		45.5%	572
No		54.5%	685
<i>answered question</i>			1257
<i>skipped question</i>			3

3. Has any other AUSA in your office been threatened or assaulted because of their job?			
		Response Percent	Response Count
Yes		81.1%	1020
No		2.2%	28
Don't Know		16.6%	209
<i>answered question</i>			1257
<i>skipped question</i>			3


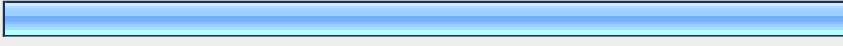
**4. Should the Department of Justice make training on personal security issues (including issues like home security measures, family safety, mail handling, counter-surveillance and self-defense tactics) available to all AUSAs?**

		Response Percent	Response Count
Yes		91.2%	1147
No		2.0%	25
No opinion		6.8%	85
		<b>answered question</b>	<b>1257</b>
		<b>skipped question</b>	<b>3</b>


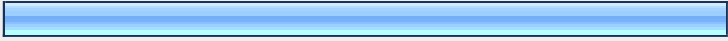
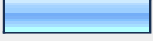
**5. If you answered "yes" to question 4, how often should the Department of Justice require personal security training (as is currently done for sexual harrassment)?**

		Response Percent	Response Count
Annually		74.8%	889
Twice a year		10.4%	124
More than twice a year		0.8%	9
Never		5.3%	63
No opinion		8.7%	103
		<b>answered question</b>	<b>1188</b>
		<b>skipped question</b>	<b>72</b>


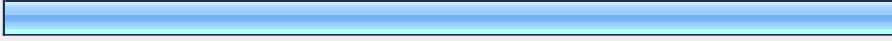
6. Considering cost and other factors which impact the likelihood of implementation, how much of a priority should it be to make:							
	Absolute top priority	High priority	Priority, but not a high priority	Not really a priority	Not a priority at all	Rating Average	Response Count
Make home alarm systems available to every AUSA carrying a high vulnerability caseload regardless of the existence of a pre-existing threat	22.2% (271)	<b>36.5% (445)</b>	26.3% (321)	12.4% (151)	2.5% (31)	2.37	1219
Make home alarm systems available to all AUSAs	8.5% (104)	22.3% (272)	<b>33.4% (408)</b>	26.7% (326)	9.0% (110)	3.05	1220
Authorize AUSAs to carry firearms for personal protection if they carry high vulnerability case loads and have obtained the requisite training to carry firearms.	<b>31.0% (383)</b>	23.8% (295)	20.0% (247)	15.2% (188)	10.0% (124)	2.49	1237
Provide secure parking to every AUSA carrying a high vulnerability caseload regardless of the existence of pre-existing threat	<b>57.3% (692)</b>	27.5% (332)	11.3% (136)	2.7% (32)	1.2% (15)	1.63	1207
Provide secure parking to all AUSAs	<b>38.7% (475)</b>	31.5% (386)	19.3% (237)	7.3% (90)	3.1% (38)	2.05	1226
Provide personal security training to all AUSAs	32.6% (398)	<b>34.8% (425)</b>	23.4% (286)	7.3% (89)	1.8% (22)	2.11	1220
	<b>answered question</b>						<b>1249</b>
	<b>skipped question</b>						<b>11</b>

7. Have you ever been deputized by DOJ to carry a firearm?			
		Response Percent	Response Count
Yes		7.0%	88
No		93.0%	1169
	<b>answered question</b>		<b>1257</b>
	<b>skipped question</b>		<b>3</b>

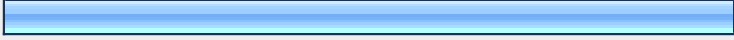


**8. Have you ever made a request to the Department of Justice to be deputized to carry a firearm and had the request turned down?**

		Response Percent	Response Count
Yes		4.2%	53
No		79.9%	1004
Not applicable		15.9%	200
<b>answered question</b>			<b>1257</b>
<b>skipped question</b>			<b>3</b>

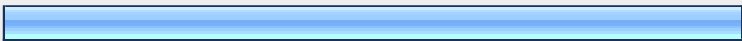


**9. Are you currently deputized by the Department of Justice to carry a firearm?**


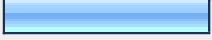
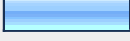
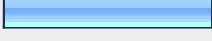
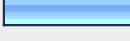

		Response Percent	Response Count
Yes		1.8%	22
No		98.2%	1235
<b>answered question</b>			<b>1257</b>
<b>skipped question</b>			<b>3</b>

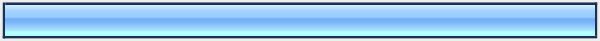
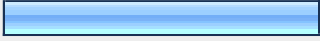
**10. Should AUSAs, who carry high vulnerability caseloads and are trained and demonstrate proficiency in the use of firearms, be authorized by the Department of Justice to carry a firearms for personal and family protection - if they so choose?**

		Response Percent	Response Count
Yes		80.6%	1013
No		7.5%	94
No opinion		11.9%	150
<b>answered question</b>			<b>1257</b>
<b>skipped question</b>			<b>3</b>




















11. What is your specialty?			Response Percent	Response Count
Criminal			81.5%	1025
Civil			20.1%	253
Appellate			2.9%	36
Other (please specify)				117
			<b>answered question</b>	<b>1257</b>
			<b>skipped question</b>	<b>3</b>

12. How long have you been an AUSA?			Response Percent	Response Count
Less than 5 years			18.0%	226
5-10 years			22.4%	282
11-15 years			13.6%	171
<b>16-20 years</b>			<b>22.7%</b>	285
21-25 years			14.1%	177
More than 25 years			9.2%	116
			<b>answered question</b>	<b>1257</b>
			<b>skipped question</b>	<b>3</b>


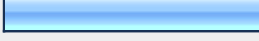

13. What is your gender?			Response Percent	Response Count
Male			65.5%	808
Female			34.5%	426
			<b>answered question</b>	<b>1234</b>
			<b>skipped question</b>	<b>26</b>

#### 14. In what State are you employed?

		Response Percent	Response Count
AI		2.2%	27
AK		1.6%	19
AZ		3.7%	45
AR		1.1%	14
CA		6.7%	81
CO		2.1%	26
CT		0.7%	8
DE		0.2%	2
DC		2.3%	28
FL		5.3%	65
GA		1.9%	23
HI		1.2%	15
ID		1.1%	13
IL		3.7%	45
IN		0.8%	10
IA		1.3%	16
KS		1.2%	15
KY		1.6%	19
LA		2.8%	34
MA		0.6%	7
ME		0.7%	8
MD		2.4%	29
MI		3.0%	36
MN		0.4%	5
MS		1.4%	17

MO		1.6%	19
MT		0.3%	4
NE		0.3%	4
NV		1.1%	13
NH		0.6%	7
NJ		1.6%	20
NM		1.0%	12
NY		3.5%	43
NC		1.6%	19
ND		0.4%	5
OH		3.9%	47
OK		1.9%	23
OR		1.6%	19
<b>PA</b>		<b>8.0%</b>	98
PR		0.9%	11
RI		0.8%	10
SC		0.7%	9
SD		0.8%	10
TN		3.4%	42
<b>TX</b>		<b>8.0%</b>	98
UT		0.9%	11
VI		0.3%	4
VT		0.1%	1
VA		2.5%	31
WA		1.4%	17
WI		0.6%	7
WV		1.7%	21
WY		0.5%	6

	<i>answered question</i>	<b>1218</b>
	<i>skipped question</i>	<b>42</b>

<b>15. Are you a member of NAAUSA?</b>			<b>Response Percent</b>	<b>Response Count</b>
<b>Yes</b>			<b>66.6%</b>	<b>837</b>
<b>No</b>			<b>28.1%</b>	<b>353</b>
<b>Former member</b>			<b>5.3%</b>	<b>67</b>
	<i>answered question</i>			<b>1257</b>
	<i>skipped question</i>			<b>3</b>