

<p>Bud Cummins (EDAR) Term expired: Jan. 9, 2006</p> <p><i>(In April 2006, Cummins repeated previous statements that he would not stay for the entire second term and that he would be leaving for the private sector soon.)</i></p> <p>Called: June 2006 Resigned: December 2006</p>	<p>Tim Griffin:</p> <ul style="list-style-type: none"> • 2 years as a federal prosecutor (one year at DOJ plus one year full-time in the military); • 10 years in the JAG Corps, U.S. Army Reserve (now a Major); • 6 months as special assistant to the Assistant Attorney General for the Criminal Division; • 1 year as associate independent counsel, <i>In re: Henry Cisneros</i>; • 2 years as senior investigative counsel, House Gov't Reform Committee; • 1 year private practice; • Additional experience as special assistant to the President and RNC research director. 	<p>Administration is consulting with Senators Lincoln and Pryor.</p>
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Elston, Michael (ODAG)

From: Goodling, Monica
Sent: Monday, February 12, 2007 8:19 PM
To: Elston, Michael (ODAG)
Subject: DRAFT (am still working on second column)

Attachments: US Attorney leadership assessment.doc



US Attorney
eadership assessm..

**U.S. ATTORNEY RESIGNATIONS
AND INTERIM ACTING/INTERIM APPOINTMENTS**

DISTRICT AND USA PRIOR EXPERIENCE:	ACTING/INTERIM'S EXPERIENCE:	PRESIDENTIAL NOMINEE'S EXPERIENCE:
<p>Dan Bodgen (NV) Term expired: Nov. 2, 2005</p> <ul style="list-style-type: none"> • 3 years as a state/local prosecutor; • 10 ½ years as a federal prosecutor; • 5 years in the Air Force JAG. 	<p>(FAUSA declined to serve. We are identifying others to interview before 2/28/07, and have interviewed so far the Crim. Chief with 23 years as a federal prosecutor, 9 years as state/local prosecutor, plus judicial experience in the military.)</p>	<p>Sen. Ensign will recommend potential candidates.</p>
<p>Paul Charlton (AZ) Term expired: Nov. 14, 2005</p> <ul style="list-style-type: none"> • 1 ½ years as a state/local prosecutor; • 10 years as a federal prosecutor; • 1 year as law clerk. 	<p>Chief AUSA Daniel Knauss was appointed interim USA:</p> <ul style="list-style-type: none"> • 32 ½ years as a federal prosecutor, including 2 months as interim United States Attorney for Arizona; • 2 years as an adjunct law professor. 	<p>Senators McCain and Kyl recommended one candidate; candidate was interviewed 1/16/07.</p>
<p>Margaret Chiara (WDMI) Term expired: Nov. 2, 2005</p> <ul style="list-style-type: none"> • 14 years as a state/local prosecutor; • 2 years as policy and planning director, office of the Michigan Chief Justice; • 1 year as an administrator, Trial Court Assessment Commission; • 3 years in private practice; • 10 years pre-law school as a teacher, principal, and education administrator. 	<p>(Resignation not yet public, so we have not contacted anyone for acting/interim interviews to date.)</p>	<p>When USA Chiara announces her resignation, the Administration will seek recommendations of potential candidates from the WH-designated Republican lead.</p>
<p>David Iglesias (NM) Term expired: Oct. 17, 2005</p>	<p>(Interviewed FAUSA and Exec AUSA and would like</p>	<p>Sen. Domenici has recommended potential</p>

<ul style="list-style-type: none"> • 3 years as a state prosecutor; • 4 years in the Navy JAG Corps full-time (criminal defense); • 13 years in Navy JAG Corps reserve; • Failed state Attorney General candidate; • 1 year as White House Fellow; • 3 years in a City Attorney's office; • 3 years chief counsel, New Mexico State Risk Management; • 3 years chief counsel, state Taxation and Revenue Department. 	<p>additional candidates before making a decision.)</p>	<p>candidates; interviews were held 1/17/07.</p> <p>Jim Bibb: Possible nominee.</p> <ul style="list-style-type: none"> • 2 years as a state/local prosecutor; • 3 years as a federal prosecutor; • 2 years in private practice; • 1 year as an FBI special agent; • 18 years in the Army National Guard; • Failed state Attorney General candidate.
<p>Carol Lam (SDCA) Term expired: Nov. 18, 2006</p> <ul style="list-style-type: none"> • 14 years as a federal prosecutor; • 2 years as a state judge; • 1 year as law clerk. 	<p>(Interviewed FAUSA, Chief AUSA, OCEDETF Chief, Appellate Chief; no decision has been made.)</p>	<p>Parsky Commission will recommend potential candidates.</p>
<p>John McKay (WDWA) Term expired: Oct. 30, 2005</p> <ul style="list-style-type: none"> • 3 months as a state/local prosecutor; • 1 year as a congressional aide; • 1 year as a White House Fellow; • 15 years in private practice; • 4 years as president of the Legal Services Corporation. 	<p>Crim Chief Jeffrey Sullivan was appointed interim USA:</p> <ul style="list-style-type: none"> • 27 years as a state/local prosecutor; • 5 years as a federal prosecutor; • 3 years in private practice. 	<p>Rep. Reichert has recommended potential candidates; interviews were held 2/9/07.</p>
<p>Kevin Ryan (NDCA) Term expired: Aug. 2, 2006</p> <ul style="list-style-type: none"> • 11 years as a state/local prosecutor; 	<p>Scott Schools: Likely interim appointee.</p> <ul style="list-style-type: none"> • 11 ½ years as a federal prosecutor, including 9 	<p>Parsky Commission will recommend potential candidates.</p>

<ul style="list-style-type: none"> • 5 years as a state/local judge. 	<p>months as interim United States Attorney for South Carolina;</p> <ul style="list-style-type: none"> • 2 years as EOUSA General Counsel; • 4 years, 9 months in private practice; • 2 years as law clerk. 	
<p>Bud Cummins (EDAR) Term expired: Jan. 9, 2006</p> <ul style="list-style-type: none"> • No prosecutorial experience; • 3 years as law clerk; • 6 years in private practice; • 1 year as chief legal counsel to governor; • Failed congressional candidate. 	<p>Tim Griffin:</p> <ul style="list-style-type: none"> • 2 years as a federal prosecutor (one year at DOJ plus one year full-time in the military); • 10 years in the JAG Corps, U.S. Army Reserve (now a Major) • 6 months as special assistant to the Assistant Attorney General for the Criminal Division; • 1 year, 4 months as associate independent counsel, <i>In re: Henry Cisneros</i>; • 2 years as senior investigative counsel, House Gov't Reform Committee; • 1 year private practice; • 5 months as special assistant to the President; • 1 ½ years as research director, RNC, plus 1 ½ years as deputy research director, RNC. 	<p>Consulting with home-state Senators.</p>

Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Monday, February 12, 2007 9:34 PM
To: Goodling, Monica; Elston, Michael (ODAG)
Subject: Re: Draft chart for AG review - NONPUBLIC

Good, thx.

-----Original Message-----

From: Goodling, Monica
To: Elston, Michael (ODAG); Sampson, Kyle
Sent: Mon Feb 12 21:10:00 2007
Subject: Draft chart for AG review - NONPUBLIC

This is the chart that the AG requested. I'll show it to him on the plane tomorrow, if he's interested.

<<US Attorney chart- AG.doc>>

Elston, Michael (ODAG)

From: Chiara, Margaret M. (USAMIW) [MM.Chiara@usdoj.gov]
Sent: Wednesday, February 14, 2007 10:27 PM
To: Elston, Michael (ODAG)
Subject: Status

I am confident that Paul deftly handled the senatorial scrutiny. However, I do need to know if my identity was disclosed. Announcement date and departure date must be confirmed. Margaret

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Elston, Michael (ODAG) <Michael.Elston@usdoj.gov>
To: Chiara, Margaret M. (USAMIW) <MChiara@usa.doj.gov>
Sent: Mon Feb 12 20:24:01 2007
Subject: RE: NAIS Meeting

Please give me a call at 202-307-2090 when you have a minute; need to discuss a related issue with you.

-----Original Message-----

From: Chiara, Margaret M. (USAMIW) [mailto:MM.Chiara@usdoj.gov]
Sent: Monday, February 12, 2007 5:36 PM
To: Elston, Michael (ODAG)
Cc: McNulty, Paul J
Subject: Re: NAIS Meeting

This is a good call. Thank you. I am aware of the required procedure to secure subcommittee assignments. The 2 interims were invited to ensure continuity of service to their district's Indian Country population. Now that NAIS is convening on March 13 + 14, am I chairing the meeting and departing on March 16 or shall I work out other arrangements with NAIS members after I announce on Feb. 23? Margaret

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Elston, Michael (ODAG) <Michael.Elston@usdoj.gov>
To: Chiara, Margaret M. (USAMIW) <MChiara@usa.doj.gov>
CC: McNulty, Paul J <Paul.J.McNulty@usdoj.gov>; Shappert, Gretchen (USANCW) <GShappert@usa.doj.gov>
Sent: Mon Feb 12 15:43:49 2007
Subject: NAIS Meeting

Margaret:

I have spoken to Gretchen Shappert, and, as you recommended and based on the additional information Gretchen provided, I have concluded that it makes sense to keep the meeting date as scheduled in March despite the absence of some long-time members of the subcommittee.

You also mentioned that two new members of the subcommittee from Arizona and Western Washington would attend. I don't have any problem with the interims from Arizona and Western Washington attending, but I wanted to make it clear that they are not members of the subcommittee. New U.S. Attorneys do not simply succeed their predecessors on AGAC or its subcommittees, and normally interims are not made members of AGAC subcommittees except in unusual circumstances. There is a process for appointment to subcommittees, and neither interim has been appointed to the subcommittee.

Thanks again for bringing this issue to my attention.

Mike

Elston, Michael (ODAG)

From: Chiara, Margaret M. (USAMIW) [MM.Chiara@usdoj.gov]
Sent: Thursday, February 15, 2007 11:25 AM
To: Elston, Michael (ODAG)
Subject: RE: Status

I am enormously relieved.

Additional time would be helpful and appreciated. As you would expect, I daily pursue options. At the outset, I assumed that my "next step" would be resolved by now. Thank you for making an effort on my behalf.

Margaret

From: Elston, Michael (ODAG)
Sent: Thursday, February 15, 2007 10:51 AM
To: Chiara, Margaret M. (USAMIW)
Subject: Re: Status

Your name did not come up. We are still mulling over the date. I assume that you would not mind additional time if I can achieve consensus on that here?

-----Original Message-----

From: Chiara, Margaret M. (USAMIW) <MM.Chiara@usdoj.gov>
To: Elston, Michael (ODAG)
Sent: Wed Feb 14 22:26:51 2007
Subject: Status

I am confident that Paul deftly handled the senatorial scrutiny. However, I do need to know if my identity was disclosed. Announcement date and departure date must be confirmed. Margaret

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Elston, Michael (ODAG) <Michael.Elston@usdoj.gov>
To: Chiara, Margaret M. (USAMIW) <MChiara@usa.doj.gov>
Sent: Mon Feb 12 20:24:01 2007
Subject: RE: NAIS Meeting

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-----Original Message-----

From: Chiara, Margaret M. (USAMIW) [mailto:MM.Chiara@usdoj.gov]
Sent: Monday, February 12, 2007 5:36 PM
To: Elston, Michael (ODAG)
Cc: McNulty, Paul J
Subject: Re: NAIS Meeting

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3/12/2007

DAG000000708

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Elston, Michael (ODAG) <Michael.Elston@usdoj.gov>
To: Chiara, Margaret M. (USAMITW) <MChiara@usa.doj.gov>
CC: McNulty, Paul J <Paul.J.McNulty@usdoj.gov>; Shappert, Gretchen (USANCW) <GShappert@usa.doj.gov>
Sent: Mon Feb 12 15:43:49 2007
Subject: NAIS Meeting

Margaret:

I have spoken to Gretchen Shappert, and, as you recommended and based on the additional information Gretchen provided, I have concluded that it makes sense to keep the meeting date as scheduled in March despite the absence of some long-time members of the subcommittee.

You also mentioned that two new members of the subcommittee from Arizona and Western Washington would attend. I don't have any problem with the interims from Arizona and Western Washington attending, but I wanted to make it clear that they are not members of the subcommittee. New U.S. Attorneys do not simply succeed their predecessors on AGAC or its subcommittees, and normally interims are not made members of AGAC subcommittees except in unusual circumstances. There is a process for appointment to subcommittees, and neither interim has been appointed to the subcommittee.

Thanks again for bringing this issue to my attention.

Mike

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Wednesday, February 14, 2007 7:17 PM
To: Goodling, Monica
Subject: Chiara

DAG favors hiring her as an AD at the NAC.

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Thursday, February 15, 2007 4:51 PM
To: Goodling, Monica; Hertling, Richard; Nowacki, John (USAEO)
Subject: RE: Release

I have spoke to Kevin.

From: Goodling, Monica
Sent: Thursday, February 15, 2007 4:41 PM
To: Hertling, Richard; Elston, Michael (ODAG); Nowacki, John (USAEO)
Subject: Release

Richard -- Schools is informing his staff right now. Nowacki is calling the judge. Elston is calling Kevin Ryan. You are clear to go ahead and start calling the Senators.

All -- Please confirm once you have completed your calls and we'll get the release to SDCA at that point. Thanks.

<< File: Hewitt - Schools Release.pdf >>

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Thursday, February 15, 2007 4:58 PM
To: Macaulay, Luke (USACAN)
Cc: Ryan, Kevin (USACAN); Choi, Eumi (USACAN); Scolinos, Tasia
Subject: Press Release

Attachments: Hewitt - Schools Release.pdf

Luke:

Attached is a press release that we would like to have issued from NDCA as soon as possible. I have spoken with Kevin about it. When you have issued the press release, please reply to this message with confirmation that it has been released to the media.

Thank you for your assistance.

Mike



Hewitt - Schools
Release.pdf (...)

Michael J. Elston
Chief of Staff and Counselor
to the Deputy Attorney General
950 Pennsylvania Avenue, N.W., Room 4210
Washington, D.C. 20530
(202) 307-2090
(202) 514-9368 (fax)

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Friday, February 16, 2007 3:25 PM
To: Chiara, Margaret M. (USAMIW)
Subject: Re: FYI only

Please call me at 202 305 5872.

-----Original Message-----

From: Chiara, Margaret M. (USAMIW) <MM.Chiara@usdoj.gov>
To: Elston, Michael (ODAG)
Sent: Fri Feb 16 15:16:25 2007
Subject: Re: FYI only

Just when I thought I had dodged a bullet..... I am away from Michigan until Tuesday. However, I am ready to deal with whatever must be confronted with help from my assistant and FAUSA. In order to issue the press release, I do need my departure date. Our last exchange was pre (March 9) and post (March 16) NAIS. So, can we make it mid March in case I am compelled to announce even before February 23? Margaret

Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Elston, Michael (ODAG) <Michael.Elston@usdoj.gov>
To: Chiara, Margaret M. (USAMIW) <MChiara@usa.doj.gov>
Sent: Fri Feb 16 13:30:50 2007
Subject: FW: FYI only

Margaret:

In the category of forewarned, forearmed.

Mike

From: Goodling, Monica
Sent: Friday, February 16, 2007 12:35 PM
To: Elston, Michael (ODAG)
Subject: FW: FYI only

FYI - Looks like someone is trying to out Chiara and it may break soon. Dan Eagan called Rachel Paulose's office this morning and said he was following up on a tip that a female U.S. Attorney in the midwest was asked by Main Justice to step down from her post on December 7. Rachel's office told him it could not have been her because she wasn't even confirmed until December 9. He said, "Sorry. Bad tip. Ignore the call."

From: Paulose, Rachel (USAMN) [mailto:Rachel.Paulose@usdoj.gov]
Sent: Friday, February 16, 2007 12:32 PM
To: Goodling, Monica; Roehrkasse, Brian
Subject: FYI only

<<Press Inquiry>> <<Telephone Call>>

Rachel K. Paulose

United States Attorney, District of Minnesota
600 U.S. Courthouse
300 South Fourth St.
Minneapolis, MN 55415
(612) 664-5600
rachel.paulose@usdoj.gov

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Friday, February 16, 2007 3:36 PM
To: Goodling, Monica; McNulty, Paul J; Sampson, Kyle
Subject: FW:

I have a one-member fan club in California!

-----Original Message-----

From: Ryan, Kevin (USACAN) [mailto:Kevin.Ryan@usdoj.gov]
Sent: Thursday, February 15, 2007 10:17 PM
To: Elston, Michael (ODAG)
Cc: Ryan, Kevin (USACAN)
Subject:

Mike,

You have been a gentleman in your dealings with me, and I appreciate it.

Thanks,

Kevin

Sent from my GoodLink synchronized handheld (www.good.com)

Elston, Michael (ODAG)

From: Margolis, David
Sent: Monday, February 19, 2007 2:49 PM
To: Moschella, William; Elston, Michael (ODAG)
Subject: FW: Thank you

here is my proposed response- any qualms or suggestions?
Carol: sorry that we did not have an opportunity to say goodbye last week. i am confident that you will have great s
Best Wishes,
David

From: Lam, Carol (USACAS) [mailto:Carol.Lam@usdoj.gov]
Sent: Friday, February 16, 2007 1:19 AM
To: Margolis, David
Subject: Thank you

David,

I've really enjoyed every minute of my time as U.S. Attorney. Thank you for helping me have that experience, and for your valuable counsel over the years. I hope that life continues to treat you well.

Warmest regards,

Carol

Contact information:

(Beginning February 26, 2007):
Carol Lam

Elston, Michael (ODAG)

From: Elston, Michael (ODAG)
Sent: Monday, February 19, 2007 8:57 PM
To: Margolis, David; Moschella, William
Subject: Re: Thank you

Fine, except that you do not have an expense account

-----Original Message-----

From: Margolis, David
To: Moschella, William; Elston, Michael (ODAG)
Sent: Mon Feb 19 14:49:03 2007
Subject: FW: Thank you

here is my proposed response- any qualms or suggestions?

Carol: sorry that we did not have an opportunity to say goodbye last week. i am confident that you will have great success in your new endeavor and i wish you all the best. When you come to D.C., i would like to take you to lunch on my expense account.

Best Wishes,
David

From: Lam, Carol (USACAS) [mailto:Carol.Lam@usdoj.gov]
Sent: Friday, February 16, 2007 1:19 AM
To: Margolis, David
Subject: Thank you

David,

I've really enjoyed every minute of my time as U.S. Attorney. Thank you for helping me have that experience, and for your valuable counsel over the years. I hope that life continues to treat you well.

Warmest regards,

Carol

Contact information:

(Beginning February 26, 2007):
Carol Lam

Elston, Michael (ODAG)

From: Chiara, Margaret M. (USAMIW) [MM.Chiara@usdoj.gov]
Sent: Wednesday, February 21, 2007 11:18 AM
To: Elston, Michael (ODAG)
Subject: WDMI - ASAP
Importance: High

Please contact me via cell phone or through my office 616-456-2404 Assistant Karrie Wichtman) regarding end date and interim. Press release and several mailings are presently being prepared.

Margaret

Elston, Michael (ODAG)

From: Chiara, Margaret M. (USAMIW) [MM.Chiara@usdoj.gov]
Sent: Wednesday, February 21, 2007 5:13 PM
To: McNulty, Paul J
Cc: Elston, Michael (ODAG)
Subject: WDMI Update

Paul: My thanks for your telephone call this afternoon. I did some quick checking. It appears that information about me is beginning to circulate in the district. I have expended an enormous amount of effort trying to contain this situation. Therefore, I believe that staying with the February 23 announcement date is the best approach. All I need to go forward is the departure date. I now understand that there is to be no mention of the interim appointment in the press release. I will anticipate hearing from Michael Elston as soon as he is available.

Margaret

Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Wednesday, February 21, 2007 7:22 PM
To: McNulty, Paul J; Moschella, William; Elston, Michael (ODAG); Margolis, David; Hertling, Richard; Goodling, Monica
Subject: Draft response to Reid/Durbin/Schumer/Murray letter re Cummins-Griffin
Importance: High
Attachments: reid letter re cummins-griffin.doc

All, can you please review and provide comments on my draft response to the above-referenced letter? Richard, can you send the .pdf version of the above-referenced letter around to this group?
Thanks!



reid letter re
cummins-griffin...

Kyle Sampson
Chief of Staff
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2001 wk.
(202) 305-5289 cell
kyle.sampson@usdoj.gov

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Senator Reid:

This is in response to your letter to the Attorney General dated February 8, 2007. An identical response has been sent to the other signatories of that letter.

The full quotation of the Attorney General's testimony at the Judiciary Committee hearing on January 18, 2007 (not the selective quote cited in your letter), more fairly represents his views about the appropriate reasons for asking a U.S. Attorney to resign. In full, the Attorney General stated: "I think I would never, ever make a change in a United States attorney for political reasons or *if it would in any way jeopardize an ongoing serious investigation. I just would not do it*" (emphasis added).

The Deputy Attorney General, at the hearing held on February 6, 2007, further stated the Department's view that asking U.S. Attorney Bud Cummins to resign so that Special Assistant U.S. Attorney Tim Griffin might have the opportunity to serve as U.S. Attorney is not, in the Department's view, an inappropriate "political reason." This is so, the Deputy Attorney General testified because, *inter alia*, Griffin was very well-qualified and had "a strong enough resume" to serve as U.S. Attorney, and Cummins "may have already been thinking about leaving at some point anyway." Indeed, at the time Griffin was appointed interim U.S. Attorney in December 2006 he had far more federal prosecution experience (in the Criminal Division and in the U.S. Attorney's office) than Cummins did at the time he was appointed U.S. Attorney in [insert month] 2001. In addition, Griffin has substantial military prosecution experience that Cummins does not have. And it was well-known, as early as December 2004, that Cummins intended to leave the office and seek employment in the private sector. See "The Insider Dec. 30," *Ark. Times* (Dec. 30, 2004) ("Cummins, 45, said that, with four children to put through college someday, he'll likely begin exploring career options. It wouldn't be 'shocking,' he said, for there to be a change in his office before the end of Bush's second term.").

In answer to your specific questions:

- The decision to appoint Tim Griffin to be interim U.S. Attorney in the Eastern District of Arkansas was made on or about December 15, 2006, after the second of the Attorney General's telephone conversations with Senator Pryor.
- The Department of Justice is not aware of anyone lobbying, either inside or outside of the Administration, for Griffin's appointment. In the spring of 2006,

following regular procedures, the Office of the Counsel to the President inquired of the Office of the Attorney General as to whether Griffin (who then was on active military duty) might be considered for appointment as U.S. Attorney upon his return from Iraq.

- As the Deputy Attorney General testified, Cummins' continued service as U.S. Attorney was not considered at the same time as the other U.S. Attorneys that the Deputy Attorney General acknowledged were asked to resign for reasons related to their performance. As the Deputy Attorney General testified, the request that Cummins resign was "related to the opportunity to provide a fresh start with a new person in that position."
- The Department is not aware of Karl Rove playing any role in the decision to appoint Griffin.

In conclusion, the Department wholeheartedly agrees with the principle that "[o]nce appointed, U.S. Attorneys, perhaps more than any other public servants, must be above politics and beyond reproach; they must be seen to enforce the rule of law without fear or favor." That many U.S. Attorneys, appointed by Presidents of both parties, have had political experience prior to their appointment does not undermine that principle.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

February 21, 2006

MEMORANDUM FOR THE ACTING DEPUTY ATTORNEY GENERAL

THROUGH: Uttam Dhillon
Associate Deputy Attorney General

Michael Elston
Chief of Staff

FROM: John S. Irving
Counsel to the Deputy Attorney General

SUBJECT: Project Safe Neighborhoods
Review of FY 2005 District Performance

CC: William Mercer
Principal Associate Deputy Attorney General

I. Executive Summary

The purpose of this memorandum is to evaluate the performance of district PSN initiatives, identify exceptional and underperforming districts, and make appropriate recommendations to the Acting Deputy Attorney General. The memorandum also provides explanations for districts that might appear to be underperforming based on prosecution statistics alone. It also documents the present effort to maintain accountability and the effort made during an initial evaluation in 2004.

Having reviewed prosecution statistics, available crime rates, the districts' October 2005 PSN Reports to the Attorney General, comments by the districts' main DOJ points of contact, ATF case referral statistics, and other information, I make the following recommendations:

- The Acting Deputy Attorney General should contact the following districts to recognize their efforts and successful PSN initiatives: 7
- The following districts experienced a decrease in Federal firearms prosecutions of 25% or more in FY 2005, and the Acting Deputy Attorney General should contact the U.S. Attorneys to offer encouragement, confirm that PSN remains a Presidential initiative, and in some cases, express concern about the districts' PSN initiatives: The Southern District

DAG00000723

of California,
and

- The following districts experienced a decrease in Federal firearms prosecutions of 25% or more in FY 2005, but any issues can be resolved at the staff level and do not require the attention of the Acting Deputy Attorney General:

II. Background

A. General

This is the second review of USAO district performance since PSN's inception in 2001. The attached documents demonstrate that the first review in 2004 started with a review of prosecution statistics – comparative numbers of Federal firearms cases filed and defendants charged. It then considered a number of other factors, such as any available crime statistics, EOUSA "EARS" reviews, and any awards the districts received for their PSN efforts.

Federal Firearms prosecution statistics also were a starting place for the current review. I looked first to districts where prosecutions decreased by 25% or more in FY 2005 to identify districts that might be underperforming. Using prosecution statistics to review district performance has been a topic of considerable discussion. From the beginning of PSN, the "Accountability" tenant of the program was not meant to measure a district's performance by prosecution numbers alone. Performance was to be measured by "outcome," rather than "output." The original Implementation Guide for PSN Partners" notes that measurement of district initiatives should be both "an assessment of outcome . . . and trend analysis" of the district's particular gun crime challenges. The guide reads as follows:

Although numerical counts of arrests and convictions are important indicators, the success of any particular strategy is not reducible to those measures alone. Accordingly, the goal of the accountability component of the initiative is not to judge the United States Attorneys' efforts based on a predetermined target number of arrests and convictions in their districts. Rather, the accountability component should serve primarily as a means for the United States Attorneys and their PSN partners to keep abreast of the changes occurring in the districts, to assist them in evaluating their efforts in light of those challenges, and to provide them and their partners with an opportunity to retool their gun plans to address the emerging issues in the districts.

While prosecution statistics alone were never meant to be the sole measure of district performance, they have evolved into a benchmark. This is in part because prosecution numbers have been increasing at such astronomical rates that they have been convenient tools to illustrate the Department's PSN efforts. Prosecution statistics also are among the few national numbers that are available and current -- unlike crime statistics that typically are at least a year old when released and focus on cities, rather than on districts.

As in the 2004 review, a number of other factors have been considered here in an effort to make a more complete and fair evaluation of the districts' PSN initiatives. To start, this review considers prosecution statistics dating back to FY 1994, not just the increases and decreases of the last year. It also considers such information as the districts' October 2005 PSN reports to the Attorney General, comments by the districts' points of contact on the main DOJ Firearms Enforcement Assistance Team, ATF referral statistics, and crime statistics where they are available.

The districts are divided below into three categories: (1) districts with PSN initiatives deserving of recognition for exceptional performance; (2) districts that experienced a decrease in Federal firearms prosecutions of 25% or more in FY 2005 that would likely benefit from contact from the Acting Deputy Attorney General, and (3) districts that experienced a decrease in Federal firearms prosecutions of 25% or more in FY 2005, but where any issues can be resolved at the staff level and do not require the attention of the Acting Deputy Attorney General.

Had this review occurred a year ago, I might have recommended that the Acting Deputy Attorney General contact more of the districts that are listed in the third category. The current recommendations are made with the understanding that PSN will now be focusing much of its attention on anti-gang efforts. Because that shift will involve new measurement criteria, it makes less sense to scrutinize districts for decreased firearms prosecution rates. I also have been mindful of the fact that the Acting Deputy Attorney General is awaiting confirmation, and that the U.S. Attorneys are his colleagues.

B. The 2004 Review

The first review of USAO district performance was initiated by a memorandum dated March 10, 2004 (see Tab 1), from then-EOUSA Director Guy Lewis to then-Counsel to the Attorney General Kyle Sampson identifying sixteen districts that appeared to be prosecuting Federal firearms offenses below their potential. The list was based in part on FY 2003 statistics for Federal firearms cases filed and Federal firearms defendants, but EOUSA considered other factors, including national prosecution statistics, violent crime statistics, and EOUSA's "EARS" reports.

PSN Coordinator Spence Pryor then narrowed the sixteen districts to twelve:
the Southern District of California.

Around the time of the June 2004 PSN conference in Kansas City, Deputy Attorney General Jim Comey met with or made calls to the U.S. Attorneys from those districts. Also present for the meetings and calls was some combination of Spence Prior, Principal Associate Deputy Attorney General Chuck Rosenberg, and Kelly Shackelford of EOUSA.

Spence Prior documented the results of those conference calls and meetings in a memorandum (see Tab 2) to Kyle Sampson dated July 20, 2004. From information received in the DAG's conversations with the U.S. Attorneys and from additional materials submitted by at least two of the listed districts, it was determined that the following districts were engaged in PSN despite the statistics, and that additional follow-up was unnecessary: the

The following chart contains historical and current information about the twelve districts that were brought to Deputy Attorney General Comey's attention:

District	U.S. Attorney in 2004	Current U.S. Attorney	Federal Firearms Cases Brought in FY 2002	Federal Firearms Cases Brought in FY 2003	Federal Firearms Cases Brought in FY 2004	Federal Firearms Cases Brought in FY 2005	Percent Change from FY 2004 - FY 2005	FY 2005 Ranking (out of 94)
			154	108	144	131	-9%	58
Southern District of California	Carol Lam	Same as 2004	24	17	18	12	-33%	86
			156	167	159	152	-4.4%	51

District	U.S. Attorney in 2004	Current U.S. Attorney	Federal Firearms Cases Brought in FY 2002	Federal Firearms Cases Brought in FY 2003	Federal Firearms Cases Brought in FY 2004	Federal Firearms Cases Brought in FY 2005	Percent Change from FY 2004 - FY 2005	FY 2005 Ranking (out of 94)
			83	96	86	96	11.6%	29
			176	193	252	223	-11.5%	62
			65	56	90	87	-3.3%	49
			15	8	2	9	350%	1
			16	4	20	12	-40%	90
			50	41	111	99	-10.8%	60
			127	111	120	171	42.5%	8
			30	28	33	31	-6.1%	53

* Denotes districts that later were deemed to be engaged in PSN and not in need of follow-up.

III. National Trends Based on FY 2005 Prosecution Numbers

FY 2005 prosecution statistics from EOUSA show that the districts continue to prosecute gun crimes at historic highs, but some of the figures deserve attention. I have included the list of districts sorted by percentage of increase or decrease between FY 2004 and FY 2005 (see Tab 3) and the list of district prosecution numbers dating back to 1994 (see Tab 4).

In FY 2005, the districts filed a total of 10,841 Federal firearms cases – a 2% decrease from the 11,067 cases filed in FY 2004. Forty-four of the districts (46.8%) filed more cases in FY 2005 than in FY 2004. Forty-eight (51%) of the districts filed fewer cases. Two districts prosecuted the same number of cases. There are a few statistical anomalies in the group – such as a 350% increase for prosecuting two cases in FY 2004 and nine in FY 2005, and the fact that the increase from zero to one does not register as a percentage.

Even with a 2% decrease from FY 2004 to FY 2005, the 10,841 cases filed in FY 2005 represents a 2.6% increase over those filed in FY 2003, a 27% increase over those filed in FY 2002, a 54% increase over those filed in FY 2001, and a 72.6% increase over the 6,281 cases filed in FY 2000. It also should be noted that the number of defendants charged with Federal firearms offenses increased, albeit by less than one percent, from 12,962 in FY 2004 to 13,062 in FY 2005. Defendants charged with federal firearms offenses are still being sentenced to significant jail time. In FY 2005, over 93% of offenders received prison terms and over 68% were sentenced to three or more years in prison. By comparison, approximately 94% received prison terms and 73% were sentenced to three or more years in prison in FY 2004.

The following chart contains Federal firearms prosecution information for the sixteen districts that experienced decreases of 24.8% or more in cases filed between FY 2004 and FY 2005:

District	U.S. Attorney	Federal Firearms Cases Brought in FY 2002	Federal Firearms Cases Brought in FY 2003	Federal Firearms Cases Brought in FY 2004	Federal Firearms Cases Brought in FY 2005	Percent Change from FY 2004 - FY 2005	FY 2005 Ranking (out of 94)
		177	234	246	185	-24.8%	78
		50	82	124	93	-25.0%	79
		35	35	48	36	-25.0%	80

District	U.S. Attorney	Federal Firearms Cases Brought in FY 2002	Federal Firearms Cases Brought in FY 2003	Federal Firearms Cases Brought in FY 2004	Federal Firearms Cases Brought in FY 2005	Percent Change from FY 2004 - FY 2005	FY 2005 Ranking (out of 94)
		107	125	153	110	-28.1%	82
		67	41	41	29	-29.3%	83
		105	167	188	129	-31.4%	84
		194	233	283	192	-32.2%	85
* Southern District of California	Carol Lam	24	17	18	12	-33.3%	86
		73	61	72	47	-34.7%	87
		42	49	101	64	-36.6%	88
		190	246	271	170	-37.3%	89
		16	4	20	12	-40.0%	90
		133	129	143	83	-42.0%	91
		21	45	50	29	-42.0%	92
		35	24	61	30	-50.8%	93

Noted in the list of 12 underperforming districts in FY 2003, above.

IV. Some Common Explanations

The districts cite some common reasons for declining firearms prosecution statistics. First, the lack of state and local grant funding in FY 2005 took its toll on partnerships and task forces. Unfortunately, many of the districts' two and three year grants to local prosecutors' offices, media partners, research partners, and others were expiring at the same time. Perhaps as detrimental as discontinued funding for PSN partners was the effect that the FY 2005 budget had on morale and on the confidence of task force members that PSN would continue to be a priority for the Department.

Some districts also have complained of decreased ATF referrals of felon-in-possession cases "adopted" from state agencies, and that the ATF is instead shifting its focus to longer-term investigations. I have included ATF referral statistics for the districts listed below. They show a mixture of results – in some cases declining and in others increasing while prosecution numbers decreased.

Some districts, such as the _____, are still working their way out from under the large number of cases they filed in FY 2004. A portion of those cases continued into FY 2005, and districts lacking their own appellate sections are briefing and arguing more appeals -- particularly in the wake of the Supreme Court's decisions in United States v. Booker, 543 U.S. 220 (2005), and Blakely v. Washington, 542 U.S. 296 (2004).

V. Districts With Exceptional PSN Initiatives

This was a difficult list to keep short, as so many districts have exceptional PSN initiatives. The following districts deserve recognition for excellence in FY 2005, consistent high performance, and some staggering prosecution numbers.

A. District _____

The _____ District _____ was one of the districts brought to the attention of Deputy Attorney General Jim Comey in 2004. After the contact between the Deputy Attorney General and _____ the U.S. Attorney sent a memorandum to EOUSA defending the district's PSN initiative (see Tab 5). In the later memorandum by Spence Prior, it was noted that "This is not a district that has any problems with its PSN program," and it was decided that additional follow-up was unnecessary.

The _____ District _____ deserves some recognition for its PSN efforts, and for an impressive 42.5% increase in Federal firearms cases filed in FY 2005 over FY 2004 – making it the district with the eighth highest percentage increase. The district went from 111 cases in FY 2003 to 120 in FY 2004 to 171 in FY 2005.

is still the U.S. Attorney in the District. The district's website contains a page dedicated to PSN and an outline of how the district is implementing its PSN initiative. The district's October 2005 PSN Report to the Attorney General provides extensive details about the district's partnerships, initiatives, and best practices. The report notes particular success with its "Project Disarm" initiative in and where it concentrates its enforcement efforts on the ultimate goal of dismantling gangs. The report also provides details about the district's community outreach and Project Sentry efforts.

It is worth noting that the District has long received recognition for its PSN initiatives, particularly for its use of "call-in" or "notification" meetings for released offenders under court supervision. The District's program remains exceptional, despite a slight decrease in prosecution numbers, but the is due for some recognition.

B. District a

U.S. Attorney has long been a PSN champion. In June 2004, the District received an award for the Most Improved Gun Violence Program at the national PSN conference in Kansas City, Missouri. U.S. Attorney also assisted the Department in its PSN appropriations struggles last summer, providing information for letters to and to .

The District " task force has not rested on its accomplishments. The district filed 114 Federal firearms cases in FY 2005 – a 37.3% increase over the 83 cases filed in FY 2004 and the 14th highest percentage increase of the year. The district filed only 20 such cases in FY 2001. In FY 2002, that number rose to 31, and then to 92 in FY 2003. After a slight dip to 83 in FY 2004, the district hit its highest number yet in FY 2005. The 114 Federal firearms cases filed in FY 2005 are a 660% increase over the 15 filed in FY 2000.

C. District

has been the U.S. Attorney for the District since the Fall of 2001. The district has long been recognized for its PSN initiative, and it was included in a handful of districts suggested to the Attorney General's Office last Fall for a visit. With a staggering 341 Federal firearms cases filed in FY 2005, the district takes the prize for the highest number of cases filed in one year since at least FY 1994. The 341 cases filed in FY 2005 also represent a 5.6% increase over the 323 cases filed in FY 2004.

The PSN task force in the _____ District _____ reviews all arrests involving a firearm to determine whether offenders are eligible for Federal prosecution. Among the district's targeted offenders through FY 2004, 560 defendants had prior convictions for 2,030 felonies, including 14 murders, 131 robberies, and 275 burglaries. The district also has implemented a successful media strategy and a public outreach campaign that includes "call-in" meetings for released offenders under court supervision.

D.) District _____

U.S. Attorney _____ in the _____ District _____ is another PSN champion. In December 2005, U.S. Attorney _____ organized a state-wide PSN conference in December 2005 attended by the Attorney General. She also was of great assistance during the FY 2006 appropriations season. U.S. Attorney _____ volunteered to testify at a PSN hearing before the Judiciary Committee of the U.S. House of Representatives last summer, and she enlisted additional witnesses from her task force – the District Attorney from _____ and a reverend named _____, who has assisted the district's outreach efforts. The committee hearing was repeatedly rescheduled, and ultimately cancelled, but U.S. Attorney _____ was ready and willing throughout.

The _____'s PSN efforts led to a reduction in violent crime involving firearms in the district's five largest cities from 2003 to 2004. Homicides in Greensboro fell from 41 in 2003 to 16 in 2004. The district screens cases to determine whether offenders are eligible for Federal prosecution, and the substantial increases in Federal prosecutions have been mirrored in state courts. The district also has an active community outreach campaign that includes "call-in" meetings for released offenders under court supervision and "Project Fresh Start," a job-skills training program that provides employment opportunities for ex-offenders.

The number of Federal firearms cases in the _____ District _____ a decreased from 187 in FY 2004 to 161 in FY 2005, but (a) the 161 number is a substantial increase over the years dating back to FY 1994, and (b) the number of Federal firearms defendants in the district increased more than 17% from 148 in FY 2004 to 174 in FY 2005.

The other two _____ districts also deserve recognition for their efforts. In the _____ District, U.S. Attorney _____ saw an 8.1% decrease in Federal Firearms cases filed from FY 2004 to FY 2005, but the district still prosecuted 250 cases in FY 2005 – the sixth highest number out of all of the districts and more than double the number of cases it filed in FY 2001. The district's PSN Coordinator, _____, received an EOUSA Director's Award for her work on PSN, a fact recognized by the Attorney General in his speech at the state-wide PSN conference in November 2005.

In the _____ U.S. Attorney _____ saw a 12.7% increase in the number of Federal firearms cases filed – from 220 in FY 2004 to 248 in FY 2005. The district had the seventh-highest number of cases filed among all of the districts, and the FY 2005 number is more than triple the 82 cases filed in FY 2001. The _____ of _____ accomplished this despite a falling-out between the ATF and the _____ Police Department.

E. District

In FY 2005, the _____ maintained its FY 2004 prosecution rate of 179 Federal firearms cases – its highest since at least FY 1994 – and increased the number of defendants charged in FY 2004 by 57.1%.

U.S. Attorney _____ has held that position since March 2002. The _____ has implemented its PSN initiative in an ethnically and geographically diverse district that includes _____ and _____. The district's sources of gun violence range from domestic violence to armed felons to gang-related crime and drug trafficking in methamphetamine, prescription drugs, and crack cocaine. The district has assigned AUSAs to multiple sites, and it has implemented an aggressive "Project Sentry" initiative to address juvenile gun crime. According to UCR data comparing the first half of 2004 to the first half of 2005, the numbers of violent crime and murder stayed essentially the same in _____. In _____ the number of violent crimes increased 4.3%, but homicides decreased 16% from 50 to 42. In _____, violent crime fell 11% and homicides decreased 26% from 11 from 15.

F. Other Noteworthy Districts

Margaret Chiara has been the U.S. Attorney for the **Western District of Michigan** since the Fall of 2001. The number of Federal firearms cases filed by that district increased from 72 in FY 2004 to 109 in FY 2005 – a 51.4% increase. Nationally, the district had the seventh highest percentage increase in cases filed in FY 2005. With the exception of a dip in prosecution numbers in FY 2004, the district has steadily increased its firearms prosecutions, which have nearly doubled since 58 cases were filed in FY 2001.

The _____ respectively filed the second, tenth, eleventh, and twelfth highest number of Federal firearms cases in FY 2005. Under U.S. Attorney _____ District _____ filed 285 cases in FY 2004 – its highest ever and more than triple the 89 cases filed in FY 2000. Under U.S. Attorney _____ until his resignation in June 2005 and then U.S. Attorney _____ the _____ District _____ filed 223 Federal firearms cases in FY 2005,

a slight dip since the district filed 252 cases in FY 2004, but still a substantial volume of cases.¹ Under U.S. Attorney [redacted] filed 214 Federal firearms cases in FY 2005 – its highest since at least FY 1994. Under U.S. Attorney [redacted] filed 211 Federal firearms cases in FY 2005 – a 40.7% increase over the 150 cases filed by the district in FY 2004 and the ninth highest percentage increase for FY 2005. In all, the four Texas districts prosecuted 933 cases in FY 2005 and more than 3,800 firearms cases since 2001.

VI. Districts Requiring the Attention of the Acting Deputy Attorney General

The following districts experienced a decrease in Federal firearms prosecutions of 25% or more in FY 2005. I recommend that the Acting Deputy Attorney General contact the U.S. Attorneys to confirm that PSN remains a Presidential initiative. With the exception of the Southern District of California, the following districts have relatively new U.S. Attorneys.

A. Southern District of California

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
SDCA	Carol Lam	24	17	18	12	-33.3%	86
ATF Referrals		98	75	143	152	6.3%	

Of the listed districts, the Southern District of California stands out as the only one with the same U.S. Attorney since 2002, a substantial urban population, almost no increase in cases filed from FY 2003 to FY 2004, a 33% decline in cases filed in FY 2005 (to a total of 12), and increased ATF referrals -- despite a call from DAG Jim Comey in June 2004. The Southern District of California's cases filed are at their lowest since 1994 – and that is the earliest year for which EOUSA provided records – despite 152 case referrals from the ATF in FY 2005.

The Southern District of California was among those identified as underperforming in the March 2004 memo from EOUSA to Kyle Sampson. The memorandum notes that the PSN Task Force was established in October 2002, after **Carol Lam** became the U.S. Attorney. The memorandum notes, however, that “[t]he most glaring statistic for this district is the overall

¹ The [redacted] District [redacted] was brought to the attention of Deputy Attorney General Jim Comey as one that might be underperforming. In the July memorandum from Spence Pryor to Kyle Sampson, it is noted that “USA is clearly engaged. At this point no follow-up is needed. Will review progress at conclusion of 2004.” In any event, Rosenberg is now the U.S. Attorney.

dearth of firearms prosecutions.” In a conference call with DAG Jim Comey prior to July 20, 2004, U.S. Attorney Carol Lam acknowledged that there were problems with the district’s PSN initiative, but explained that part of the problem was that the district had an enormous immigration problem and lacked adequate prosecutorial resources to focus on PSN. U.S. Attorney Lam expected the district’s PSN effort to improve through a new case-screening system with local prosecutors and a new point of contact in the U.S. Attorney’s Office who was to oversee the intake of all firearms cases.

In our efforts to educate Congress about the success of PSN and need for state and local grant funding in FY 2006, Assistant Attorney General for the Office of Legislative Affairs Will Moschella sent a letter to Senator Diane Feinstein describing the efforts of the three U.S. Attorney’s Offices in California. The following information was provided by U.S. Attorney Carol Lam:

PSN Enforcement, Southern District of California - The Southern District of California has made a concerted effort to support the goals of the PSN program by:

The Southern District has increased firearms prosecutions of gang members and other violent offenders. For example, in August 2003, the San Diego District Attorney's Office was awarded a PSN grant to fund the San Diego Violent Crimes Task Force - Gang Group in a multi-agency operation to combat gun violence in southeast San Diego. Typical of the results of this ongoing, joint Federal and state effort, six Federal and state search warrants were executed in August 2005 to address the violent nature of a local street gang in the targeted area. Drugs were seized and 12 weapons (including a pistol with silencer and 2 assault rifles) were taken off the streets.

PSN Regional Identification of Firearms Project - PSN funding has provided gun-tracing analysis of firearms involved in crimes such as homicides, attempted murder, drug charges and felony in possession charges. Images of bullets and cartridge casings entered into the database system has increased progress in identifying guns used in crimes and linking them to criminal suspects. The program is supported by local, state, and Federal law enforcement, and without PSN funding, the equipment and highly-trained technician may be lost.

Youth Gun Violence Reduction - PSN funding has increased awareness through education in the Youth Gun Violence Reduction area by implementing the Bureau of Alcohol, Tobacco, Firearms and Explosives' G.R.E.A.T. program in San Diego schools in high risk areas. Gun safety brochures, in English and Spanish, have been circulated at community events to youth and families in high risk areas.

The district has made some efforts, and U.S. Attorney Lam's assistance in the appropriations process is appreciated, but there ought to be more to say about the district's PSN enforcement efforts in its fourth year than citing to a 2003 grant and six search warrants.

In its October 2005 report to the Attorney General on its PSN efforts, the district acknowledges a need for technical assistance in the areas of prosecution protocols, media outreach, and law enforcement strategies. The district states that it has requested and is planning to receive that assistance from MSU. The district reports that it does engage in case screening, and it focuses those efforts on domestic violence and alien-in possession cases. The district identifies gangs, drugs, felons-in-possession and aliens-in-possession as the sources of its gun violence problem. It notes that the effectiveness of its strategies has not been assessed and that one of its obstacles has been "turnover of key personnel."

Crime statistics do show a decrease in the number of violent crimes and homicides in San Diego. According to the FBI's UCR data, violent crime in the first half of 2005 declined there 8.8 % from the same period in 2004, and the homicides declined 23% from 30 to 23. I was unable to find crime statistics for El Cajon, the primary focus area of the district's task force.

B. District

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		177	234	246	185	-24.8%	78
ATF Referrals		207	252	250	226	-9%	

Michael Garcia was only confirmed as the U.S. Attorney for the District in 2005. The fact that U.S. Attorney Garcia had little, if anything, to do with the decreased prosecution numbers is an opportunity. I recommend that the Acting Deputy Attorney General contact the U.S. Attorney to emphasize the importance of PSN, note some concern about the district's prosecution numbers, and offer encouragement.

_____ was confirmed as the U.S. Attorney for the _____ District in 2005. He was an Assistant United States in that office from _____

Federal firearms cases in the _____ dropped 24.8% from 246 in FY 2004 to 185 in FY 2005, although the FY 2005 number is still substantially above those filed

in other recent years. The number of firearms defendants are proportionate – slipping from 333 in 2004 to 292 in 2005, but still above the numbers for other recent years. It is noteworthy that ATF referrals also declined from 250 in 2004 to 226 in 2005, and that the district likely is not lacking in armed felons. Crime statistics are not available specifically for the district, but UCR data for _____ shows decreasing violent crime and murder rates. Violent crime declined 3% in the first half of 2005 compared to the same period in 2004, and murders declined 14% -- down from 278 in 2004 to 238 in 2005.

Unfortunately, we did not receive a PSN report to the Attorney General from the _____ in October 2005, so I do not have additional details about the district's strengths and weaknesses. Information about the district's PSN initiative also is not available on the internet, as the district's website does not have a page devoted to its PSN efforts.

On the other hand, please be aware that the district's PSN Coordinator, _____, has been responsive to my calls and was very helpful in providing information during the FY 2006 appropriations season. With her feedback, we were able to send the following information to Rep. _____ during the FY 2006 appropriations season:

PSN Enforcement in the _____ - In _____
District _____, the PSN task force includes the U.S. Attorney's Office,

District Attorney's Office, _____ District Attorney's Office,
Crimestoppers, _____ Division of Criminal Justice Services, YMCA,
Boys and Girls' Club, _____ Overall Economic Development
Organization, Urban Institute, National Crime Prevention Council, and the U.S.
Department of Housing and Urban Development. As an example of the
cooperation within the task force, the U.S. Attorney's Office, _____

_____ review firearms-related
arrests and determine whether State or Federal prosecution will be more
effective in individual cases. The _____ t
_____ have received PSN grants to support gun prosecutor
positions.

The task force focuses its efforts primarily on gangs and drug trafficking. The task force also targets violent gun-related offenses, illegal possession of firearms by convicted felons and other prohibited persons, gun trafficking, and any firearm offenses in given high-crime "hot spots" in the district. Federal firearms prosecutions in the district increased by over 100% from FY 2000 to FY 2004.

The U.S. Attorney's Office in the District has used Federal firearms laws in its fight against street gangs. For example, the District prosecuted two members of rival crack cocaine distribution organizations under Federal firearms laws. Both were later charged with additional murder and narcotics related offenses, and the investigation led to the convictions of 11 members of the conspiracy and the effective dismantling of the criminal organization. Another felon-in-possession case led to the October 2004 conviction of [redacted] in an interstate crack cocaine distribution ring that stretched from New York to Virginia, and then to South Carolina. [redacted] and his crew were responsible for, among other things, the stripping, beating, shooting, and murder of an associate who lost a quantity of crack cocaine he had been instructed to sell. The victim's body was stuffed into a trashcan and dumped along an interstate highway. [redacted] faces life in prison. [redacted] and [redacted] face sentences of 25 years to life.

PSN Outreach - Recognizing that arrests and prosecutions alone will not effectively combat gun violence, the [redacted] has implemented a community outreach campaign to engage the community and educate citizens about the dangers of gun violence and the penalties for Federal firearms offenses. The district places public service messages on television, posters, flyers, bus shelters, and billboards to spread the message that "Gun Crime = Hard Time". Project Safe Neighborhoods grants also helped to support youth anti-gang initiatives implemented by the [redacted] YMCA and Pathways for Youth at summer youth camps.

It is important to note that [redacted] has benefitted from PSN grant funding in the past for the hiring of State and local gun crime prosecutors, prevention, media outreach, research, and strategic planning. You may be aware that PSN State and local grant funding provided to [redacted] in FY 2001 totaled \$5,725,948; in FY 2002 totaled \$4,458,008; in FY 2003 totaled \$3,396,006 and in FY 2004 totaled \$2,766,815. Without sustained funding, these programs will not be able to continue.

C. District

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		73	61	72	47	-334.7%	87
ATF Referrals		71	112	120	128	6%	

District [redacted] interim U.S. Attorney [redacted] has held his position since U.S. Attorney [redacted] left in August 2005. The Acting Deputy Attorney General should take the opportunity to offer encouragement and make clear the Department's emphasis on PSN. For further background information about the district, the Acting Deputy Attorney General should consult with Associate Deputy Attorney General David Margolis about the exit of former U.S. Attorney [redacted].

I understand that the PSN Coordinator in the office, [redacted] is engaged and effective, but the district's firearms prosecutions have fallen significantly – to their lowest number since they prosecuted 43 cases in FY 1999. The number of firearms defendants are proportionate – 47 defendants in FY 2005 down from 75 in FY 2004 – and the lowest number since 33 in FY 1998. Crime rates for the district are difficult to determine, as the FBI's UCR does not contain data for [redacted] or [redacted].

When the district's PSN Coordinator was asked by a main DOJ PSN point of contact about the declining prosecution numbers, the PSN Coordinator provided some fairly understandable explanations. To start, he said that the ATF shifted their focus to longer-term investigations and targeting chronic dangerous offenders. As a result, local police department officers had to obtain the various records necessary to prosecute the case, and it took those officers longer than it had taken ATF agents. ATF's data, however, show an increase in firearms cases referred to the district – up to 128 in FY 2005 from 120 in FY 2004. The PSN Coordinator reported an increase in Armed Career Criminal convictions and lengthy prison sentences as a result of the concentration on chronic offenders. He also reported success in the form of a 50% decrease in murders from FY 2004 to FY 2005 in a notorious targeted area of [redacted]. The district also transferred the primary gun prosecuting AUSA to a narcotics section, and divided that AUSA's caseload among other AUSAs in the general crime section who are unable to concentrate exclusively on guns. The PSN Coordinator also has spent much of his time training police officers and coordinating community and media outreach campaigns. These resource issues are understandable, but the district should be able to maintain a higher number of firearms prosecutions.

D. District

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		194	233	283	192	-32.2%	85
ATF Referrals		124	203	309	294	-4.8%	

The District has been among the most involved and active districts since PSN's inception. The recent decrease in firearms prosecution numbers does not cause concern because of the district's prior performance and because even the decreased FY 2005 number of cases filed represents an enormous increase over pre-PSN numbers. I recommend contact by the Acting Deputy Attorney General because there is an opportunity here: The interim U.S. Attorney has only held that post since October 2005, and he had little, if anything, to do with FY 2005 prosecution numbers. The Acting Deputy Attorney General would be able to recognize the district's past performance and emphasize the importance of PSN as a Presidential initiative without the contact being construed as a reprimand.

The district's decreased prosecution numbers are puzzling because the district has had a model PSN initiative. It has been cited as one of the "PSN Best Practice" districts for comprehensive case screening – a strategy where all local firearms-related arrests are reviewed to determine the most effective venue for prosecution. The district also is one of the few that has not used grant funds for personnel costs, which has insulated its program from the winds of Federal appropriations.

Interim U.S. Attorney has held that position since U.S. Attorney resigned in October 2005. The number of Federal firearms cases filed fell more than 32% from 283 in FY 2004 to 192 in FY 2005. The FY 2005 number also is lower than the 233 cases filed in FY 2003 and the 194 cases filed in FY 2002. Still, the FY 2005 number is more than triple the average of 55 cases filed per year from 1994 through 2001. Federal firearms defendant statistics are proportionate – 213 in FY 2005 down from 322 in 2004 and 263 in FY 2003.

UCR data is not available for the district's largest cities of and

The district does have some valid reasons for the decreased prosecution numbers in FY 2005. In response to an inquiry about decreasing prosecution numbers by the district's main DOJ point of contact, the following explanations were offered: The PSN Coordinator had a baby in the middle of the year, the U.S. Attorney resigned in October, the district lost an AUSA in their gun unit and was not allowed to hire a replacement, a Special AUSA left the office and the

replacement SAUSA was then deployed to Iraq, and the district (which does not have a separate appellate section) has been swamped with Blakely appeals.

VII. Districts in Need of Staff-Level Contact and Follow-up

The following districts experienced a decrease in Federal firearms prosecutions of 25% or more in FY 2005, but for the reasons stated below, I believe that any issues can be resolved at the staff level and do not require the attention of the Acting Deputy Attorney General. I recommend further contact with the district to obtain additional information about the districts' PSN efforts, crime statistics, and to offer assistance to ensure that the programs are running efficiently. I suggest that some of the districts be asked to outline the steps that they will take to measure their own performance in the coming year, and that their progress be monitored.

A. District

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		35	35	48	36	-25.0%	80

ATF Referrals	23	73	81	149	84%
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The District is one districts where the decrease in firearms cases filed might be the result of a particularly high number in FY 2004. U.S. Attorney has held his position since March 2003. After a spike of 48 firearms cases filed in FY 2004, the District slipped in FY 2005 to 36 cases – essentially is the recent norm in the district. The district's statistics on firearms defendants are interesting. The number of defendants increased from 80 in FY 2004 to 84 in FY 2005. FY 2002 was similar with 71 defendants, but there were significant spikes in FY 2001 (126 defendants) and in FY 2003 (142 defendants).

In its October 2005 report to the Attorney General, the district provided some statistics that do not quite match those from EOUSA, and further inquiry is needed to determine which figures are more accurate. The district stated that it had filed 32 PSN-related cases in Federal court in the preceding six months, representing a 60% increase from the preceding reporting period. The district also stated that those cases involved 82 defendants, representing an increase of 140% from the last reporting period. The district reported that from 2002 to 2005, violent crime decreased by 29.4%, and that the has not been cooperative.

B. District

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		50	82	124	93	-25.0%	79

ATF Referrals	64	130	202	165	-18%
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_____ has been the U.S. Attorney for the _____ District since October 2001. The district has been engaged in PSN, and its decrease in Federal firearms prosecutions are in large part due to the substantial increase in cases filed in FY 2004. However, due to some increasing crime statistics and in order to better assess the district's program in the wake of _____ I recommend further contact with the district on a staff level to obtain additional information and offer assistance.

Cases filed in the district slipped 25% from 124 in FY 2004 to 93 in FY 2005. Still, the FY 2005 number is almost double that of FY 2002, and it far exceeds the 39 cases filed in FY 2001 or the 26 in FY 2000. Federal firearms defendant statistics are proportionate. There were 108 defendants in FY 2005 -- below the 138 in FY 2004 but higher than the 96 in FY 2003, 65 in FY 2002, and 45 in FY 2001. It also is noteworthy that the ATF referrals dropped by nearly the same percentage as the cases filed in FY 2005.

Crime statistics in the district are disconcerting, and the UCR data comparing the first six months of 2005 to the same period in 2004 are not affected by _____. In _____ the violent crime rate rose 4.2% and the murder rate increased 40% from 15 in 2004 to 21 in 2005. In _____ the violent crime rate decreased 7.9%. The murder rate there increased 25%, but that translates to four murders in 2004 and five in 2005.

In its October 2005 PSN Report to the Attorney General, the district noted a number of successes. They are in the process of forming a full-time task force in _____ and they have been coordinating their PSN efforts with other law enforcement initiatives, such as Weed & Seed, OCDETF, and the FBI's Safe Streets initiative. The district also is engaged with its research partner, which is providing helpful information to the district. The district reports decreasing crime rates in the areas in which its PSN efforts have been focused.

C. District

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		103	147	186	135	-27.4%	81
ATF Referrals		124	131	152	187	23%	

The _____ is another district in need of some follow-up, but it is engaged and its decreased prosecution statistics do not yet rise to the level that necessitate contact from the Acting Deputy Attorney General.

_____ has held his position since March 2002, so he has some experience with PSN. In FY 2005, the district filed 135 cases – down 27.4% from FY 2004, despite a 23% increase in ATF referrals. The number of cases filed in the district in FY 2005 is also below the 147 cases filed in FY 2003, but it is above the 103 cases in FY 2002 and the 93 in FY 2001. The numbers of Federal firearms defendants in the district are proportionate – 157 in FY 2005, which is down from 233 in FY 2004 and 171 in FY 2003, but above the 123 in FY 2002 and the 105 in FY 2001.

UCR statistics comparing the first six months of 2005 to the same period of 2004 show mixed results and some notable homicide rate increases. In _____, the violent crime rate rose only 1% and murders decreased 66%, although that translates to one murder in 2005 compared to three in 2004. In _____, violent crime increased less than one percent, but murders rose over 43% -- from 39 in 2004 to 56 in 2005. A similar trend was seen in _____ where there was no meaningful change in the violent crime rate, but murders rose 275% from four to 15.

The district’s October 2005 PSN report to the Attorney General demonstrates that the district is engaged in PSN. It has formed partnerships in its three largest cities. The district screens local arrests for eligible Federal defendants, and it has a cross-designated local prosecutor who can prosecute firearms cases federally. The district was in the process of planning a new media campaign at the time of the report, and it has trained over 400 law enforcement officers on Federal firearms laws and PSN for each of the last three years. The district’s major concern was future PSN funding – it warned that a lack of funding would bring “a slow but steady reduction in our cases and an increase in violent crime.”

When asked about the declining prosecution numbers by a main DOJ PSN contact, the district PSN Coordinator explained that the decrease was due to the following circumstances: (a) the district prosecuted so many PSN cases in FY 2004 that it had a backlog of cases in FY 2005, (b) the district has been swamped with post-Booker appeals, and (c) the primary PSN AUSA in _____ tried a capital murder case while still bringing 50 PSN cases. The Main

DOJ PSN point of contact for the district reports that the PSN Coordinator, AUSA [redacted], has been helpful, cooperative, and supportive of PSN.

D. District

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
	le	107	125	153	110	-28.1%	82

ATF Referrals	140	211	226	266	17%
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The District is clearly engaged in PSN. I would like to know more about the reasons for the district's lower prosecution numbers and about its plans to address the increasing murder rates in [redacted] and [redacted], but this information can be obtained through staff-level contact.

[redacted] became the Director in June 2005. Federal firearms cases slipped significantly from 125 in FY 2003 and 153 in FY 2004 to 110 in FY 2005. The number of cases filed in FY 2005 was closer to the 107 filed in FY 2002 and the 101 filed in FY 2001, but all of those years' totals far exceed the average of 45 cases per year from FY 1994 to FY 2000. The numbers of Federal firearms defendants are proportionate – down from 146 in FY 2003 and 171 in FY 2004 to 139 in FY 2005.

UCR statistics comparing the first half of 2005 to the same period in 2004 show modest decreases in the number of violent crimes in [redacted] and [redacted]. However, murders increased in both cities – by one murder in [redacted] but a 31% increase in [redacted] from 16 in 2004 to 21 in 2005.

The [redacted] reports that it has been working in "Exile" partnerships since 1999, and the district's cooperation with researcher [redacted] is one of our best examples of data-driven law enforcement efforts. The district submitted an extremely detailed PSN report noting its use of such PSN "best practices" as screening local arrests for potential Federal cases, conducting "homicide reviews" to examine patterns in those cases, using offender "call-in" meetings to dissuade those under court supervision from engaging in gun violence, and building street-level cases into more sophisticated investigations.

E. District

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		67	41	41	29	-29.3%	83

ATF Referrals	71	60	57	39	-32%
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The District's report to the Attorney General indicates a well-developed PSN program, but I am concerned about the nearly 30% decrease in prosecution numbers. I recommend further staff-level contact with the district to obtain more information about its PSN initiative, crime trends, and the reasons for lower prosecution numbers.

has been the U.S. Attorney for the District since December 2001. Federal firearms cases in the district fell nearly 30% from 41 in FY 2004 and FY 2003 to 29 in FY 2005. The FY 2005 number is, however, a substantial increase from the average of 13 cases each year from FY 1994 through FY 2001. The district also is a relatively small one, and the nearly 30% decrease translates to a difference of 12 cases. On the other hand, holds a sizeable chunk of the I-95 corridor, nicknamed "The Iron Pipeline." It is noteworthy that the number of ATF firearms case referrals decreased at nearly the same rate – from 57 cases in FY 2004 to 39 in FY 2005, a 32% decrease. Trends in Federal firearms defendant numbers are consistent with the number of cases filed since FY 2001.

Recent UCR data is not available for the two largest cities in the district – and According to one press account, experienced a slight decrease in homicides in 2005, and "after a particularly bloody" 2004 with "near record shootings," major crimes decreased by 5% in the city. The article notes that the murder rate increased in 2005 in nearby and a, and decreased in and. There apparently is some disagreement between and other city leaders about how to address violent crime. According to the article, the mayor has said that social services and outreach initiatives "will have more of an impact over the long term than any policing strategy." After 2004, the mayor created the HOPE Commission" to examine and coordinate social services, education, faith-based initiatives and cultural programs.

The district's report to the Attorney General generally demonstrates engagement in PSN. It notes task forces members in and elsewhere, and the district reports that it is very satisfied with its research partner, Data Statistical Analysis Center. I am concerned about the district's method of measuring its performance. The report states in relevant part that "[t]he PSN Program will measure effectiveness by the percentage increase in charged Federal firearms offenders compared to pre-PSN levels. . . ." As an indication of success, the report boasts, "Since the beginning of our PSN efforts in September

2001, until the end of July 2005, we have prosecuted over three times as many Federal firearms defendants as in the immediately preceding corresponding period” – presumably referring to the years 1998-2001. Clearly, the district has decided that prosecuting felons in possession of firearms is an effective way to address gun violence, and it ought to compare its current performance to that of more recent years.

F. District

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		105	167	188	129	-31.4%	84
ATF Referrals		179	227	259	348	34.3%	

The District’s presence in this memorandum is puzzling. The district’s PSN program has been a model one, and its PSN Coordinator is involved in the district’s efforts. Given some of the PSN Coordinator’s stated reasons for the decline in Federal firearms prosecutions, crime statistics that have shown some improvement, and the district’s selection as a new ATF VCIT site, I recommend against raising the issue to the level of the Acting Deputy Attorney General. I instead recommend further staff-level contact with the district to obtain additional information and to monitor the district’s progress for the remainder of the fiscal year.

_____ became the U.S. Attorney for the _____ in December 2004. The district recently experienced a 31.4% decline in Federal firearms cases filed – falling from 188 in FY 2004 to 129 in FY 2005. At the same time, ATF referrals grew, with a 34.3% gain from 259 cases in FY 2004 to 348 cases in FY 2005. The cases filed in the district in FY 2005 also were lower than the 167 cases filed in FY 2003, so the recent decline apparently is not due to a spike in the number of cases filed in FY 2004. The number of Federal firearms defendants fell proportionately – there were 197 in FY 2005 down from 260 in FY 2004 and 268 in FY 2003.

The district’s crime statistics show a generally improving trend. UCR data comparing the first half of 2005 to the same period in 2004 indicates that violent crime decreased 14% and that homicides fell 31%. In October 2005, the district reported that the effectiveness of its PSN program is demonstrated by significant decreases in crime rates: From 2003-2005, homicides were down 38%, robberies decreased by 25%, shootings decreased by 40%, shooting victims by 37% and gun crimes by 41%. The district noted that the number of firearms seized during the same period increased 38%. In its request for ATF VCIT resources, the district pointed out lower violent crime and homicide numbers, but noted that _____ murder rate in 2004 was worse than that of all of the then-current VCIT cities aside from D.C., Baltimore, and Richmond.

The District's PSN report demonstrates that it is engaged in PSN, and that is consistent with its reputation. The district's task force meets weekly and reviews local firearm arrests for possible Federal cases. The district enjoys a close relationship with the District Attorney's office, which has actively pursued firearms offenses in state court. That office filed 877 state firearms cases in 2004 and a similar number in 2005. Federal prosecutors prioritize cases involving violent armed career criminals, even where the immediate case does not involve a firearm – which might make the statistics for Federal firearms cases filed an unreliable measurement of the district's PSN efforts. Examples of the district's innovative initiatives include flagging "PSN Highly Dangerous" offenders in the records of the Criminal Information Center, and the district's collaboration with the Housing Authority to abate nuisance properties and warn public housing residents about the consequences of committing firearms offenses.

The district's PSN Coordinator provided the following detailed email response to an inquiry about decreasing prosecution numbers by the district's point of contact at main DOJ:

The Firearms & Local Impact Offenses section, which prosecutes almost all the PSN cases in this district, charges defendants causing or contributing to gun violence under statutes other than 18 U.S.C. §§ 922, 924; these cases are not represented in the firearms statistics totals.

Many offenders, particularly in the PSN focus neighborhoods recognize possessing or carrying a firearm puts them at risk for Federal prosecution. Although many of these offenders continue to contribute to firearms violence, they are not armed when arrested or when a search warrant is executed. The Firearms & Local Impact Offenses section uses whatever Federal criminal statutes may be reasonably available to impact violent crime, particularly crime in the PSN focus neighborhoods. One example is a series of seven indictments against 15 defendants operating a heroin distribution ring in the PSN focus area unsealed July 28, 2005. These indictments charged few or no firearms charges, so their numbers would not appear in the 18 U.S.C. §§ 922, 924 statistics. Another example of charges not appearing in the EOUSA firearms statistics is a 15-defendant machine gun indictment returned August 14, 2005. Just those two examples alone change the percentage drop from 31.4% to 15.4%. Researching all the cases filed by the section would doubtless narrow the number even more significantly. Another example of a more complex prosecution completed during 2005 is one begun by an Assistant when she was in the Narcotics & OCDEF section and completed in May 2005, after she transferred to the Firearms & Local Impact Offenses. This case began as a 10 defendant drug trafficking conspiracy, and, on May 5, 2005, the three defendants who did not plead guilty were

convicted at trial, two of them on firearms charges, as well as on drug charges. The three have been sentenced: one to life in prison, plus 15 years; one to 15 years, and the other to 9 years. The preparation and trial took an estimated 6 weeks.

Although the Firearms & Local Impact Offenses section continues, when appropriate, to adopt purely reactive local cases, the heroin indictments mentioned above illustrate a shift to more strategic, more sophisticated investigations.

While the number of cases filed may be down from FY04 to FY05, more cases were completed in FY05 (163 to 147 in FY04), a 10.9% increase in completed cases. Since the number of cases indicted in FY04 (188) represented a 12.6% increase over FY03 (167), completing indicted cases reasonably shifts resources from initiating new ones. The shift to more complex-multi-defendant cases makes measuring defendants charged a better indicator of performance than measuring case initiations. When the number of defendants charged during this period also decreased (260 in FY04 to 197 in FY05, a 24.2% decrease), the average number of defendants per case filed increased slightly from 1.38 per case to 1.53 per case, and this reported increase does not include the defendants charged with non-firearms violations, like most of the defendants in the examples provided above.

Violent crime in the city of _____, the most violent area in the district, is down significantly, which reasonably affects the number of cases prosecuted. Although end-of-year numbers are not yet final, Part 1 firearms crime was down 12% from calendar year January 1, 2004 through December 3, 2005, and the two-year decrease for the same period from 2003 to 2005 was 25%. The homicide rate for the corresponding periods decreased 19% for one year, and 38% for two years. The _____ Police Department just announced the lowest homicide numbers since 1964.

Personnel losses and changes in personnel likely affected the number of cases filed.

On March 25, 2005, a former AUSA in the Firearms & Local Impact Offenses section, who had recently returned from maternity leave, resigned to stay at home with her young children. This AUSA was not replaced until 6-10-05. The replacement was an AUSA from the Narcotics & OCDETF section who brought her indicted cases from her former section with her. Another AUSA in the

Firearms & Local Impact Offenses section was on maternity leave during 2005, as well.

GAND answered the call for FISA help by detailing a different AUSA from the Firearms & Local Impact Offenses section to OIPR in DC from November 15, 2004-May 12, 2005.

Finally, during FY05 one AUSA in the Firearms & Local Impact Offenses section began to prosecute internet predators of children to fill a gap left when two AUSAs resigned. These AUSAs formerly handled almost all these cases in the district.

This lack of resources in part reflects the lack of resources generally available in the district to meet all of the Department's and local priorities. As ODAG is aware, GAND has fewer AUSAs to serve our district's very large and rapidly growing population than most districts. While the Department and the district have dedicated significant resources to PSN, in the long run, the overall lack of resources must produce a deleterious effect.

G. District

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		42	49	101	64	-36.6%	88

ATF Referrals	82	91	109	65	-40.3%
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The District's Federal firearms prosecutions fell significantly in FY 2005, but the district has supported PSN historically, and it is still prosecuting far more firearms cases than it was prior to FY 2004. I recommend that the matter be discussed at a staff level to obtain additional information about local crime trends and to monitor the district's performance.

has been the U.S. Attorney for the since April 2002. The district filed 64 Federal firearms cases in FY 2005 – more than a 36% decrease from the 101 cases filed in FY 2004. To place the latest number in context, though, 64 cases is still a substantial increase from the average of 37 cases filed from FY 1994 through FY 2003. The number of Federal firearms defendants has been proportionate – 90 in FY 2005 down from 141 in FY 2004 but substantially above any year dating back to FY 1994.

Recent crime statistics are not available in the UCR for the larger cities in the district:
and :

The District's commitment to PSN is evident from the district's October 2005 report to the Attorney General. The district's task force includes a multitude of state and local law enforcement partners, prosecutors, and probation offices. With the help of designated prosecutors in district attorneys' offices, cases are screened to identify those that are eligible for and warrant Federal prosecution. Using statistical data, the district focuses its efforts in the ten counties that experience the most significant gun crime.

The district reports a successful PSN initiative as measured by (1) firearms prosecution numbers that are "at historic highs;" (2) reduced incidents of firearms violence in the counties actively engaged in PSN; (3) the efficient distribution of approximately \$900,000 in grant funding that has facilitated prosecutions, provided equipment overtime pay to police departments, assisted battered women's shelters, and promoted the PSN initiative through media campaigns; and (4) knowledge that the district's efforts have prevented crimes, held offenders accountable, and helped victims.

The district's own evaluation of its PSN initiative is as follows:

In those communities where PSN is active violent crime is down and anecdotal information ties these violent crime reductions to our own efforts. Indeed, by every empirical measure which we have reviewed, our Project Safe Neighborhoods initiative is highly successful. Three statistics aptly illustrate the success of this effort: First, this initiative has resulted in a significant increase in firearms presentations throughout the district, with firearms prosecutions increasing by more than 100% over the lifetime of this program. Second, these prosecutions are exacting substantial sentences, with 98% of the cases resulting in prison terms and 56% of these prosecutions yielding jail terms exceeding 5 years. Third, this initiative is fostering stronger, local, state and Federal partnerships with more than half of our district's county district attorneys actively participating in the program in some fashion. Beyond these empirical measures of success, anecdotal evidence indicates that this district's initiative is having a concrete, positive impact on the communities we serve. Prosecutors [and] police agencies report that arrested felons and drug traffickers are stating that they have refrained from firearms possessions in order to avoid Federal prosecution. Morale among local police agencies and prosecutors who are actively participating in this program is extremely high because those agencies can see the immediate benefits which they are deriving from Project Safe Neighborhoods.

H. District

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		190	246	271	170	-37.3%	89
ATF Referrals		111	134	113	127	12.4%	

Federal firearms prosecutions decreased in the [redacted] by more than 37% from FY 2004 to FY 2005. I am concerned about the degree of the decrease, but prosecution statistics are an inadequate basis on which to evaluate the effectiveness of this district's PSN program. I advise against raising the issue to the level of the Acting Deputy Attorney General and the U.S. Attorney for the [redacted].

The U.S. Attorney's Office for the [redacted] prosecuted 170 Federal firearms cases in FY 2005 – a 37.3% decrease from the 271 cases filed in FY 2004. The FY 2005 number also is below the 246 cases in FY 2003 and the 190 cases filed in FY 2002, and it is essentially the same as the 165 cases filed in FY 2001. It is, however, substantially higher than the average of 108 cases filed from FY 1994 through FY 2000. Federal firearms defendant numbers are proportionate – 292 in FY 2005, down from 333 in FY 2004 and 328 in FY 2003, but above the 243 in FY 2002 and the 153 in FY 2001. ATF referral numbers appear odd in the above chart because they are lower than any of the numbers for cases filed. That is because the U.S. Attorney's Office works closely with the [redacted], so it is not unusual for a case to be brought directly from the local police to the U.S. Attorney's Office. While the number of Federal firearms cases fell, it should be noted that the district experienced increased conviction rates in 2005 – nearly 10% in Federal court and 11% in the local [redacted] court.

According to the [redacted], there were 195 homicides in [redacted] in 2005. While there is always room for improvement on homicide statistics, the 2005 number is the lowest in almost 20 years and it represents a 20% decrease in the past two years. There were 198 homicides in 2004, 246 in 2003, and 262 in 2002. The highest number was 474 in 1990, and homicides averaged over 344 per year from 1986 through 2001. The number of child homicide victims fell in the district almost 50% from 24 in 2004 to 13 in 2005.

Violent crime decreased in the [redacted] between 2001 and 2004. According to the data submitted to the FBI, non-homicide violent crimes (Rape, Robbery, and Aggravated Assaults) in [redacted] went from 8,961 in 2001 to 8,847 in 2002 (down 1.2%), to 8,591 in 2003 (down 2.9%), to 7,138 in 2004 (down 16.9%). According to preliminary data from the [redacted] there were 7,612 non-homicide violent crimes in the [redacted] in [redacted].

2005 – an increase of 6.6%. However, the police department warns that this preliminary data is preliminary and is not necessarily what will be reported to the FBI for the UCR. In addition, the categories are different – instead of the “forcible rape, robbery, and aggravated assault” categories listed in the 2004 report, the 2005 statistics list “sexual assault, robbery, and assault with a deadly weapon.”

became the U.S. Attorney in May 2004. Having started as a line prosecutor in the office, he has ample respect from his colleagues. As you are aware, has been involved in PSN as the former Director and he has actively supported the Department through the Attorney General’s Advisory Committee, the Attorney General’s Anti-Gang Coordinating Committee, and elsewhere. As a former AUSA in his office, I can attest to the pressure he receives from the U.S. District Court bench about the large volume of firearms cases brought there.

The U.S. Attorney’s Office for the

. One reason for the decreasing number of Federal firearms cases is that the recently adopted sentencing guidelines. Although the guidelines are “voluntary,” most of the judges apply them. Because the district now has reasonable expectations about sentences in local court, it is able to focus Federal prosecutions on offenders with more substantial criminal histories and on those who are more likely to have information about gang members and other crimes. Also, because firearms offenses are detainable in there is a tactical incentive to bring cases there when the case does not involve drug or other offenses that might detain a defendant in Federal court. The U.S. Attorney’s Office also recently restructured its Federal court sections, forming a separate section to prosecute most arrest-driven Federal crimes.

The district’s Community Prosecution Section has made substantial efforts to coordinate and focus law enforcement efforts, and its AUSAs have been heavily involved in public outreach efforts -- attending neighborhood meetings and spending a portion of their time at offices in each of the seven police district stations. The October 2005 PSN report to the Attorney General describes its law enforcement coordination, media outreach, community involvement, and research-driven focus

I. District

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		16	4	20	12	-40.0%	90
ATF Referrals		13	6	20	36	80%	

Federal firearms prosecution numbers in the District fell by a substantial percentage in FY 2005, but the actual number is fewer cases. Given some of the history with this district, the recent tenure of the U.S. Attorney, and the district's small size, I recommend against raising the issue to the level of the Acting Deputy Attorney General at this time.

In 2004, the District was identified by EOUSA as a potentially underperforming district. In his July 20, 2004, memorandum to Kyle Sampson, Spence Pryor indicated that the district was focusing on its PSN initiative and seemed to be on the right track. He concluded that additional follow-up was not needed, but that the district's performance should be reassessed at the end of 2004. Spence Pryor's memorandum noted that the district's Federal firearms prosecution numbers fell in FY 2003 because the Attorney General ordered the local police to bring all gun cases to his office and not the U.S. Attorney's office in apparent retaliation for a Federal corruption probe.

As of the date of Pryor's memorandum, the local government had changed, and the district was again receiving firearms cases from the local police. The FY 2004 statistics confirm that the district was again prosecuting a substantial number of firearms cases for its size – it filed more than four times as many cases as it did in FY 2003. It is unclear what caused the number to then fall in FY 2005 to 12 cases, particularly in light of increased ATF referrals. While the number of cases filed was a 40% drop from FY 2004, it was still triple the number of cases in FY 2003. The number of Federal firearms defendants was proportionate – 13 in FY 2005 down from 25 in FY 2004.

Crime statistics are not available in for the in the FBI's UCR.

U.S. Attorney has held his position since June 2005. Former U.S. Attorney resigned in August 2004. When the district's main DOJ PSN point of contact recently contacted the district to discuss the prosecution statistics, he was told that the district now has administrators, partners, and participants in PSN who are committed to developing a successful program. They anticipate marked improvement. I recommend that the new participants be given an opportunity, and that the district's efforts be monitored to for the remainder of the fiscal year.

J. District

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		133	129	143	83	-42.0%	91
ATF Referrals		285	219	218	171	-21.6%	

The District's PSN program is active and healthy. While the number of cases filed slipped considerably in FY 2005, the number of Federal firearms defendants tells a different story – the district had its second highest year since FY 1995. I recommend that there be no additional follow-up.

has been the U.S. Attorney for the since the Fall of 2002. Federal Firearms cases filed by the district fell 42% from 143 in FY 2004 to 83 in FY 2005. The FY 2005 number was the lowest since FY 2000. However, the number of Federal firearms defendants increased from 229 in FY 2004 to 238 in FY 2005. With the exception of the 256 defendants in FY 2002, this was the highest number since FY 1995. It also is worth noting that the ATF referred fewer cases in FY 2005 than it did in FY 2004, although it is unclear whether the cases referred in FY 2005 involved more co-defendants.

According to the FBI's UCR data comparing crime statistics for the first half of 2005 to the same period in 2004, homicides decreased by 14 percent (from 278 in 2004 to 238 in 2005), and violent crime numbers decreased by 3%. Those numbers are imperfect, not only because of their limited time frame, but because the is contained in both. The statistics are of some value in determining the general trend in the area.

The district's PSN report to the Attorney General in October 2005 demonstrates that the district is engaged in the initiative. It identifies a long list of partners that include the ATF, FBI, DEA, USMS, Weed and Seed, and a host of local law enforcement partners in and. The district and its local partners screen arrests to identify appropriate Federal cases, and local prosecutors have been cross-designated to prosecute firearms cases federally. The district provides detailed numbers for the more than 3,000 firearms cases prosecuted locally by its partners in 2004 and 2005, and it provides factual details about high-profile organized crime, MS-13, and other cases that started as PSN cases. The district has determined that its two most significant sources of gun violence are gangs and drugs. It does not list "illegal possession" as one of the offenses on which its efforts are focused. Rather, the task force focuses on all firearms offenses in focused areas (usually coinciding with Weed and Seed sites),

targeted offenders rather than specific offenses, criminal organizations and gangs, and gun trafficking.

K. District

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		21	45	50	29	-42.0%	92
ATF Referrals		31	37	48	31	-35.4%	

Despite a significant decrease in the percentage of Federal firearms cases filed in FY 2005 as compared to FY 2004, the District is engaged in PSN. I recommend further staff-level follow-up, but I do not see the need to raise the issue to the level of contact between the Acting Deputy Attorney General and the U.S. Attorney.

The District filed 42% fewer Federal firearms cases in FY 2005 than in FY 2004; however, that percentage translates to a decrease from 50 cases in FY 2004 to 29 in FY 2005. The numbers of Federal firearms defendants in the district are proportionate – 32 in FY 2005 down from 59 in FY 2004, but above the 26 filed in FY 2002 and the 28 filed in FY 2001.

Crime statistics for the district's largest city, are not reported by the FBI's UCR.

U.S. Attorney has held his position since January 2002. In the district's PSN Report to the Attorney General in October 2005, it reported that its task force included the ATF, FBI, USMS, IRS, ICE, and a number of state and local law enforcement agencies. The task force screens arrests to determine the appropriate venue for prosecution, but it has not cross-designated local prosecutors to prosecute Federal cases. The district's PSN Coordinator is the anti-gang coordinator and the Project Sentry coordinator. He also is active with DEA and OCDETF and coordinates proactive cases with PSN. The district identified drugs and chronic offenders as its most significant sources of gun violence, although it listed felons in possession as another source. The district reported that it focuses on illegal possession, as well as specific offenders and criminal organizations and gangs. The district identified "increased Federal prosecution of firearms-related cases" as one of five strategies it has implemented. The report noted that the previous PSN Coordinator, was detailed to EOUSA, and that the new Coordinator, needed some time to transition. At the time of the report, the district was planning a conference for PSN training in 2006.

The district's main DOJ PSN point of contact discussed the FY 2005 prosecution statistics with the district's PSN Coordinator. To start, the district's PSN Coordinators have always been responsive to inquiries by the DOJ point of contact, and they have actively worked to implement PSN in the district. The PSN Coordinator explained that until recently, many of the district's PSN cases arose out of investigations involving methamphetamine labs. After an Oklahoma law regulating the distribution of precursor drugs went into effect in July 2004, many of the labs disappeared. Much of the drug supply now comes from Mexico. Also, the ATF was assisting in drug cases in the district until DEA was able to focus its resources in the state. The PSN Coordinator notes that the ATF has now focused its attention on longer-term investigations. ATF referrals of firearms cases to the district decreased significantly in FY 2005.

I District:

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		35	24	61	30	-50.8%	93
ATF Referrals		37	91	54	37	-31.5%	

Although the District experienced a substantial drop in Federal firearms prosecutions in FY 2005, the district is engaged in PSN, and it has some reasonable explanations for its decreased firearms prosecution numbers in FY 2005. I do not believe that the district's performance requires the attention of the Acting Deputy Attorney General.

U.S. Attorney has held that post since October 2001. In FY 2005, the District experienced a 50.8% drop in Federal firearms cases filed – from 61 in FY 2004 to 30 in FY 2005. This was the most significant percentage drop by any district in FY 2005. The number of cases filed in FY 2005 sits between numbers for other years – above the 24 cases filed in FY 2003 but lower than the 35 cases filed in FY 2002 and barely lower than the 31 cases filed in FY 2001. The numbers of Federal firearms defendants are proportionate – 33 in FY 2005 down from 66 in FY 2004 and the lowest number since 30 cases were filed in FY 2000.

UCR Crime statistics are not available for the largest city in the district.

In its October 2005 PSN Report to the Attorney General, the district lists a full complement of Federal and local task force partners, including the FBI and DEA. The district focuses its PSN efforts in [redacted] and [redacted]. It screens local gun-related arrests to determine the best venue for prosecution. The district reports using federal firearms cases to prosecute the leaders of [redacted]'s "Mafia Insane Vice Lords" gang and using PSN relationships to investigate and successfully prosecute those gang members for the subsequent

murder of a key government witness. The district identified gangs and drugs as the primary sources of its gun violence, although it listed felons in possession as another source. The district has implemented a number of PSN's "Best Practices," including increased federal firearms prosecutions, gang investigations, directed police patrols, and chronic offender lists.

In its PSN Report, the district describes the successes of its PSN initiatives launched in _____ in 2002 and in _____ in 2004:

In _____, where PSN was implemented in March 2002, violent gun crimes dropped 63% from 131 incidents in 2001 to 49 in 2003. There were 54 such incidents in 2004, still 59% below the 2001 level. Through the first 9 months of 2005, violent gun crime remains down in _____. In _____, where PSN began in August 2004, violent gun crimes dropped from 261 incidents in 2003 to 172 in 2004, a decrease of 34%. Violent gun crime was down significantly in _____ for the first six months of 2005 and stabilized at the reduced level for the 3rd quarter. . . . Violent gun crime has stabilized in _____ at a rate approximately 60% below 1999-2002 levels. In one year, violent gun crime in _____ has decreased from 210 to 127, a drop of 40%.

The district is understandably proud of its efforts. In October 2005, the district contacted me and sent me a CD titled "The _____ story" detailing the district's efforts in that target area. On February 14, 2006, I received an email from the district announcing that "The _____ Story" was going to be discussed on a radio program. The email also provided updated crime statistics:

The gun crime in _____ remained stable near its drastically reduced level. The big emerging news is that _____ has reduced its violent gun crime by 54% over the last two years, going from 261 violent gun crimes in 2003 to 119 in 2005.

When the PSN Coordinator was contacted by the district's main DOJ PSN point of contact and asked about the decreased firearms prosecution numbers in FY 2005, the PSN Coordinator provided some fair explanations for the decreased prosecution numbers. He noted that the FY 2004 numbers were particularly high for the district, due in part to approximately 25 cases that were unsealed at one time in FY 2004. The PSN Coordinator explained that the district received fewer case referrals from ATF in FY 2005, which is confirmed by ATF data showing a decrease from 54 cases referred in FY 2004 to 37 in FY 2005. The PSN Coordinator reported that ATF had experienced personnel issues in the district – one agent from the small NDMS office was reassigned to the _____ CIT initiative, and another was reassigned to assist in _____ as after the hurricane. The ATF's office in the district was shut down for a substantial period of time due to the hurricane. The PSN Coordinator also said that the ATF

RAC was being told by ATF headquarters to shift his focus from firearm possession cases to larger criminal enterprise cases.

The decreased Federal firearms numbers in the _____ are not due to a lack of energy or initiative. The district is engaged, and continued staff-level contact and assistance should ensure that the district's program meets its potential.

Elston, Michael (ODAG)

From: Margolis, David
Sent: Thursday, February 22, 2007 9:23 AM
To: Sampson, Kyle; McNulty, Paul J; Moschella, William; Elston, Michael (ODAG); Hertling, Richard; Goodling, Monica
Subject: RE: Draft response to Reid/Durbin/Schumer/Murray letter re Cummins-Griffin

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From: Sampson, Kyle
Sent: Wednesday, February 21, 2007 7:22 PM
To: McNulty, Paul J; Moschella, William; Elston, Michael (ODAG); Margolis, David; Hertling, Richard; Goodling, Monica
Subject: Draft response to Reid/Durbin/Schumer/Murray letter re Cummins-Griffin
Importance: High

All, can you please review and provide comments on my draft response to the above-referenced letter?
Richard, can you send the .pdf version of the above-referenced letter around to this group?
Thanks!

<< File: reid letter re cummins-griffin.doc >>

Kyle Sampson
Chief of Staff
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2001 wk.
(202) 305-5289 cell
kyle.sampson@usdoj.gov

Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Thursday, February 22, 2007 10:16 AM
To: Margolis, David; McNulty, Paul J; Moschella, William; Elston, Michael (ODAG); Hertling, Richard; Goodling, Monica
Subject: RE: Draft response to Reid/Durbin/Schumer/Murray letter re Cummins-Griffin

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Elston, Michael (ODAG)

From: Goodling, Monica
Sent: Thursday, February 22, 2007 12:01 PM
To: Sampson, Kyle; Margolis, David; McNulty, Paul J; Moschella, William; Elston, Michael (ODAG); Hertling, Richard
Subject: RE: Draft response to Reid/Durbin/Schumer/Murray letter re Cummins-Griffin

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Elston, Michael (ODAG)

From: Sampson, Kyle
Sent: Thursday, February 22, 2007 12:03 PM
To: Goodling, Monica; Margolis, David; McNulty, Paul J; Moschella, William; Elston, Michael (ODAG); Hertling, Richard
Subject: RE: Draft response to Reid/Durbin/Schumer/Murray letter re Cummins-Griffin
Importance: High
Attachments: reid letter re cummins-griffin v.2.doc

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The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Senator Reid:

This is in response to your letter to the Attorney General dated February 8, 2007. An identical response has been sent to the other signatories of that letter.

The full quotation of the Attorney General's testimony at the Judiciary Committee hearing on January 18, 2007 (not the selective quote cited in your letter), more fairly represents his views about the appropriate reasons for asking a U.S. Attorney to resign. In full, the Attorney General stated: "I think I would never, ever make a change in a United States attorney for political reasons or *if it would in any way jeopardize an ongoing serious investigation. I just would not do it*" (emphasis added).

The Deputy Attorney General, at the hearing held on February 6, 2007, further stated the Department's view that asking U.S. Attorney Bud Cummins to resign so that Special Assistant U.S. Attorney Tim Griffin might have the opportunity to serve as U.S. Attorney is not, in the Department's view, an inappropriate "political reason." This is so, the Deputy Attorney General testified because, *inter alia*, Mr. Griffin is very well-qualified and has "a strong enough resume" to serve as U.S. Attorney, and Mr. Cummins "may have already been thinking about leaving at some point anyway." Indeed, at the time Mr. Griffin was appointed interim U.S. Attorney in December 2006 he had far more federal prosecution experience (in the Criminal Division and in the U.S. Attorney's office) than Mr. Cummins did at the time he was confirmed as U.S. Attorney in December 2001. In addition, Mr. Griffin has substantial military prosecution experience that Mr. Cummins does not have. And it was well-known, as early as December 2004, that Mr. Cummins intended to leave the office and seek employment in the private sector. See "The Insider Dec. 30," *Ark. Times* (Dec. 30, 2004) ("Cummins, 45, said that, with four children to put through college someday, he'll likely begin exploring career options. It wouldn't be 'shocking,' he said, for there to be a change in his office before the end of Bush's second term.").

In addition, the Department does not consider the replacement of one Republican U.S. Attorney by another well-qualified person with extensive experience as a prosecutor and strong ties to the district to be a change made for "political reasons." U.S. Attorneys serve at the pleasure of the President; that has always been the rule, and U.S. Attorneys accept their appointment with that understanding. U.S. Attorneys leave office all the time for a wide variety of reasons. As noted in the case of Mr. Cummins, he had previously

indicated publicly that he did not expect to remain in office through the President's second term. It was only natural and appropriate that the Department would seek a successor in anticipation of the potential vacancy. When the Department found an able and experienced successor, it moved forward with his interim appointment.

In answer to your specific questions:

- The decision to appoint Tim Griffin to be interim U.S. Attorney in the Eastern District of Arkansas was made on or about December 15, 2006, after the second of the Attorney General's telephone conversations with Senator Pryor.
- The Department of Justice is not aware of anyone lobbying, either inside or outside of the Administration, for Mr. Griffin's appointment. In the spring of 2006, following regular procedures, the Office of the Counsel to the President inquired of the Office of the Attorney General as to whether Mr. Griffin (who then was on active military duty in Iraq) might be considered for appointment as U.S. Attorney upon his return.
- As the Deputy Attorney General testified, Mr. Cummins's continued service as U.S. Attorney was not considered at the same time as the other U.S. Attorneys that the Deputy Attorney General acknowledged were asked to resign for reasons related to their performance. As the Deputy Attorney General testified, the request that Mr. Cummins resign was "related to the opportunity to provide a fresh start with a new person in that position."
- The Department is not aware of Karl Rove playing any role in the decision to appoint Mr. Griffin.

In conclusion, the Department wholeheartedly agrees with the principle you set forth in your letter that "[o]nce appointed, U.S. Attorneys, perhaps more than any other public servants, must be above politics and beyond reproach; they must be seen to enforce the rule of law without fear or favor." That many U.S. Attorneys, appointed by Presidents of both parties, have had political experience prior to their appointment does not undermine that principle.

We appreciate the opportunity to respond to your inquiry.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

Elston, Michael (ODAG)

From: Moschella, William
Sent: Thursday, February 22, 2007 3:20 PM
To: Sampson, Kyle; Goodling, Monica; Margolis, David; McNulty, Paul J; Elston, Michael (ODAG); Hertling, Richard
Subject: RE: Draft response to Reid/Durbin/Schumer/Murray letter re Cummins-Griffin

No objection but would copy Specter and McConnell.

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Sent: Thursday, February 22, 2007 12:03 PM
To: Goodling, Monica; Margolis, David; McNulty, Paul J; Moschella, William; Elston, Michael (ODAG); Hertling, Richard
Subject: RE: Draft response to Reid/Durbin/Schumer/Murray letter re Cummins-Griffin
Importance: High

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Washington, D.C. 20510

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We appreciate the opportunity to respond to your inquiry.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

Elston, Michael (ODAG)

From: Hertling, Richard
Sent: Thursday, February 22, 2007 5:25 PM
To: Moschella, William; Sampson, Kyle; McNulty, Paul J; Elston, Michael (ODAG); Scolinos, Tasia; Goodling, Monica
Subject: FW: Draft Schumer response per our conversation.
Attachments: schumer ears.wpd

Here is the letter I intend to send Schumer tomorrow morning. Please advise before 10 a.m. if you have any comments, edits, or concerns. Thanks.

From: Burton, Faith
Sent: Thursday, February 22, 2007 5:17 PM
To: Hertling, Richard
Subject: Draft Schumer response per our conversation.



schumer ears.wpd
(78 KB)



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

The Honorable Charles E. Schumer
Chairman
Subcommittee on Administrative Oversight
and the Courts
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This supplements our previous response to your letter, dated February 14, 2007, which requested information relating to the Subcommittee's oversight interest in the recent requests to several United States Attorneys for their resignations.

In response to your prior request, which followed the Committee hearing of February 6, on this matter, and in an extraordinary effort to accommodate the Subcommittee's interests, the Deputy Attorney General briefed Committee Members on the reasons for the requested resignations. At that briefing on February 14, you requested access to the Evaluation and Review Staff (EARS) reports for the offices discussed by the Deputy Attorney General. As he stated at the briefing, these reports are not evaluations of the United States Attorneys themselves but, in some instances, they may contain relevant information that is responsive to the Subcommittee's interests in this matter.

The Department has substantial confidentiality interests in the EARS reports because they are an important management tool that relies upon the candor of participating individuals, both Evaluation Team members and those who provide information to them. In order to protect the continuing value of this process, we want to avoid disclosures that would chill such candor or the energetic conduct of these reviews. Accordingly, we appreciate your agreement to limit review of the reports to one staff member for the Chairman and one for the Ranking Member. We will redact the identities of the Evaluation Team participants as well as individuals who provided information to the Team in connection with each report, although we do not believe these redactions will in any way interfere with your ability to understand the reports. We further request that you advise us in advance if you believe it is necessary to disclose information from these reports outside of the Committee. While our public disclosure of information contained in these reports might be prohibited by the Privacy Act, we are providing access to the reports as described above in response to your oversight request and pursuant to 5 U.S.C. 552a(b)(9).

DAG000000771

The Honorable Charles E. Schumer
Page 2

I hope this information is helpful. Please do not hesitate to contact this office if we can be of assistance in any other matter.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Jeff Sessions
Ranking Minority Member

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary

The Honorable Arlen Specter
Ranking Minority Member
Committee on the Judiciary

Elston, Michael (ODAG)

From: Hertling, Richard
Sent: Friday, February 23, 2007 8:19 AM
To: Cabral, Catalina
Cc: Sampson, Kyle; Goodling, Monica; Elston, Michael (ODAG)
Subject: FW: Revised Draft
Attachments: Senator Levin and Senator Stabenow.doc

Please format this and get it ready for my signature.

From: Oprison, Christopher G. [mailto:Christopher_G._Oprison@who.eop.gov]
Sent: Friday, February 23, 2007 7:25 AM
To: Hertling, Richard; Eckert, Paul R.
Cc: Sampson, Kyle
Subject: RE: Revised Draft

slight revision - otherwise good to go

From: Hertling, Richard [mailto:Richard.Hertling@usdoj.gov]
Sent: Friday, February 23, 2007 6:52 AM
To: Eckert, Paul R.; Oprison, Christopher G.
Cc: Sampson, Kyle
Subject: FW: Revised Draft

Here is the draft letter to Levin and Stabenow for your review and approval. Chiara is announcing her departure this morning, having talked to both senators yesterday. We would like to send this letter up to their offices this morning before she makes her announcement.

From: Elston, Michael (ODAG)
Sent: Thursday, February 22, 2007 7:35 PM
To: Hertling, Richard
Cc: Goodling, Monica; Moschella, William; Sampson, Kyle; McNulty, Paul J
Subject: Revised Draft

<<Senator Levin and Senator Stabenow.doc>>

William E. Moschella
Opening Statement

Madam Chairman, Mr. Cannon, and Members of the Subcommittee, I appreciate the opportunity to testify today.

Let me begin by stating clearly that the Department of Justice appreciates the public service that was rendered by the seven U.S. Attorneys who were asked to resign last December. Each is a talented lawyer who served as U.S. Attorney for more than four years, and we have no doubt they will achieve success in their future endeavors – just like the 40 or so other U.S. Attorneys who have resigned for various reasons over the last six years.

Let me also stress that one of the Attorney General's most important responsibilities is to manage the Department of Justice. Part of managing the Department is ensuring that the Administration's priorities and policies are carried out consistently and uniformly. Individuals who have the high privilege of serving as presidential appointees have an obligation to carry out the Administration's priorities and policies.

U.S. Attorneys in the field (as well as Assistant Attorneys General here in Washington) are duty bound not only to make prosecutorial decisions, but also to implement and further the Administration and Department's priorities and policy decisions. In carrying out these responsibilities they serve at the pleasure of the President and report to the Attorney General. If a judgment is made that they are not executing their responsibilities in a manner that furthers the management and policy goals of departmental leadership, then it is appropriate that they be asked to resign so that they can be replaced by other individuals who will.

To be clear, it was for reasons related to policy, priorities and management – what has been referred to broadly as “performance-related” reasons – that these U.S. Attorneys were asked to resign. I want to emphasize that the Department – out of respect for the U.S. Attorneys at issue – would have preferred not to talk at all about those reasons, but disclosures in the press and requests for information from Congress altered those best laid plans. In hindsight, perhaps this situation could have been handled better. These U.S. Attorneys could have been informed at the time they were asked to resign about the reasons for the decision. Unfortunately, our failure to provide reasons to these individual U.S. Attorneys has only served to fuel wild and inaccurate speculation about our motives, and that is unfortunate because faith and confidence in our justice system is more important than any one individual.

That said, the Department stands by the decisions. It is clear that after closed door briefings with House and Senate members and staff, some agree with the reasons that form the basis for our decisions and some disagree – such is the nature of subjective judgments. Just because you might disagree with a decision, does not mean it was made for improper political reasons – there were appropriate reasons for each decision.

One troubling allegation is that certain of these U.S. Attorneys were asked to resign because of actions they took or didn't take relating to public corruption cases. These charges are dangerous, baseless and irresponsible. This Administration has never removed a U.S. Attorney

to retaliate against them or interfere with or inappropriately influence a public corruption case. Not once.

The Attorney General and the Director of the FBI have made public corruption a high priority. Integrity in government and trust in our public officials and institutions is paramount. Without question, the Department's record is one of great accomplishment that is unmatched in recent memory. The Department has not pulled any punches or shown any political favoritism. Public corruption investigations are neither rushed nor delayed for improper purposes.

Some, particularly in the other body, claim that the Department's reasons for asking these U.S. Attorneys to resign was to make way for preselected Republican lawyers to be appointed and circumvent Senate confirmation. The facts, however, prove otherwise. After the seven U.S. Attorneys were asked to resign last December, the Administration immediately began consulting with home-state Senators and other home-state political leaders about possible candidates for nomination. Indeed, the facts are that since March 9, 2006, the date the Attorney General's new appointment authority went into effect, the Administration has nominated 16 individuals to serve as U.S. Attorney and 12 have been confirmed. Furthermore, 18 vacancies have arisen since March 9, 2006. Of those 18 vacancies, the Administration (1) has nominated candidates for six of them (and of those six, the Senate has confirmed three); (2) has interviewed candidates for eight of them; and (3) is working to identify candidates for the remaining four of them. Let me repeat what has been said many times before and what the record reflects: the Administration is committed to having a Senate-confirmed U.S. Attorney in every single federal district.

In conclusion, let me make three points: First, although the Department stands by the decision to ask these U.S. Attorneys to resign, it would have been much better to have addressed the relevant issues up front with each of them. Second, the Department has not asked anyone to resign to influence any public corruption case – and would never do so. Third, the Administration at no time intended to circumvent the confirmation process.

I would be happy to take your questions.

Elston, Michael (ODAG)

From: Scolinos, Tasia
Sent: Thursday, February 22, 2007 5:13 PM
To: Elston, Michael (ODAG); Goodling, Monica; Sampson, Kyle
Cc: Roehrkasse, Brian
Subject: FW: Margaret Chiara Press Release
Attachments: 2007 MMC press release.wpd

FYI - Michigan is going to push this out tomorrow. The first question will be whether she was asked to leave. The first assistant said he did not know what Margaret planned to say in response to that. Has anyone talked to her this week to get a feel for where she is at with this? She is also faxing a copy of her resignation letter to the AG and the WH - the first assistant did not know what it said. Has she discussed it with any of you? I believe this will generate another round of rough stories as expected- her press release paints a pretty darn good record and emphasizes her many "firsts" as a woman which the media will no doubt play up. I am planning to decline comment out of here with respect to whether she was asked to leave.

From: Stoddard, Russell (USAMIW) [mailto:Russell.Stoddard@usdoj.gov]
Sent: Thursday, February 22, 2007 4:58 PM
To: Scolinos, Tasia
Subject: Margaret Chiara Press Release

Ms. Scolinos, attached is the proposed press release.

Russell C. Stoddard
First Assistant U.S. Attorney
Western District of Michigan
616-456-2404

(cell)
<<2007 MMC press release.wpd>>



U.S. Department of Justice

*Margaret M. Chiara
United States Attorney
Western District of Michigan*

*5th Floor, The Law Building
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Grand Rapids, Michigan 49503*

*Mailing Address:
United States Attorney's Office
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FOR IMMEDIATE RELEASE

Contact: Russell C. Stoddard
First Assistant United States Attorney
(616) 456-2404

Grand Rapids, Michigan – February 23, 2007 – United States Attorney Margaret M. Chiara announced that she is resigning her position as United States Attorney for the Western District of Michigan effective March 16, 2007. Ms. Chiara was nominated by President George W. Bush on September 4, 2001, and she was confirmed by the United States Senate on October 23, 2001. She is the first woman in the history of the State of Michigan to serve as a United States Attorney. Ms. Chiara intends to remain in public service.

Ms. Chiara has enjoyed a distinguished legal career in public service. She served as Assistant Prosecutor for Cass County from 1982 to 1987, the last two years of which she served as the Chief Assistant Prosecutor. From 1988 through 1996, Ms. Chiara was the elected Prosecuting Attorney for Cass County. Ms. Chiara was the first (and only) woman to serve as President of the Prosecuting Attorney's Association of Michigan. Following her tenure as Prosecuting Attorney, Ms. Chiara was appointed Administrator for the Trial Court Assessment Commission, which developed a variety of recommendations for the systematic reform of the Michigan trial courts. From 1999 until her appointment as United States Attorney, Ms. Chiara served as the Policy and Planning Director for the Michigan Supreme Court.

DAG000000777

During Ms. Chiara's tenure as United States Attorney, the Western District of Michigan achieved an overall increase of more than fifteen percent in felony prosecutions and convictions. The Northern Division (Marquette), alone, experienced an increase of 84% in the number of criminal cases prosecuted during the two-year period of 2003 to 2005.

The Department of Justice invited Ms. Chiara to serve on several key subcommittees of the Attorney General's Advisory Committee (AGAC), including the Native American Issues Subcommittee (NAIS), the Office of Management and Budget Subcommittee (OM&B), and the Office Outreach: LECC/Victim-Witness Subcommittee. In 2006, her leadership skills were recognized by her appointment as chairperson of the NAIS. During Ms. Chiara's tenure on the NAIS, the subcommittee established "best practices" for Indian Country on a variety of issues, including family violence, border security, guns, drugs and gangs, and gaming. Among the accomplishments of the NAIS were the legislative changes in the Violence Against Women and Department of Justice Reauthorization Act of 2005 and the implementation of a national pilot program to address the growing problem of sexual assaults in Indian Country.

Ms. Chiara developed an attorney training and mentoring program for the Western District of Michigan that was recognized as a "best practice" by the Department of Justice. This program now serves as a national model.

Ms. Chiara's accomplishments as United States Attorney have also been recognized outside of the Department. For example, in April 2005, she was given the "Building Bridges Award" by the Arab-American Anti-Discrimination Committee. This award was given in recognition for her work in forming BRIDGES, the United States Attorney's outreach program to Arab and Muslim residents of the Western District of Michigan. BRIDGES consists of local Arab and Muslim business, community, and religious leaders; federal, state and local law

enforcement; and academia representatives, with the goal of developing trust and rapport between law enforcement and the Arab and Muslim communities.

In October 2005, Ms. Chiara received the "Lifetime Achievement Recognition" by the Women's Historical Center and Michigan Women's Hall of Fame. She was also recognized, in March 2006, as one of the "50 Most Influential Women in West Michigan," by the Grand Rapids Business Journal.

Ms. Chiara developed a number of highly-successful initiatives during her tenure as United States Attorney. Among those are Project Safe Neighborhoods, which is a federal, state, tribal and local law enforcement partnership to reduce gun crime and violence, the Western District of Michigan Environmental Crimes Task Force, and Project Safe Childhood, which focuses on Internet Crimes Against Children.

Under Ms. Chiara's leadership, the Western District of Michigan obtained the first conviction under the Attorney General's Obscenity Prosecution Task Force. In *United States v. Messer, et al.*, the Defendants were convicted of selling and receiving obscene material, including images of minors, as young as one year of age, engaging in sexually explicit conduct. Ms. Chiara and the Assistant United States Attorney who prosecuted the case were commended for this significant accomplishment on January 5, 2007, by the Assistant Attorney General for the Criminal Division.

Noteworthy during the United States Attorney's tenure is the prosecution of Michigan's first death penalty case since 1938, *United States v. Gabrion*, and the nearly concluded second phase of *United States v. Michigan*, which is a historically significant civil case involving treaty rights in Indian Country.

Other significant accomplishments can be found in the attached supplement.

#END#

DAG000000779

Elston, Michael (ODAG)

From: Clifton, Deborah J
Sent: Friday, February 23, 2007 4:52 PM
To: Moschella, William; Elston, Michael (ODAG); Frisch, Stuart; Atwell, Tonya M; Barksdale, Gwen; Hardin, Gail; Horkan, Nancy; Lauria-Sullens, Jolene; Lofthus, Lee J; Pagliarini, Raymond; Rodgers, Janice; Santangelo, Mari (JMD); Schultz, Walter H; DeFalaise, Lou (OARM); Davis, Valorie A; Jackson, Wykema C; Wilcox, Matrina (OLP); Engel, Steve; Marshall, C. Kevin; Mitchell, Dyone; Robinson, Lawan; Smith, George; Davis, Kerry; Lofton, Betty; Opl, Legislation; Samuels, Julie; Cummings, Holly (CIV); Benderson, Judith (USAEO); Nowacki, John (USAEO); Smith, David L. (USAEO); Voris, Natalie (USAEO); Caballero, Luis (ODAG)
Cc: Scott-Finan, Nancy; Seidel, Rebecca; Silas, Adrien
Subject: ODAG Moschella draft testimony for a 03/06/07 hearing re the importance of the Justice Department's United States Attorneys

Attachments: DRAFT Moschella Testimony.doc; H15control.pdf



DRAFT Moschella H15control.pdf (12
Testimony.doc ... KB)

YOU WILL NOT RECEIVE A HARD COPY OF THIS REQUEST. PLEASE PROVIDE COMMENTS TO ADRIEN SILAS, OLA, NO LATER THAN 2 pm 02/26/07.

Department Of Justice
Office Legislative Affairs
Control Sheet

Date Of Document: 02/23/07
Date Received: 02/23/07
Due Date: 02/26/07 2 pm

Control No.: 070223-13441
ID No.: 435525

From: OLA (HOUSE JUDICIARY COMTE) (H.15) ((110TH
CONGRESS))

To: HOUSE JUDICIARY COMTE

Subject:

ATTACHED FOR YOUR REVIEW AND COMMENT IS A COPY OF THE DRAFT STATEMENT OF
WILLIAM MOSCHELLA, PRINCIPAL ASSOCIATE DEPUTY ATTORNEY GENERAL,
REGARDING THE IMPORTANCE OF THE JUSTICE DEPARTMENT'S UNITED STATES
ATTORNEYS, BEFORE THE HOUSE JUDICIARY COMTE, TO BE GIVEN ON MARCH 6,
2007

Action/Information:

Signature Level: OLA

Referred To:

Assigned: Action:

ODAG, JMD/PERSONNEL/GC,
OARM, OLP, OLC, CRM, CIV,
EOUSA

02/23/07 COMMENTS DUE TO OLA/SILAS BY 2 PM
02/26/07. CC: OLA/SCOTT-FINAN/
SEIDEL

Remarks:

Comments:

File Comments:

Primary Contact: ADRIEN SILAS, 514-7276

DAG000000781



Department of Justice

STATEMENT

OF

WILLIAM E. MOSCHELLA
PRINCIPAL ASSOCIATE DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

“[[TITLE]]”

PRESENTED ON

MARCH 6, 2007

**Testimony
of**

**William E. Moschella
Principal Associate Deputy Attorney General
U.S. Department of Justice**

**Committee on the Judiciary
United States House of Representatives**

“[[Title]]”

March 6, 2007

Chairman Conyers, Congressman Smith, and members of the Committee, thank you for the invitation to discuss the importance of the Justice Department’s United States Attorneys.

As the chief federal law-enforcement officers in their districts, U.S. Attorneys represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. U.S. Attorneys are not only prosecutors, however; they are government officials charged with managing and implementing the policies and priorities of the Executive Branch. The Attorney General has set forth six key priorities for the Department of Justice, and in each of their districts, U.S. Attorneys lead our efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.

United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in

the Executive Branch, they may be removed for any reason or no reason. The Department of Justice—including the office of United States Attorney—was created precisely so that the government’s legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. And unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. This accountability ensures compliance with Department policy, and is often recognized by the Members of Congress who write to the Department to encourage various U.S. Attorneys’ Offices to focus on a particular area of law enforcement.

The Attorney General and the Deputy Attorney General are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon and should be expected, particularly after the position’s four-year term has expired. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half

of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Of the U.S. Attorneys whose resignations have been the subject of recent discussion, each one had served out his or her four-year term prior to being asked to resign.

Given the reality of turnover among the United States Attorneys, it is actually the career investigators and prosecutors who exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals, and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state, and local law enforcement partners. When a U.S. Attorney submits his or her resignation, the Department must first determine who will serve temporarily as interim U.S. Attorney. The Department has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a presidentially-appointed, Senate-confirmed United States Attorney. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on an interim basis. When neither the First Assistant nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees.

At no time, however, has the Administration sought to avoid the confirmation process in the Senate by appointing an interim U.S. Attorney and then refusing to move forward—in consultation with home-State Senators—on the selection, nomination, confirmation and appointment of a new U.S. Attorney. Not once. In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate. And the Administration's actions bear this out. Every time a vacancy has arisen, the President has either made a nomination, or the Administration is working—in consultation with home-state Senators—to select candidates for nomination. The appointment of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by the Senate, and it is unquestionably the appointment method preferred by the Administration.

Since January 20, 2001, 125 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 13 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 15 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 13 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill five of these positions, has interviewed candidates for nomination for seven more positions, and is waiting to receive names to set up interviews for the final position—all in consultation with home-state Senators.

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney

vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act (“VRA”), 5 U.S.C. § 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General’s appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General’s appointment authority, as amended last year, signals nothing other than a decision to have an interim U.S. Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

As you know, before last year’s amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases where a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General’s appointment authority resulted in recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was consequently required to make multiple successive 120-day interim appointments. Other district courts ignored the inherent conflicts and sought to appoint as interim U.S. Attorneys wholly unacceptable candidates who lacked the required clearances or appropriate qualifications.

In most cases, of course, the district court simply appointed the Attorney General’s choice as interim

U.S. Attorney, revealing the fact that most judges recognized the importance of appointing an interim U.S. Attorney who enjoys the confidence of the Attorney General. In other words, the most important factor in the selection of past court-appointed interim U.S. Attorneys was the Attorney General's recommendation. By foreclosing the possibility of judicial appointment of interim U.S. Attorneys unacceptable to the Administration, last year's amendment to Section 546 appropriately eliminated a procedure that created unnecessary problems without any apparent benefit.

We are aware of no other agency where federal judges—members of a separate branch of government—appoint the interim staff of an agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an appearance of potential conflict that undermines the performance or perceived performance of both the Executive and Judicial Branches. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. *See Wiener, Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys*, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).

Prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. Court-appointed U.S. Attorneys would be at least as accountable to the chief judge of the district court as to the Attorney General, which could, in some circumstances become untenable. In no context is accountability more important to our society than on

the front lines of law enforcement and the exercise of prosecutorial discretion, and the Department contends that the chief prosecutor should be accountable to the Attorney General, the President, and ultimately the people.

As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an Acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an Acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee.

Thank you again for the opportunity to testify, and I look forward to answering the Committee's questions.

Elston, Michael (ODAG)

From: Goodling, Monica
Sent: Monday, February 26, 2007 2:09 PM
To: Scolinos, Tasia; Roehrkasse, Brian; Hertling, Richard; Elston, Michael (ODAG)
Cc: Sampson, Kyle; Moschella, William
Subject: Updated USA documents

Attachments: FACT SHEET - USA appointments.pdf; TPS - US Attorney vacancy-appointment points.pdf; Examples of Difficult Transition Situations.pdf; WHY 120 DAYS IS NOT REALISTIC.doc; Griffin Talkers.doc; USA prosecution only stats.pdf; 02-06-07 McNulty Transcript re US Attorneys.doc

I have updated the documents in my possession in advance of this week's hearing. (However, please note that we may have a nomination tomorrow, which will affect several of these documents. We will also have two resignations on Wednesday but not until COB -- those will affect the numbers of vacancies and acting/interim numbers at that time.) I will update and recirculate if that occurs. Thanks!

FOR PUBLIC USE



FACT SHEET - USA appointments....



TPS - US Attorney vacancy-appe...



Examples of Difficult Transiti...



WHY 120 DAYS IS NOT REALISTIC....



Griffin Talkers.doc (33 KB)



USA prosecution only stats.pdf...



02-06-07 McNulty Transcript re...

FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 15 individuals to serve as United States Attorney. The 15 nominations are:

- **Erik Peterson** – Western District of Wisconsin;
- **Charles Rosenberg** – Eastern District of Virginia;
- **Thomas Anderson** – District of Vermont;
- **Martin Jackley** – District of South Dakota;
- **Alexander Acosta** – Southern District of Florida;
- **Troy Eid** – District of Colorado;
- **Phillip Green** – Southern District of Illinois;
- **George Holding** – Eastern District of North Carolina;
- **Sharon Potter** – Northern District of West Virginia;
- **Brett Tolman** – District of Utah;
- **Rödger Heaton** – Central District of Illinois;
- **Deborah Rhodes** – Southern District of Alabama;
- **Rachel Paulose** – District of Minnesota;
- **John Wood** – Western District of Missouri; and
- **Rosa Rodriguez-Velez** – District of Puerto Rico.

All but Phillip Green, John Wood, and Rosa Rodriguez-Velez have been confirmed by the Senate.

VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 16 new U.S. Attorney vacancies that have arisen. They have been filled as noted below.

For 5 of the 13 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made) until a nomination could be or can be submitted to the Senate. Those districts are:

- **Central District of California** – FAUSA George Cardona is acting United States Attorney
- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (a nomination was made last Congress for Phillip Green, but confirmation did not occur);

- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Sharon Potter was nominated and confirmed); and
- **Southern District of Georgia** – FAUSA Edmund A. Booth, Jr. is acting USA.

For 1 vacancy, the Department first selected the First Assistant United States Attorney to lead the office in an acting capacity under the Vacancies Reform Act, but the First Assistant retired a month later. At that point, the Department selected another employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). This district is:

- **Northern District of Iowa** – FAUSA Judi Whetstine was acting United States Attorney until she retired and Matt Dummermuth was appointed interim United States Attorney.

For 10 of the 16 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) (“Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant”). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Northern District of California** – Scott Schools was appointed interim United States Attorney when incumbent United States Attorney resigned; and

- **Southern District of California** – Karen Hewitt was appointed interim United States Attorney when incumbent United States Attorney resigned.

ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of 14 times since the authority was amended in March 2006.

In 2 of the 14 cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick

In 1 case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen

In 1 case, the Department originally selected the First Assistant to serve as acting United States Attorney; however, she retired from federal service a month later. At that point, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **Northern District of Iowa** – Matt Dummermuth

In the 10 remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;

- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Northern District of California** – Scott Schools was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **Southern District of California** – Karen Hewitt was appointed interim United States Attorney when incumbent United States Attorney resigned.

TALKING POINTS: U.S. ATTORNEY NOMINATIONS AND INTERIM APPOINTMENTS BY THE ATTORNEY GENERAL

Overview:

- In every single case, it is a goal of the Bush Administration to have a U.S. Attorney that is confirmed by the Senate. Use of the AG's appointment authority is in no way an attempt to circumvent the confirmation process. To the contrary, when a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office during the period when there is not a presidentially-nominated, senate-confirmed (PAS) U.S. Attorney. Whenever a U.S. Attorney vacancy arises, we consult with the home-state Senators about candidates for nomination.
- Our record since the AG-appointment authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination.
 - ✓ Specifically, since March 9, 2006 (when the AG's appointment authority was amended), the Administration has nominated 15 individuals to serve as U.S. Attorney (12 have been confirmed to date).

U.S. Attorneys Serve at the Pleasure of the President:

- United States Attorneys are at the forefront of the Department of Justice's efforts. They are leading the charge to protect America from acts of terrorism; reduce violent crime, including gun crime and gang crime; enforce immigration laws; fight illegal drugs, especially methamphetamine; combat crimes that endanger children and families like child pornography, obscenity, and human trafficking; and ensure the integrity of the marketplace and of government by prosecuting corporate fraud and public corruption.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.
- United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or

inappropriately influence a particular investigation, criminal prosecution or civil case.

- Whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.
- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the U.S. Attorneys and ensuring that they are leading their offices effectively. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case.

The Administration Must Ensure an Effective Transition When Vacancies Occur:

- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation. The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 124 confirmations of new U.S. Attorneys since January 20, 2001.
- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.
- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting U.S. Attorney; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition, often another senior manager from that office or an experienced attorney from within the Department.

The Administration Is Nominating Candidates for U.S. Attorney Positions:

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 15 individuals for Senate consideration (12 have been confirmed to date).
- Since March 9, 2006, when the appointment authority was amended, 16 vacancies have been created. Of those 16 vacancies, the Administration nominated candidates to fill 5 of these positions (3 were confirmed to date), has interviewed candidates for 7 positions, and is waiting to receive names to set up interviews for the remaining positions – all in consultation with home-state Senators.

The 16 Vacancies Were Filled on an Interim Basis Using a Range of Authorities, in Order To Ensure an Effective and Smooth Transition:

- In 5 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.
- In 1 case, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). However, the First Assistant took federal retirement a month later and the Department had to select another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.
- In 9 cases, the Department selected another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.
- In 1 case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

Amending the Statute Was Necessary:

- Last year's amendment to the Attorney General's appointment authority was necessary and appropriate.
- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.
- Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on

the Attorney General's appointment authority resulted in numerous, recurring problems.

- The statute was amended for several reasons:
 - 1) The previous provision was constitutionally-suspect in that it is inappropriate and inconsistent with sound separation of powers principles to vest federal courts with the authority to appoint a critical Executive Branch officer such as a United States Attorney;
 - 2) Some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments;
 - 3) Other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances.

- Court appointments raise significant conflict questions. After being appointed by the court, the judicial appointee would have authority for litigating the entire federal criminal and civil docket for this period before the very district court to whom he was beholden for his appointment. Such an arrangement at a minimum gives rise to an appearance of potential conflict that undermines the performance of not just the Executive Branch, but also the Judicial one. Furthermore, prosecutorial authority should be exercised by the Executive Branch in a unified manner, with consistent application of criminal enforcement policy under the supervision of the Attorney General.

- Because the Administration is committed to having a Senate-confirmed United States Attorney in all districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

WHY 120 DAYS IS NOT REALISTIC

- One hundred twenty days is not a realistic period of time to permit any Administration to **solicit and wait for home-state political leaders to identify a list of potential candidates**, provide the time needed to **interview and select a candidate for background investigation**, provide the FBI with adequate time to **do the full-field background investigation**, **prepare and submit the nomination**, and to be followed by the **Senate's review and confirmation** of a new U.S. Attorney.
- The **average number of days between the resignation of one Senate-confirmed U.S. Attorney and the President's nomination of a candidate for Senate consideration is 273 days** (including 250 USAs during the Clinton Administration and George W. Bush Administration to date). Once nominated, the Senate has taken an additional period of time to review the nominations of the Administration's law enforcement officials.
- The **average number of days between the nomination of a new U.S. Attorney candidate and Senate confirmation has been 58 days for President George W. Bush's USA nominees** (note - the majority were submitted to a Senate that was controlled by the same party as the President) and **81 days for President Bill Clinton's USA nominees** (note - 70% of nominees were submitted in the first two years to a Senate controlled by the same party as the President, others were submitted in the later six years to a party that was not).
- Simply adding the two averages of 273 and 58 days would mean a **combined average of 331 days from resignation of one USA to confirmation of the next.**
- The substantial time period between resignation and nomination is often due to factors outside the Administration's control, such as: 1) the Administration is waiting for home-state political leaders to develop and transmit their list of names for the Administration to begin interviewing candidates; 2) the Administration is awaiting feedback from home-state Senators on the individual selected after the interviews to move forward into background; and 3) the Administration is waiting for the FBI to complete its full-field background review. (The FBI often uses 2-4 months to do the background investigation -- and sometimes needs additional time if they identify an issue that requires significant investigation.)