

Brand, Rachel

From: Frank, Michael
Sent: Thursday, January 27, 2005 12:43 PM
To: Brand, Rachel
Subject: RE: 1325 and 1326

Sorry. I just sent a response, which I'll send to you, along with her e-mail.

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

From: Brand, Rachel
Sent: Thursday, January 27, 2005 12:33 PM
To: Frank, Michael
Subject: RE: 1325 and 1326

Forward me that email without your comments and I'll respond to it.

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

From: Frank, Michael
Sent: Thursday, January 27, 2005 12:32 PM
To: Brand, Rachel
Subject: FW: 1325 and 1326

I'm starting to not like Roger Haines. He forwarded my quick response to his U.S. Attorney and I got the attached.

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

From: Lam, Carol
Sent: Thursday, January 27, 2005 12:24 PM
To: Frank, Michael
Subject: 1325 and 1326

Michael,

Roger Haines tells me that the proposed amendments to 8 USC 1325 and 1326 are at OLP but the emphasis right now are on the alien smuggling proposals. While I support the work on the alien smuggling statute, I need to point out that 1325 and 1326 cases make up about 2200 of our 3500 felonies annually, and more than half of our trials. In fact, many of our alien smugglers are prosecuted under 1325 and 1326 (so that we don't have to retain the smuggled aliens as material witnesses). Prosecuting 1325 and 1326 cases has become much more difficult, particularly in the 9th Cir, which has come down with caselaw that provides defendants with potential defenses that, frankly, defy common sense. As a result, we have more cases going to trial, which limits our ability to prosecute other crimes. I would greatly appreciate it if you would give attention to the 1325 and 1326 proposals, or let me know what I can do to shine a light on them as soon as possible.

Thank you.

Carol Lam
United States Attorney
Southern District of California

Brand, Rachel

From: Frank, Michael
Sent: Thursday, January 27, 2005 12:50 PM
To: Brand, Rachel
Subject: FW: 1325 and 1326

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

From: Lam, Carol
Sent: Thursday, January 27, 2005 12:48 PM
To: Frank, Michael
Subject: Re: 1325 and 1326

Michael,

My frustration is that so few people seem to understand that we often prosecute alien smugglers under 1325 and 1326. So improvements to these statutes would directly help the anti-alien smuggling effort. If you could make this point to whomever will listen, I would greatly appreciate it.

Carol

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

From: Frank, Michael <Michael.Frank@USDOJ.gov>
To: Lam, Carol <Carol.Lam@usdoj.gov>
Sent: Thu Jan 27 09:42:14 2005
Subject: RE: 1325 and 1326

Ms. Lam,

I completely understand the need with respect to 1325 and 1326, and thus appreciate your zeal. OLP didn't give priority to alien smuggling as opposed to other areas perhaps in greater need of reform. Rather, we acted in response to what members of Congress requested. To the extent we can, we're trying to broaden their interests to other areas that also warrant legislative attention.

As far as shining light on these issues, LOP may ask for some assistance on that in the future, and I certainly appreciate your offer to help and the assistance Roger has given us.

Michael

Michael J. Frank
Office of Legal Policy

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From: Lam, Carol
Sent: Thursday, January 27, 2005 12:24 PM
To: Frank, Michael
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Michael,

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Thank you.

Carol Lam
United States Attorney
Southern District of California

Brand, Rachel

From: Lam, Carol
Sent: Thursday, January 27, 2005 1:00 PM
To: Brand, Rachel
Subject: Re: 1325 and 1326

Thanks, Rachel. The realities of what we deal with are not always apparent at first glance. These changes would help us immeasurably, both in terms of our caseload and the alien smuggling problem.

Carol

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

From: Brand, Rachel <Rachel.Brand@USDOJ.gov>
To: Lam, Carol <Carol.Lam@usdoj.gov>
CC: Brand, Rachel <Rachel.Brand@USDOJ.gov>
Sent: Thu Jan 27 09:48:29 2005
Subject: FW: 1325 and 1326

Carol:

Just to provide a bit of clarification, we'll definitely take a look at these proposals. By saying that alien smuggling was the focus for now, Michael only meant that we're trying to move those out the door within the next week, so that the others might have to wait a week or two for focused attention.

RLB

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Sent: Thursday, January 27, 2005 12:24 PM
To: Frank, Michael
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Thank you.

Carol Lam
United States Attorney
Southern District of California

Brand, Rachel

From: Hertling, Richard
Sent: Thursday, April 28, 2005 9:33 AM
To: Brand, Rachel
Subject: FW: Recording interviews

Trono responded from the road (he's on his way to Philly with the DAG) on interviews. So we will move forward. rah

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

From: Trono, Robert (ODAG)
Sent: Thursday, April 28, 2005 9:30 AM
To: Hertling, Richard
Subject: Re: Recording interviews

Fantastic. I was going to call and ask for your participation and OLP's help. Jim announced at the USA conf that I would lead a working group on the issue and I immediately had half a dozen USAs approach me with passionate views (interestingly, on either end of the debate) I'll get up with you to coordinate. Bob

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

From: Hertling, Richard <Richard.Hertling@SMOJMD.USDOJ.gov>
To: Trono, Robert (ODAG) <Robert.Trono@SMOJMD.USDOJ.gov>
Sent: Thu Apr 28 09:17:55 2005
Subject: Recording interviews

Bob: I understand from Rachel that you and Paul Charlton have had a conversation following up on his interest in having DOJ investigative agencies alter their policy towards recording interviews. I have had a conversation with Paul about this issue and advised him of OLP's interest in the issue and our general sense of support for the direction in which he wants to head. I further advised that, in the face of what I understand to be concerted opposition from FBI and our other investigative agencies, he ought to have the AGAC develop a task force on the issue. Subsequently, Rachel told me of your interest in the issue and your thought to have an ODAG working group address the question. OLP will be pleased to assist you in developing such a working group and addressing the subject, and I am happy to discuss the matter with you at your convenience. I already have a lawyer assigned to the issue, and he can do a fair amount of the leg-work to make this happen. rah

Brand, Rachel

From: Mullane, Hugh
Sent: Wednesday, June 08, 2005 4:24 PM
To: Brand, Rachel
Cc: Grimsrud, Amy N
Subject: Revised Paper -- comments from ODAG and Crim

Attachments: DOJcostsforenhancedenforcement2.doc

Rachel --

We received comments from ODAG (Dawn) and Crim. (Teresa) as of 4:10 pm. I included their comments in the attached red-line version.

Dawn wanted to include a reference to post-trial pre-conviction and post-conviction pre-designation detention -- which I did. She also mentioned the Expedited removal issue and whether EOIR would have more work as a result. I sent her the stats I sent you and Jon -- which to me suggest that EOIR will NOT have a big role in expedited removal cases because the fear of return claim rate is low. Dawn agreed.

Teresa caught a typo -- which I attempted to fix. I also did not make a change on the second issue because I assumed that we did not intentionally leave out Crim for resource enhancement but referenced USAOs because they would need it more.

Finally, my notes had down that it would be a person would have to smuggle 12 aliens in order to be prosecuted in Arizona. Not having heard anything to the contrary from US Attorney Charlton, I think you were right.

-- Hugh



DOJcostsforenhanc
edenforcement...

cc: Amy

**DOJ COSTS ASSOCIATED WITH INCREASED IMMIGRATION
ENFORCEMENT**

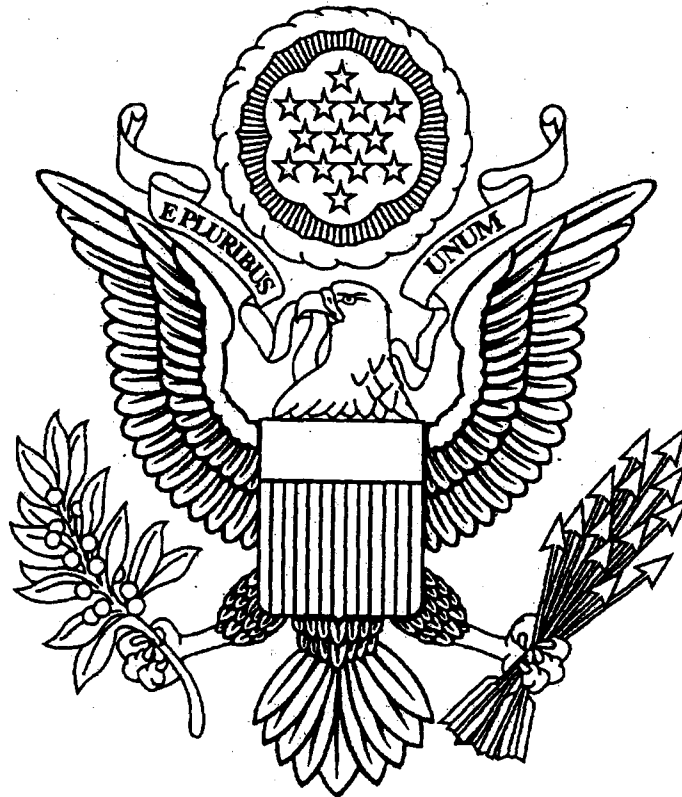
Increased Criminal Prosecutions

OLP000000008

Executive Office for Immigration Review

Civil Litigation Resources

White House Judicial Selection Committee



June 21, 2006

Copy No. 7 of 23:
Rachel Brand

OLP00000010

B.

C.

D.

E. **United States Attorney for the Eastern District of Arkansas**

i. **J. Timothy Griffin**

F.

G.

III. **Confirmation Update**

OLP00000011

J. TIMOTHY GRIFFIN
Candidate for the United States Attorney
for the Eastern District of Arkansas

Age: 37

Residence: Little Rock, Arkansas

Education:

Tulane University School of Law, J.D. *cum laude*, 1994.
Oxford University, Pembroke College, 1990-1991.
Hendrix College, B.A. *cum laude*, 1990.

Legal and Professional Experience:

Special Assistant to the President and Deputy Director, Office of Political Affairs, The White House, 2005- present. (Currently on Military Leave)
Research Director and Deputy Communications Director, 2004 Presidential Campaign, Republican National Committee, 2002-2004.
Special Assistant to the Assistant Attorney General, Criminal Division, U.S. Department of Justice, 2001-2002.
Special Assistant United States Attorney, Eastern District of Arkansas, 2001-2002.
Deputy Research Director, 2000 Presidential Campaign, Republican National Committee, 1999-2001.
Senior Investigative Counsel, Committee on Government Reform, U.S. House of Representatives, 1997-1998 and 1998-1999.
Campaign Manager, Betty Dickey for Attorney General, State of Arkansas, 1998.
Associate Independent Counsel, U.S. Office of Independent Counsel David M. Barrett, 1995-1997.
Associate, Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P., 1994-1995.

Military Service:

Trial Counsel and Special Assistant U.S. Attorney, Judge Advocate General's Corps, U.S. Army Reserves, 2005- present. (Active duty.)
Captain, Judge Advocate General's Corps, U.S. Army Reserves, 2000- present.
First Lieutenant, Judge Advocate General's Corps, U.S. Army Reserves, 1996-2000.

Professional and Civic Activities:

Member, Arkansas Bar Association, 1995- present.
Member, Annual Meeting Subcommittee on Technology, 2002.
Member, The Oxford Society, 1991- present.
Board Member, Florence Crittenton Services, 2001-2002.
Member, Pulaski County Bar Association, 2001-2002.
President, New Orleans Lawyers Chapter, The Federalist Society, 1995.
Life Member, Reserve Officers Association.

Brand, Rachel

From: Bounds, Ryan W (OLP)
Sent: Thursday, July 27, 2006 5:14 PM
To: Charlton, Paul (USAAZ); Brand, Rachel
Subject: Fw: Prosecution Issues

Mr. Charlton,

Is the answer to both of these follow-up questions "yes"? If so, what is the guideline outside of the Tucson sector?

Thanks.

Ryan Bounds

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

From: Douglas_B._Baker@who.eop.gov <Douglas_B._Baker@who.eop.gov>
To: Brand, Rachel
CC: Bounds, Ryan W (OLP); Robert_Jacobs@who.eop.gov <Robert_Jacobs@who.eop.gov>
Sent: Thu Jul 27 16:29:42 2006
Subject: RE: Prosecution Issues

Rachel:

A quick question for clarity purposes. Is Nogales in the Tucson sector? And more importantly, does the USA apply a different policy in other sectors in Arizona? (OK so two questions)

Thanks,

Doug

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

From: Rachel.Brand@usdoj.gov [mailto:Rachel.Brand@usdoj.gov]
Sent: Wednesday, July 26, 2006 6:38 PM
To: Baker, Douglas B.
Cc: Jacobs, Robert; Ryan.W.Bounds@usdoj.gov; Rachel.Brand@usdoj.gov
Subject: RE: Prosecution Issues

I've talked to the U.S. Attorney in Arizona. Here's what he says:

"We have altered our threshold guidelines for the Tucson Sector so that we prosecute marijuana cases of 500 pounds and above. There are exceptions. If the marijuana is found on the Tohono O'odham Indian Reservation, we take all of their cases, regardless of weight, because of our trust obligation. In any other area of the Tucson Sector, we take the case regardless of weight if their is an ongoing investigation regarding the smuggling ring, or some other compelling factor exists, such as endangerment, assault on the officer, or a repeat offender."

There are three major issues to keep in mind when considering this fact:

1) Because we are a federal system and states also have jurisdiction to investigate and prosecute drug offenses, the prosecution threshold has not resulted in a real gap of enforcement on marijuana cases. According to the US Attorney, three of the four border county attorneys in Arizona have agreed to prosecute marijuana cases involving less than 500

pounds. While the fourth county attorney has not issued a blanket policy of accepting cases involving less than 500 pounds, he has agreed to take them on a case-by-case basis. Since the implementation of this drug weight threshold, the U.S. Attorney's Office in Arizona is unaware of any case referred to the country attorneys that completely fell between the cracks of enforcement.

2) Across the country, the Department of Justice's focus is and has been on large, and especially international, drug trafficking rings. For example, the Organized Crime Drug Enforcement Task Force (OCDEF) focuses on prosecuting entire organizations, not necessarily responding to each enforcement event. This is partly a function of limited resources and partly because these are the types of cases that federal law enforcement (as opposed to state and local law enforcement) is uniquely equipped to handle.

3) Finally, higher prosecution thresholds are simply going to be a fact of life if the state of budget/resources in the SWB US Attorneys' offices remains what it is now. These districts, and perhaps especially Arizona, are absolutely stretched to the limit. Our focus recently has been on immigration enforcement, but insufficient resources affects every type of enforcement, including narcotics cases. US Attorneys' offices must always triage and prioritize, and the need to do so is especially acute here. We'd be happy to get you more info on the staggering caseload that each Assistant US Attorney in Arizona currently carries. It is true that we will be adding 20 new immigration prosecutors and 5 OCDEF prosecutors to the SWB districts with the money from the supplemental, and I would imagine this would be part of the response to Speaker Hastert. Just for your information, however -- do not expect this to effect a radical change in those districts' ability to take smaller cases. It is only a first step.

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

From: Douglas_B._Baker@who.eop.gov [mailto:Douglas_B._Baker@who.eop.gov]
Sent: Tuesday, July 25, 2006 5:54 PM
To: Brand, Rachel
Cc: Robert_Jacobs@who.eop.gov
Subject: Prosecution Issues

Rachel:

I understand that Barry Jackson has asked a question about the variable prosecution policies by AUSA Sector for illegal immigration. We have another question posed by Speaker Hastert. He understands that the AUSA for Nogales will not prosecute marijuana possession for amounts less than 500 lbs. Seems unlikely to me, but need to get to the truth as this was raised in meeting with POTUS.

Thanks,

Doug

Brand, Rachel

From: Bounds, Ryan W (OLP)
Sent: Thursday, July 27, 2006 7:43 PM
To: 'Douglas_B_Baker@who.eop.gov'; Brand, Rachel
Cc: Robert_Jacobs@who.eop.gov
Subject: RE: Prosecution Issues

Nogales is indeed in the Tucson sector. The only other sector in the District of Arizona is the Yuma sector, for which the USAO maintains a 500 pound threshold for marijuana cases with the same exceptions that apply in the Tucson sector. (We are told that the Yuma County Attorney accepts all cases that are referred for failing to meet the 500-pound threshold.)

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

From: Douglas_B_Baker@who.eop.gov [mailto:Douglas_B_Baker@who.eop.gov]
Sent: Thursday, July 27, 2006 4:30 PM
To: Brand, Rachel
Cc: Bounds, Ryan W (OLP); Robert_Jacobs@who.eop.gov
Subject: RE: Prosecution Issues

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Cc: Robert_Jacobs@who.eop.gov
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Thanks,

Doug

Brand, Rachel

From:
Sent: Monday, October 02, 2006 10:20 AM
To: Brand, Rachel
Subject: A Day in the Life

Attachments: tmp.htm



tmp.htm (4 KB)

So, Rachel

This past Friday Miss Margaret called a mandatory all-staff meeting of AUSAs and support personnel--the entire office--and publicly announced who was getting bonuses and who wasn't. She stated that all those who got an outstanding performance evaluation were the ones who got a bonus. She then read a list of names of the AUSAs and support personnel who were getting bonuses (with the deafening silence of those who were omitted . . . pretty much half-and-half).

Publicly-shamed secretaries started sniffing in the meeting then broke down in heart-rending sobs in their cubicles. Angry and disgusted AUSAs--both those who got bonuses and those who didn't--retreated in groups behind closed office doors, saying they'd never seen anything like it.

So at 7:09 AM this morning, Miss Margaret commences damage control

Oh, yeah, almost forgot . . . you can guess the one person who got the largest bonus and presumably the best rating.

>
>

From: Chiara, Margaret M. (USAMIW)
> Sent: Monday, October 02, 2006 7:09 AM
> To: USAMIW-EVERYONE
> Subject: 2005 Awards
>
> In an effort to increase understanding of the 2005 awards amount and
> allocation, special attention was paid to conveying the details of the
> process and the identification of the 2005 recipients. Recognizing
> outstanding or superior performance publicly is a recommended practice
> and, I am informed, a standard national procedure.
> After the All Staff meeting, several of you conveyed distress at the
> identification of award recipients. I regret that the impression
> conveyed was that staff whose names were not announced, (because they
> did not achieve an outstanding rating), was somehow synonymous with
> failing to contribute to the WDMI mission. That impression is
> incorrect. Each year supervisors assess the quality and quantity of
> staff performance during and at the conclusion of the year. It is an
> imperfect but required procedure which is conducted in good faith and
> with real effort by those who have supervisory responsibility. We do
> need to acknowledge those whose contribution exceeds an acceptable or

> satisfactory level. However, I have no interest in offending those of
> you whose contribution was less than outstanding in a particular year.
> So, we will revisit the matter when awards are announced for 2006.
> Meanwhile, I urge each of you to do your best to serve the interests
> of United States and to protect the safety of the people who live and
> work in this federal district. MMC

So, Rachel . . .

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So at 7:09 AM this morning, Miss Margaret commences damage control

Oh, yeah, almost forgot . . . you can guess the one person who got the largest bonus and presumably the best rating.

Thanks, Rachel, you're a life-saver!

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Sent: Monday, October 02, 2006 7:09 AM
To: USAMIW-EVERYONE
Subject: 2005 Awards

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OLP000000019

Bounds, Ryan W (OLP)

From: Bounds, Ryan W (OLP)
Sent: Monday, April 03, 2006 5:29 PM
To: Seidel, Rebecca
Subject: Re: Catch and release

OK.

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

From: Seidel, Rebecca <Rebecca.Seidel@SMOJMD.USDOJ.gov>
To: Bounds, Ryan W (OLP) <Ryan.W.Bounds@SMOJMD.USDOJ.gov>
CC: Otis, Lee L <Lee.L.Otis@SMOJMD.USDOJ.gov>; Rybka, Timothy A <Timothy.A.Rybka@usdoj.gov>; Voris, Natalie (USAEO) <Natalie.Voris@usdoj.gov>
Sent: Mon Apr 03 17:17:50 2006
Subject: FW: Catch and release

Thanks Natalie. Ryan, could you please turn this draft response into talkers? First talker should be the AG saying "I understand that we are arranging a briefing for you on this issue" (DAG will be meeting with him after the Easter recess).

Then the rest should be just enough as may be necessary to rebut a little.

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

From: Voris, Natalie (USAEO)
Sent: Monday, April 03, 2006 5:12 PM
To: Seidel, Rebecca
Cc: Crews, John (USAEO); Smith, David L. (USAEO)
Subject: FW: Catch and release

Rebecca,
Dave must be reading minds today...see below.

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

From: Smith, David L. (USAEO)
Sent: Monday, April 03, 2006 5:00 PM
To: Voris, Natalie (USAEO)
Cc: Crews, John (USAEO)
Subject: RE: Catch and release

Natalie,

I don't know of any talking points either. However, perhaps Rebecca is thinking of letters that Rep. Issa wrote to Carol Lam and to the AG last year criticizing the SDCA for its immigration prosecution policies. The letters were mostly focused on two specific cases that SDCA did not prosecute. But in the letter to the AG Issa also criticized "catch and release" generally in the context of USAO prosecutions. I drafted a response to the letters, attached. I don't believe the response was ever sent because it was determined to have a briefing rather than a formal letter response. I don't know whether the briefing ever took place or what ever happened to the issue.

See emails on this subject below.
Dave

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

From: Crews, John (USAEO)
Sent: Monday, April 03, 2006 4:37 PM
To: Voris, Natalie (USAEO); Smith, David L. (USAEO)
Subject: Re: Catch and release

I am not aware of any talking points on this. The issue of catch and release is an administrative, which is to say - non criminal context. The USAO's don't get involved in this part of immigration enforcement.

Jgc

Sent from my BlackBerry Wireless Device

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

From: Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
To: Smith, David L. (USAEO) <DSmith@usa.doj.gov>; Crews, John (USAEO) <JCrews@usa.doj.gov>
Sent: Mon Apr 03 16:32:36 2006
Subject: FW: Catch and release

Are either of you aware of catch and release talkers? See below.

nv

From: Seidel, Rebecca
Sent: Monday, April 03, 2006 4:27 PM
To: Voris, Natalie (USAEO)
Cc: Bounds, Ryan W (OLP); Otis, Lee L
Subject: Fw: Catch and release
Importance: High

See below. I think EOUSA has something too?

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

From: Seidel, Rebecca <Rebecca.Seidel@SMOJMD.USDOJ.gov>
To: Kent, Don (DHS) <Don.Kent@dhs.gov>; Turner, Pam (DHS) <Pam.Turner@DHS.GOV>; Kendall, Sarah (DHS) <Sarah.Kendall@dhs.gov>

CC: Bounds, Ryan W (OLP) <Ryan.W.Bounds@SMOJMD.USDOJ.gov>; Otis, Lee L <Lee.L.Otis@SMOJMD.USDOJ.gov>
Sent: Mon Apr 03 16:26:09 2006
Subject: Catch and release

I think you guys have good talkers on this, about how you are remedying? Apparently Rep Issa is going to ask AG at his hearing Thurs in HJC about crim alien prosecutions generally, and catch and release in particular.

Please forward what you can asap?

From: Smith, David L. (USAEO)
Sent: Tuesday, January 10, 2006 6:25 PM
To: Seidel, Rebecca; Otis, Lee L
Cc: Voris, Natalie (USAEO); Crews, John (USAEO)
Subject: FW: Issa letter

Rebecca,

Per our conversation last night, attached is the Issa/CA delegation letter to the AG regarding alien prosecutions in the SDCA, as well as EOUSA's draft response to the letter. There are additional materials that I can forward on this, including a long memo that the SDCA prepared on the matter as well as SDCA stats, etc. Please note that the response letter was intended to be a response to both the CA delegation letter and to an earlier letter Issa sent directly to USA Carol Lam on the same issue.

Lee, my understanding is that the latest thought was to do a briefing in lieu of a letter response, but I am not sure where this stands at the moment.

Please let me know what your thoughts are on this so I can keep SDCA apprised.

Thanks

Dave

From: Smith, David L. (USAEO)
Sent: Friday, November 18, 2005 11:53 AM
To: Otis, Lee L
Cc: Voris, Natalie (USAEO); Parras, Jeff (USAEO)
Subject: Issa letter

Lee,

Attached is my draft response to Cong. Issa and the California delegation regarding the prosecution policies in SDCA. The Exec Sec. hard copy of this letter is being sent on down the line here as well.

Also, I have collected a variety of additional stats not currently cited in the draft and can forward them to you if you would like. I will give you a call.

Dave

David L. Smith
Legislative Counsel
Executive Office for U.S. Attorneys
(202) 353-3035
David.L.Smith2@usdoj.gov

-----Original Message-----
From: Seidel, Rebecca

Sent: Tuesday, October 25, 2005 12:14 PM

To: Voris, Natalie (USAEO)

Cc: Cohn, Jonathan (CIV); Callier, Sandra M; Bounds, Ryan W (OLP);
Scott-Finan, Nancy

Subject: FW: CA Republican delegation letter - prosecution of Criminal
aliens

Natalie - please see this letter. Sandra will log with Exec Sec and start through normal process, but wanted to give you heads up as EOUSA will likely have pen, hopefully we can get this response done soon (do we have a good response?). Note that the Delegation asks to meet with the AG. AG not necessary for this, but we should discuss whether Mike Battle may be appropriate to bring up to meet with Members?

I know the "catch and release" thing is a DHS issue, however, note the reference to USA declining to prosecute.

Bounds, Ryan W (OLP)

From: Bounds, Ryan W (OLP)
Sent: Tuesday, April 04, 2006 8:13 PM
To: Seidel, Rebecca; Otis, Lee L
Subject: TPs on Issa's Catch-and-Release question

Importance: High

Attachments: ISSA-- Catch-and-Release (AG Briefing 4-7).doc

See attached.



ISSA--
ch-and-Release (AG

Ryan W. Bounds
Chief of Staff and Senior Counsel
Office of Legal Policy, DOJ
W: 202/305-4870
M: 202/532-5121
F: 202/514-1731

Tracking:

Recipient	Read
Seidel, Rebecca	Read: 4/4/2006 8:17 PM
Otis, Lee L	Read: 4/5/2006 12:11 PM

REP. ISSA: CATCH-AND-RELEASE

Issue: The U.S. Attorney for the Southern District of California has reportedly indicated to Congressman Issa of San Diego that the USAO will not prosecute a criminal alien for unlawful entry unless the alien has already been convicted of two felonies in the district. Congressman Issa wants a copy of the prosecutorial guidelines and to discuss the Department's enforcement policies.

Talking Points:

- I understand that the Department is in the process of setting up a briefing with you on this issue.
- I share your belief in the importance of securing the Southwest border and preventing criminal aliens—and all illegal aliens—from remaining at large in Southwestern towns and cities. I applaud the House's passage of H.R. 4437 as an important legislative advance in this critical effort.
- Although enactment of a border-security bill along the lines of H.R. 4437 will improve matters considerably, I must note that the Southern District of California has a strong record of prosecuting criminal aliens despite the obvious and formidable challenges.
- **The U.S. Attorney's Office for the Southern District of California, along with the USAOs for just four other districts, prosecuted over two-thirds of the criminal immigration cases nationwide last year.**
- More can and must be done, of course, and so the Department is constantly seeking new ways to enhance the effectiveness of our law-enforcement efforts. H.R. 4437 and the comprehensive immigration reform that is now being debated in the Senate should give us many tools to do just that.

Background:

Congressman Issa sent you an October 20, 2005, letter complaining about the Southern District of California's (SDCA's) failure to prosecute criminal aliens generally and two aliens in particular. The letter was co-signed by 18 members of California's delegation.

A briefing is being scheduled for Congressman Issa and the DAG after the Easter recess.

SDCA categorizes criminal aliens into four major categories for purposes of illegal re-entry prosecutions: (1) violent/major felons (which includes aliens with convictions for national security or terrorism offenses, murder, rape, forcible sex offenses and other violent crimes), (2) recidivist felons, (3) repeat immigration violators on supervised release, and (4) alien smugglers (guides) who otherwise do not meet the guidelines for smuggling prosecution.

Drafter: Ryan Bounds, OLP, x54870

OLP000000025

Bounds, Ryan W (OLP)

From: Bounds, Ryan W (OLP)
Sent: Tuesday, May 09, 2006 6:20 PM
To: Ambrose, Cheryl
Cc: Hertling, Richard
Subject: FW: USA_FY07 QFR_Sen Domenici_Int'l Borders.doc

Attachments: USA_FY07 QFR_Sen Domenici_Int'l Borders (OLP revised).doc



USA_FY07
R_Sen Domenici_Int'l

Attached is a redline version of these QFR responses, reflecting proposed changes.

Ryan Bounds
OLP
x54870

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

From: Hertling, Richard
Sent: Tuesday, May 09, 2006 12:19 PM
To: Bounds, Ryan W (OLP)
Subject: Fw: USA_FY07 QFR_Sen Domenici_Int'l Borders.doc

This one belongs to you, sir (I would copy Brent if he were here).

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

From: Ambrose, Cheryl
To: Chambers, Shane P; Seidel, Rebecca; Epley, Mark D; Hertling, Richard
Sent: Tue May 09 12:15:52 2006
Subject: USA_FY07 QFR_Sen Domenici_Int'l Borders.doc

Please provide any comments by COB Wednesday, May 10, 2006. Thank you.

Tracking:	Recipient	Read
	Ambrose, Cheryl	Read: 5/10/2006 7:15 AM
	Hertling, Richard	Read: 5/9/2006 6:28 PM

**QUESTION FOR THE RECORD SUBMITTED BY
SENATOR PETE V. DOMENICI**

Judiciary Needs on International Borders

QUESTION: Federal Judges serving in Districts located on the southern international border have caseloads with an increasing number of immigration related matters. According to the Administrative Office of the Courts, for FY2004 my home state of New Mexico had 1502 immigration filings and 2497 total criminal filings. Compare that to a northern border district – the Western District of Washington had 78 immigration filings and 539 total criminal filings.

As we continue to work to secure our nation, we must be sure that we adequately equip all of the agencies involved in this fight, including the federal courts that must prosecute immigration related charges. I fear that we are not focusing on agencies outside of the Department of Homeland Security and their need for funding, as I have heard from New Mexico judges that their resources are insufficient to meet their increasing immigration-related caseloads.

Additionally, I am afraid our Southwest border district courts will be unable to handle the increased immigration caseload that is sure to result from increased enforcement efforts without new judges.

Can you speak to the crisis southwest border courts like Arizona and New Mexico face?

ANSWER: The five judicial districts that constitute the Southwest border generate a significant percentage of the total workload for Department of Justice components such as the U.S. Marshals Service (USMS) and the U.S. Attorneys' Offices (USAOs). In the USAOs, 68 percent of all immigration cases occur on the Southwest border—12,318 immigration cases were filed in the Southwest border districts out of a total of 18,147 immigration cases filed nationwide in 2005.

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In FY 2005, 31 percent of all prisoner productions (transporting a prisoner to a judicial proceeding) by the USMS were in Southwest border districts; even though these five districts are only 5 percent of the 94 districts nationwide. Ten percent of all USMS prisoner productions were in Arizona and New Mexico in FY 2005. In addition to court proceedings, the Southwest border districts have an enormous warrant workload. In FY 2005, 21 percent of all Class I fugitive warrants (federal felony warrants and DEA warrants) were issued by federal judges working in Southwest border districts. Six percent of all Class I fugitive warrants were issued by federal judges in Arizona and New Mexico in FY 2005.

QUESTION: What resources are being marshaled by the Department of Justice to assist federal courts faced with increasing caseloads due to our successful efforts to secure our country?

ANSWER: Judicial security is one area where the Department of Justice can directly assist federal courts. The USMS strives to place its personnel in those districts with the

greatest amount of workload. In FY 2005, the USMS received 94 new Deputy U.S. Marshals for judicial security work in the districts. Of this amount, 34 percent (or 32 Deputy U.S. Marshals) were allocated to the five Southwest border districts. The Department of Justice is providing significant resources, in the form of judicial security, to assist federal courts along the Southwest border.

QUESTION: What other needs does the Department of Justice have on our international borders --- is there a need for more Assistant U.S. Attorneys, Deputy U.S. Marshals, and/or Bureau of Prisons personnel?

ANSWER: The 2007 President's Budget for the Department of Justice requests funds for additional Assistant U.S. Attorneys (AUSAs) and Deputy U.S. Marshals:

Deleted: resources to fund

<u>Requested FY 2007 Program Increases</u>	<u>Amount</u>		
	<u>Pos</u>	<u>FTE</u>	<u>(\$s in 000s)</u>
U.S. Attorneys	149	75	\$23,205
U.S. Marshals Service	66	33	\$13,619

In addition, the budget request for the USAOs and USMS include \$58.6 million and \$57.7 million respectively for adjustments-to-base increases to cover rising salaries, benefits, and overhead costs. These additional resources, if fully funded, will be allocated based on the latest workload and budgetary data available at the time of enactment. Since the workload of the USAOs and USMS along the Southwest border does not appear likely to diminish, it is only logical to assume that full support of the 2007 President's Budget will result in more resources in border districts.

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By way of background, the USAOs in the five districts along the Southwest Border are at the forefront of the Department's efforts to stem the tide of illegal immigration and drug trafficking. Between FY 1998 and FY 2005, a total of 97 new Assistant United States Attorneys positions were allocated to the five Southwest Border districts. These additional resources have helped to play a part in increasing the number of criminal immigration cases filed in the five Southwest Border districts by over 55 percent between FY 2000 and FY 2005—from 7,942 to 12,318 cases filed.

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QUESTION: Besides creating new district judgeships for border courts and providing more funding for these courts, what else can Congress do to assist the federal border courts that are in a situation the Judicial Conference has called a crisis?

ANSWER: From time to time, the Department of Justice submits legislative proposals to the Congress that address a wide range of legal issues, including those affecting the courts. Those proposals are the most effective avenue for responding to such a question. It is clear, however, that as the judicial staffing and workload of the courts expand, the space, personnel, and funding resources needed for Department of Justice components such as the USMS, USAOs and Bureau of Prisons will also increase.

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Deleted: also expands

Bounds, Ryan W (OLP)

From: Bounds, Ryan W (OLP)
Sent: Thursday, June 08, 2006 10:01 AM
To: Brand, Rachel
Subject: Re: Urgent Report (Alien Smuggling Arrests-SEALED INDICTMENT)

That is all very serendipitous, since we were just talking with Taylor yesterday about the criticism for the lack of alien smuggling prosecutions in SD Cal at yesterday's meeting.

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

From: Brand, Rachel
To: Bounds, Ryan W (OLP)
Sent: Thu Jun 08 09:57:43 2006
Subject: Fw: Urgent Report (Alien Smuggling Arrests-SEALED INDICTMENT)

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

From: Taylor, Jeffrey (OAG)
To: Brand, Rachel; Elwood, Courtney; Scolinos, Tasia; Elston, Michael (ODAG)
CC: Sampson, Kyle
Sent: Thu Jun 08 09:57:01 2006
Subject: Re: Urgent Report (Alien Smuggling Arrests-SEALED INDICTMENT)

Not until it is unsealed, and then, of course, we would have to be careful about what we say.

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

From: Brand, Rachel
To: Elwood, Courtney; Scolinos, Tasia; Elston, Michael (ODAG)
CC: Sampson, Kyle; Taylor, Jeffrey (OAG)
Sent: Thu Jun 08 09:53:57 2006
Subject: Re: Urgent Report (Alien Smuggling Arrests-SEALED INDICTMENT)

Can we say anything about it at this point?

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

From: Elwood, Courtney
To: Scolinos, Tasia; Brand, Rachel; Elston, Michael (ODAG)
CC: Sampson, Kyle; Taylor, Jeffrey (OAG)
Sent: Thu Jun 08 09:46:41 2006
Subject: FW: Urgent Report (Alien Smuggling Arrests-SEALED INDICTMENT)

Knowing nothing more than what I see in this urgent report, this sounds like the kind of story that the WH-led immigration working group should be aware and perhaps highlight.

Courtney Simmons Elwood
Deputy Chief of Staff and
Counselor to the Attorney General
U.S. Department of Justice
(w) 202.514.2267
(c) 202.532.5202
(fax) 202.305.9687

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

From: USAEO-Urgent
Sent: Thursday, June 08, 2006 9:21 AM
To: Tenpas, Ronald J (ODAG); Taylor, Jeffrey (OAG); Smith, Kimberly A; Sierra, Bryan

(OPA); Scolinos, Tasia; Sampson, Kyle; Roehrkasse, Brian; Mercer, Bill (ODAG); Goodling, Monica; Elwood, Courtney; Elston, Michael (ODAG); Battle, Michael (USAEO); Beeman, Judy (USAEO); Coughlin, Robert; Fisher, Alice; Friedrich, Matthew; Kelly, John (USAEO); Parent, Steve (USAEO); Sabin, Barry; Schools, Scott (USAEO); USAEO-Chron; Voris, Natalie (USAEO)
Subject: Urgent Report (Alien Smuggling Arrests-SEALED INDICTMENT)

URGENT REPORT 06-06-0011

TO: THE ATTORNEY GENERAL
THE DEPUTY ATTORNEY GENERAL

FROM: Carol C. Lam
United States Attorney
Southern District of California
(619) 557-5690 (Office)
(Home)
(619) 855-6244 (Cell)

DATE: June 8, 2006

CLASSIFICATION: Limited Official Use

CONTACT PERSON: Linda Frakes
Deputy Chief, General Crimes Section
(619) 557-5711 (Office)
(Home)
(619) 206-7332 (Cell)

OLP000000030

<<UR-06-06-0011SDCA.wpd>>

Bounds, Ryan W (OLP)

From: Bounds, Ryan W (OLP)
Sent: Friday, June 23, 2006 4:45 PM
To: Brand, Rachel
Subject: FW: SWB 1325 Prosecution Guidelines

Importance: High

Rachel,

Joel Harris was at the AG/Myers event at the WH today and mentioned that he had never gotten this information---I admitted that I was surprised and would circle back. Did you give it to someone else? Would you have any objection to my forwarding the substance of Fridman's e-mail directly to Harris?

Lemme know.

RWB

From: Fridman, Daniel (ODAG)
Sent: Thursday, June 15, 2006 2:07 PM
To: Brand, Rachel
Cc: Bounds, Ryan W (OLP); Mercer, Bill (ODAG)
Subject: SWB 1325 Prosecution Guidelines

1325s are evaluated by each district on a case by case basis. Due to resource limitations (AUSAs, detention space, public defenders, judges) not every illegal entry case can be accepted, so most districts focus on the worst offenders.

Arizona

New Mexico

Western Texas

Southern District of California (San Diego)

Southern District of Texas

Daniel S. Fridman, Esq.
Counsel to the Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Office # 4114
Washington, D.C. 20530
Tel: (202) 514-5650
Daniel.Fridman2@usdoj.gov

Tracking:

Recipient

Brand, Rachel

Read

Read: 6/23/2006 4:45 PM

Bounds, Ryan W (OLP)

From: Bounds, Ryan W (OLP)
Sent: Wednesday, July 05, 2006 1:55 PM
To: Mercer, Bill (ODAG); Elston, Michael (ODAG)
Subject: RE: Issa Questions and Response

FYI--Unhelpful developments in SD Cal.

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

From: Seidel, Rebecca
Sent: Wednesday, July 05, 2006 1:49 PM
To: Kebodeaux, Tiffany (DHS); Kent, Don (DHS); 'Michael_P._Moreland@who.eop.gov'
Cc: Roland, Sarah E; Bounds, Ryan W (OLP); Otis, Lee (SMO); Voris, Natalie (USAEO)
Subject: FW: Issa Questions and Response
Importance: High

see below. Who prepped the Border Patrol for this hearing? Who is he to say what prosecution standards should be? If you aren't already watching, you can stream it on C-Span.org

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

From: Crews, John (USAEO)
Sent: Wednesday, July 05, 2006 1:34 PM
To: Seidel, Rebecca; McHenry, Teresa; Voris, Natalie (USAEO)
Cc: Smith, David L. (USAEO); Hahn, Paul (USAEO); Roberts, Tom; Campbell, Benton
Subject: RE: Issa Questions and Response

He just did it again. He was asked a question by a Republic Congresswoman from Tennessee. He suggested uniformity in national intake criteria. He said that cases which were declined earlier had been prosecuted as 8 USC 1326 defendants rather than 1324 defendants. However now they weren't being prosecuted. JGC.

From: Crews, John (USAEO) [mailto:John.Crews@usdoj.gov]
Sent: Wednesday, July 05, 2006 1:19 PM
To: Seidel, Rebecca; Voris, Natalie (USAEO); McHenry, Teresa
Cc: Smith, David L. (USAEO); Hahn, Paul (USAEO); Roberts, Tom
Subject: Issa Questions and Response
Importance: High

Listening to HJC field hearing now ongoing on CSPAN.

Congressman Issa, vice chair of the committee having the hearings, asked questions regarding the prosecutions guidelines of SDCA. Congressman Issa made reference to the station report he's made reference to in the past, and which he referenced in his recent letter to Ms. Lam. Congressman Issa said wasn't it true that only 6% of the individuals apprehended were prosecuted for alien smuggling.

Border Patrol Sector Chief Darryl Griffen said that USAO SD CA changed prosecution guidelines in December, 2004, he believed on December 7, 2004. Griffen said in the year prior to that time his office had taken for prosecution some 367 aliens transporters, mostly guides. The intake guidelines changed, and in the remainder of that fiscal year they had prosecuted 5. Chief Griffen went on to say that it was his understanding each USA had discretion to set his or her own intake guidelines; and that these varied between each judicial district. Griffen went on to suggest that there be uniform national intake guidelines.

Bounds, Ryan W (OLP)

From: Nash, Stuart (ODAG)
Sent: Tuesday, July 25, 2006 6:43 PM
To: Brand, Rachel
Cc: Bounds, Ryan W (OLP); Macklin, Kristi R; Otis, Lee L
Subject: Re: Prosecution Issues

Rachel:

There are no standardized intake criteria for narcotics cases in the USAOs. Each office tailors its intake criteria to address the realities of the threat in the district. Given the large number of high volume mj interdictions in AZ, I'm sure their threshold is quite high, although I agree that 500 lbs. is somewhat higher than I would have guessed. I'll let Paul address the specifics of that claim.

I'm not sure if you were looking for an answer on the immigration question, which seemed pretty general, but if so, I have forwarded your e-mail to Lee Otis.

The Department is looking to get additional AUSAs to the Border, which would, of course, provide the flexibility to potentially lower the thresholds.

Sent from my BlackBerry Wireless Handheld

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

From: Brand, Rachel
To: Charlton, Paul (USAAZ); Nash, Stuart (ODAG)
CC: Bounds, Ryan W (OLP); Macklin, Kristi R
Sent: Tue Jul 25 18:20:39 2006
Subject: Fw: Prosecution Issues

Gentlemen: what's the response to this?

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

From: Douglas_B._Baker@who.eop.gov <Douglas_B._Baker@who.eop.gov>
To: Brand, Rachel
CC: Robert_Jacobs@who.eop.gov <Robert_Jacobs@who.eop.gov>
Sent: Tue Jul 25 17:53:58 2006
Subject: Prosecution Issues

Rachel:

I understand that Barry Jackson has asked a question about the variable prosecution policies by AUSA Sector for illegal immigration. We have another question posed by Speaker Hastert. He understands that the AUSA for Nogales will not prosecute marijuana possession for amounts less than 500 lbs. Seems unlikely to me, but need to get to the truth as this was raised in meeting with POTUS.

Thanks,

Doug

Bounds, Ryan W (OLP)

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 6:46 PM
To: Nash, Stuart (ODAG)
Cc: Bounds, Ryan W (OLP); Macklin, Kristi R; Otis, Lee L
Subject: Re: Prosecution Issues

Thanks.

We're already dealing with the immigration issue separately. This inquiry is just about the marijuana.

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

From: Nash, Stuart (ODAG)
To: Brand, Rachel
CC: Bounds, Ryan W (OLP); Macklin, Kristi R; Otis, Lee L
Sent: Tue Jul 25 18:43:13 2006
Subject: Re: Prosecution Issues

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To: Brand, Rachel
CC: Robert_Jacobs@who.eop.gov <Robert_Jacobs@who.eop.gov>
Sent: Tue Jul 25 17:53:58 2006
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Thanks,

Doug

Bounds, Ryan W (OLP)

From: Charlton, Paul (USAAZ)
Sent: Tuesday, July 25, 2006 6:51 PM
To: Nash, Stuart (ODAG); Brand, Rachel
Cc: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Subject: RE: Prosecution Issues

Attachments: tmp.htm



tmp.htm (3 KB)

It is true. We no longer have the resources to prosecute marijuana cases under 500 pounds. The exception is the Tohono O'odham Indian reservation, where we will prosecute all drug cases based on our trust obligation. Three of the four border county attorneys have agreed to prosecute marijuana cases under 500 pounds, filling the void we have left. It is unclear what the policy of the fourth county attorney will be. We have heard of no cases going unprosecuted based on our new guidelines.

Paul

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 3:21 PM
To: Nash, Stuart (ODAG); Charlton, Paul (USAAZ)
Cc: Bounds, Ryan W (OLP); Macklin, Kristi R
Subject: Fw: Prosecution Issues

Gentlemen: what's the response to this?

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

From: Douglas_B._Baker@who.eop.gov <Douglas_B._Baker@who.eop.gov>
To: Brand, Rachel
CC: Robert_Jacobs@who.eop.gov <Robert_Jacobs@who.eop.gov>
Sent: Tue Jul 25 17:53:58 2006
Subject: Prosecution Issues

<<tmp.htm>> Rachel:

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was raised in meeting with POTUS.

Thanks,

Doug

Bounds, Ryan W (OLP)

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 7:03 PM
To: Charlton, Paul (USAAZ); Nash, Stuart (ODAG)
Cc: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Subject: Re: Prosecution Issues

Do you know how many marijuana cases you prosecute over 500 lbs in a year and how many are taken by the county attorneys?

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

From: Charlton, Paul (USAAZ)
To: Nash, Stuart (ODAG); Brand, Rachel
CC: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Sent: Tue Jul 25 18:51:04 2006
Subject: RE: Prosecution Issues

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From: Brand, Rachel
Sent: Tuesday, July 25, 2006 3:21 PM
To: Nash, Stuart (ODAG); Charlton, Paul (USAAZ)
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Thanks,

Doug

Bounds, Ryan W (OLP)

From: Nash, Stuart (ODAG)
Sent: Tuesday, July 25, 2006 7:11 PM
To: Charlton, Paul (USAAZ); Brand, Rachel
Cc: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Subject: Re: Prosecution Issues

I would add one additional observation. The recent focus of OCDETF prosecutions has been on eradicating entire organizations, not necessarily on responding to specific enforcement events. For that reason, the exclusive focus on the drug weight threshold is somewhat misleading.

Transactions involving much smaller amounts will be prosecuted (usually as overt acts in a conspiracy), if they can be strung together to prove the ongoing operation of a trafficking organization over an extended period of time.

Sent from my BlackBerry Wireless Handheld

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

From: Charlton, Paul (USAAZ)
To: Nash, Stuart (ODAG); Brand, Rachel
CC: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Sent: Tue Jul 25 18:51:04 2006
Subject: RE: Prosecution Issues

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Paul

From: Brand, Rachel
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To: Nash, Stuart (ODAG); Charlton, Paul (USAAZ)
Cc: Bounds, Ryan W (OLP); Macklin, Kristi R
Subject: Fw: Prosecution Issues

Gentlemen: what's the response to this?

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

From: Douglas_B._Baker@who.eop.gov <Douglas_B._Baker@who.eop.gov>
To: Brand, Rachel
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Thanks,

Doug

Bounds, Ryan W (OLP)

From: Charlton, Paul (USAAZ)
Sent: Tuesday, July 25, 2006 7:13 PM
To: Brand, Rachel; Nash, Stuart (ODAG)
Cc: Bounds, Ryan W (OLP); Macklin, Kristi R; Knauss, Dan (USAAZ)
Subject: RE: Prosecution Issues

Attachments: tmp.htm



tmp.htm (5 KB)

Well said. I'm working on your previous question Rachel. Paul

From: Nash, Stuart (ODAG)
Sent: Tuesday, July 25, 2006 4:11 PM
To: Brand, Rachel; Charlton, Paul (USAAZ)
Cc: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Subject: Re: Prosecution Issues

I would add one additional observation. The recent focus of OCDETF prosecutions has been on eradicating entire organizations, not necessarily on responding to specific enforcement events. For that reason, the exclusive focus on the drug weight threshold is somewhat misleading.

Transactions involving much smaller amounts will be prosecuted (usually as overt acts in a conspiracy), if they can be strung together to prove the ongoing operation of a trafficking organization over an extended period of time.

Sent from my BlackBerry Wireless Handheld

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

From: Charlton, Paul (USAAZ)
To: Nash, Stuart (ODAG); Brand, Rachel
CC: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Sent: Tue Jul 25 18:51:04 2006
Subject: RE: Prosecution Issues

It is true. We no longer have the resources to prosecute marijuana cases under 500 pounds. The exception is the Tohono O'odham Indian reservation, where we will prosecute all drug cases based on our trust obligation. Three of the four border county attorneys have agreed to prosecute marijuana cases under 500 pounds, filling the void we have left. It is unclear what the policy of the fourth county attorney will be. We have heard of no cases going unprosecuted based on our new guidelines.
Paul

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 3:21 PM
To: Nash, Stuart (ODAG); Charlton, Paul (USAAZ)
Cc: Bounds, Ryan W (OLP); Macklin, Kristi R
Subject: Fw: Prosecution Issues

Gentlemen: what's the response to this?

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

From: Douglas_B._Baker@who.eop.gov <Douglas_B._Baker@who.eop.gov>
To: Brand, Rachel
CC: Robert_Jacobs@who.eop.gov <Robert_Jacobs@who.eop.gov>
Sent: Tue Jul 25 17:53:58 2006
Subject: Prosecution Issues

<<tmp.htm>> Rachel:

I understand that Barry Jackson has asked a question about the variable prosecution policies by AUSA Sector for illegal immigration. We have another question posed by Speaker Hastert. He understands that the AUSA for Nogales will not prosecute marijuana possession for amounts less than 500 lbs. Seems unlikely to me, but need to get to the truth as this

was raised in meeting with POTUS.

Thanks,

Doug

Bounds, Ryan W (OLP)

From: Charlton, Paul (USAAZ)
Sent: Tuesday, July 25, 2006 7:45 PM
To: Nash, Stuart (ODAG); Brand, Rachel
Cc: Bounds, Ryan W (OLP); Macklin, Kristi R; Knauss, Dan (USAAZ)
Subject: RE: Prosecution Issues

Attachments: tmp.htm; narc defs charged.pdf; narc cases opened.pdf; narc cases charged.pdf



tmp.htm (6 KB)



narc defs
charged.pdf (9 KB)



narc cases
opened.pdf (9 KB)



narc cases
charged.pdf (9 KB)

Rachel - we cannot break out weight limits on our

prosecutions. Nor can I obtain the numbers of cases taken by the county attorney as a result of our policy. Below are our overall narcotics prosecutions for the years 2000 to present. They are good numbers but show a drop in 2005 when we could not hire. I just got off of the phone with the fourth county attorney's criminal chief and would modify my earlier response to say as follows:

We have altered our threshold guidelines for the Tucson Sector so that we prosecute marijuana cases of 500 pounds and above. There are exceptions. If the marijuana is found on the Tohono O'odham Indian Reservation, we take all of their cases, regardless of weight, because of our trust obligation. In any other area of the Tucson Sector, we take the case regardless of weight if there is an ongoing investigation regarding the smuggling ring, or some other compelling factor exists, such as endangerment, assault on the officer, or a repeat offender. Three of the four county attorney's have agreed to take cases under our marijuana threshold, the fourth has not issued a blanket policy to accept those cases, but has agreed to take them on a case by case basis. To date, we are unaware of any case that was referred to the county attorney that was declined for threshold reasons alone.

Let me know if you need more.

Paul

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 4:03 PM
To: Nash, Stuart (ODAG); Charlton, Paul (USAAZ)
Cc: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Subject: Re: Prosecution Issues

Do you know how many marijuana cases you prosecute over 500 lbs in a year and how many are taken by the county attorneys?

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

From: Charlton, Paul (USAAZ)

To: Nash, Stuart (ODAG); Brand, Rachel
CC: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Sent: Tue Jul 25 18:51:04 2006
Subject: RE: Prosecution Issues

It is true. We no longer have the resources to prosecute marijuana cases under 500 pounds. The exception is the Tohono O'odham Indian reservation, where we will prosecute all drug cases based on our trust obligation. Three of the four border county attorneys have agreed to prosecute marijuana cases under 500 pounds, filling the void we have left. It is unclear what the policy of the fourth county attorney will be. We have heard of no cases going unprosecuted based on our new guidelines.
Paul

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 3:21 PM
To: Nash, Stuart (ODAG); Charlton, Paul (USAAZ)
Cc: Bounds, Ryan W (OLP); Macklin, Kristi R
Subject: Fw: Prosecution Issues

Gentlemen: what's the response to this?

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From: Douglas_B._Baker@who.eop.gov <Douglas_B._Baker@who.eop.gov>
To: Brand, Rachel
CC: Robert_Jacobs@who.eop.gov <Robert_Jacobs@who.eop.gov>
Sent: Tue Jul 25 17:53:58 2006
Subject: Prosecution Issues

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was raised in meeting with POTUS.

Thanks,

Doug

Narcotics Defendants Charged

	2000	2001	2002	2003	2004	2005	2006	Total
Total								

7/25/2006

Narcotics Cases Opened

	2000	2001	2002	2003	2004	2005	2006	Total
Total								

7/25/2006

Narcotics Cases Charged

	2000	2001	2002	2003	2004	2005	2006	Total
Total								

7/25/2006

Bounds, Ryan W (OLP)

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 10:55 PM
To: Elston, Michael (ODAG); Nash, Stuart (ODAG); Grider, Mark (ODAG)
Cc: Bounds, Ryan W (OLP)
Subject: Re: Prosecution Issues

Then we should use this as an opportunity to push our resource needs. We'll pull together the info gathered this evening and send a response to wh tomorrow.

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

From: Elston, Michael (ODAG)
To: Brand, Rachel; Nash, Stuart (ODAG); Grider, Mark (ODAG)
Sent: Tue Jul 25 22:44:56 2006
Subject: RE: Prosecution Issues

I am not surprised. They also do not prosecute illegal re-entry until the 13th illegal re-entry or something like that. We are stretched thin on the border, and this is the result.

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

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 7:01 PM
To: Nash, Stuart (ODAG); Grider, Mark (ODAG); Elston, Michael (ODAG)
Subject: Fw: Prosecution Issues

Does this sound like a good response to you?

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

From: Charlton, Paul (USAAZ)
To: Nash, Stuart (ODAG); Brand, Rachel
CC: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Sent: Tue Jul 25 18:51:04 2006
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Subject: Fw: Prosecution Issues

Gentlemen: what's the response to this?

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To: Brand, Rachel

CC: Robert_Jacobs@who.eop.gov <Robert_Jacobs@who.eop.gov>

Sent: Tue Jul 25 17:53:58 2006

Subject: Prosecution Issues

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Thanks,

Doug

Bounds, Ryan W (OLP)

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 10:55 PM
To: Bounds, Ryan W (OLP)
Subject: Fw: Prosecution Issues

Pulling together the info from the various emails today into one email to send back to wh is a perfect intern project.

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

From: Brand, Rachel
To: Elston, Michael (ODAG); Nash, Stuart (ODAG); Grider, Mark (ODAG)
CC: Bounds, Ryan W (OLP)
Sent: Tue Jul 25 22:54:36 2006
Subject: Re: Prosecution Issues

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From: Elston, Michael (ODAG)
To: Brand, Rachel; Nash, Stuart (ODAG); Grider, Mark (ODAG)
Sent: Tue Jul 25 22:44:56 2006
Subject: RE: Prosecution Issues

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To: Brand, Rachel

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was raised in meeting with POTUS.

Thanks,

Doug

Bounds, Ryan W (OLP)

From: Bounds, Ryan W (OLP)
Sent: Tuesday, July 25, 2006 11:04 PM
To: Brand, Rachel
Subject: Re: Prosecution Issues

OK

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

From: Brand, Rachel
To: Bounds, Ryan W (OLP)
Sent: Tue Jul 25 22:55:11 2006
Subject: Fw: Prosecution Issues

Pulling together the info from the various emails today into one email to send back to wh is a perfect intern project.

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From: Brand, Rachel
To: Elston, Michael (ODAG); Nash, Stuart (ODAG); Grider, Mark (ODAG)
CC: Bounds, Ryan W (OLP)
Sent: Tue Jul 25 22:54:36 2006
Subject: Re: Prosecution Issues

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To: Brand, Rachel; Nash, Stuart (ODAG); Grider, Mark (ODAG)
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To: Nash, Stuart (ODAG); Grider, Mark (ODAG); Elston, Michael (ODAG)
Subject: Fw: Prosecution Issues

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CC: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
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To: Nash, Stuart (ODAG); Charlton, Paul (USAAZ)
Cc: Bounds, Ryan W (OLP); Macklin, Kristi R
Subject: Fw: Prosecution Issues

Gentlemen: what's the response to this?

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From: Douglas B. Baker@who.eop.gov <Douglas_B._Baker@who.eop.gov>
To: Brand, Rachel
CC: Robert_Jacobs@who.eop.gov <Robert_Jacobs@who.eop.gov>
Sent: Tue Jul 25 17:53:58 2006
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was raised in meeting with POTUS.

Thanks,

Doug

Bounds, Ryan W (OLP)

From: Elston, Michael (ODAG)
Sent: Tuesday, July 25, 2006 11:19 PM
To: Brand, Rachel; Nash, Stuart (ODAG); Grider, Mark (ODAG)
Cc: Bounds, Ryan W (OLP)
Subject: RE: Prosecution Issues

Agreed.

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

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 10:55 PM
To: Elston, Michael (ODAG); Nash, Stuart (ODAG); Grider, Mark (ODAG)
Cc: Bounds, Ryan W (OLP)
Subject: Re: Prosecution Issues

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Cc: Bounds, Ryan W (OLP); Macklin, Kristi R

Subject: Fw: Prosecution Issues

Gentlemen: what's the response to this?

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From: Douglas_B._Baker@who.eop.gov <Douglas_B._Baker@who.eop.gov>

To: Brand, Rachel

CC: Robert_Jacobs@who.eop.gov <Robert_Jacobs@who.eop.gov>

Sent: Tue Jul 25 17:53:58 2006

Subject: Prosecution Issues

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Thanks,

Doug

Bounds, Ryan W (OLP)

From: Brand, Rachel
Sent: Thursday, July 27, 2006 3:36 PM
To: Bounds, Ryan W (OLP)
Subject: FW: Prosecution Issues

We have a happy camper.

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

From: Charlton, Paul (USAAZ)
Sent: Thursday, July 27, 2006 3:31 PM
To: Brand, Rachel
Subject: RE: FW: Prosecution Issues

Rachel - perfect, perfect, perfect. Thank you. Paul

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

From: Brand, Rachel
Sent: Thursday, July 27, 2006 02:30 PM Eastern Standard Time
To: Charlton, Paul (USAAZ)
Subject: FW: Prosecution Issues

Fyi, this is what I sent back to the White House.

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

From: Brand, Rachel
Sent: Wednesday, July 26, 2006 6:39 PM
To: 'Douglas_B._Baker@who.eop.gov'
Cc: Robert_Jacobs@who.eop.gov; Bounds, Ryan W (OLP); Brand, Rachel
Subject: RE: Prosecution Issues

I've talked to the U.S. Attorney in Arizona. Here's what he says:

"We have altered our threshold guidelines for the Tucson Sector so that we prosecute marijuana cases of 500 pounds and above. There are exceptions. If the marijuana is found on the Tohono O'odham Indian Reservation, we take all of their cases, regardless of weight, because of our trust obligation. In any other area of the Tucson Sector, we take the case regardless of weight if there is an ongoing investigation regarding the smuggling ring, or some other compelling factor exists, such as endangerment, assault on the officer, or a repeat offender."

There are three major issues to keep in mind when considering this fact:

1) Because we are a federal system and states also have jurisdiction to investigate and prosecute drug offenses, the prosecution threshold has not resulted in a real gap of enforcement on marijuana cases. According to the US Attorney, three of the four border county attorneys in Arizona have agreed to prosecute marijuana cases involving less than 500 pounds. While the fourth county attorney has not issued a blanket policy of accepting cases involving less than 500 pounds, he has agreed to take them on a case-by-case basis. Since the implementation of this drug weight threshold, the U.S. Attorney's Office in Arizona is unaware of any case referred to the county attorneys that completely fell between the cracks of enforcement.

2) Across the country, the Department of Justice's focus is and has been on large, and especially international, drug trafficking rings. For

example, the Organized Crime Drug Enforcement Task Force (OCDETF) focuses on prosecuting entire organizations, not necessarily responding to each enforcement event. This is partly a function of limited resources and partly because these are the types of cases that federal law enforcement (as opposed to state and local law enforcement) is uniquely equipped to handle.

3) Finally, higher prosecution thresholds are simply going to be a fact of life if the state of budget/resources in the SWB US Attorneys' offices remains what it is now. These districts, and perhaps especially Arizona, are absolutely stretched to the limit. Our focus recently has been on immigration enforcement, but insufficient resources affects every type of enforcement, including narcotics cases. US Attorneys' offices must always triage and prioritize, and the need to do so is especially acute here. We'd be happy to get you more info on the staggering caseload that each Assistant US Attorney in Arizona currently carries. It is true that we will be adding 20 new immigration prosecutors and 5 OCDETF prosecutors to the SWB districts with the money from the supplemental, and I would imagine this would be part of the response to Speaker Hastert. Just for your information, however -- do not expect this to effect a radical change in those districts' ability to take smaller cases. It is only a first step.

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

From: Douglas_B._Baker@who.eop.gov [mailto:Douglas_B._Baker@who.eop.gov]

Sent: Tuesday, July 25, 2006 5:54 PM

To: Brand, Rachel

Cc: Robert_Jacobs@who.eop.gov

Subject: Prosecution Issues

Rachel:

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Thanks,

Doug

Bounds, Ryan W (OLP)

From: Bounds, Ryan W (OLP)
Sent: Thursday, July 27, 2006 3:41 PM
To: Brand, Rachel
Subject: Re: FW: Prosecution Issues

Wow!

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

From: Brand, Rachel
To: Bounds, Ryan W (OLP)
Sent: Thu Jul 27 15:35:39 2006
Subject: FW: FW: Prosecution Issues

We have a happy camper.

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

From: Charlton, Paul (USAAZ)
Sent: Thursday, July 27, 2006 3:31 PM
To: Brand, Rachel
Subject: RE: FW: Prosecution Issues

Rachel - perfect, perfect, perfect. Thank you. Paul

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Sent: Tuesday, July 25, 2006 5:54 PM

To: Brand, Rachel

Cc: Robert_Jacobs@who.eop.gov

Subject: Prosecution Issues

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Thanks,

Doug

Bounds, Ryan W (OLP)

From: Bounds, Ryan W (OLP)
Sent: Thursday, July 27, 2006 5:14 PM
To: Charlton, Paul (USAAZ); Brand, Rachel
Subject: Fw: Prosecution Issues

Mr. Charlton,

Is the answer to both of these follow-up questions "yes"? If so, what is the guideline outside of the Tucson sector?

Thanks.

Ryan Bounds

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

From: Douglas_B._Baker@who.eop.gov <Douglas_B._Baker@who.eop.gov>
To: Brand, Rachel
CC: Bounds, Ryan W (OLP); Robert_Jacobs@who.eop.gov <Robert_Jacobs@who.eop.gov>
Sent: Thu Jul 27 16:29:42 2006
Subject: RE: Prosecution Issues

Rachel:

A quick question for clarity purposes. Is Nogales in the Tucson sector? And more importantly, does the USA apply a different policy in other sectors in Arizona? (OK so two questions)

Thanks,

Doug

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

From: Rachel.Brand@usdoj.gov [mailto:Rachel.Brand@usdoj.gov]
Sent: Wednesday, July 26, 2006 6:38 PM
To: Baker, Douglas B.
Cc: Jacobs, Robert; Ryan.W.Bounds@usdoj.gov; Rachel.Brand@usdoj.gov
Subject: RE: Prosecution Issues

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From: Douglas_B._Baker@who.eop.gov [mailto:Douglas_B._Baker@who.eop.gov]
Sent: Tuesday, July 25, 2006 5:54 PM
To: Brand, Rachel
Cc: Robert_Jacobs@who.eop.gov
Subject: Prosecution Issues

Rachel:

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Thanks,

Doug

Bounds, Ryan W (OLP)

From: Charlton, Paul (USAAZ)
Sent: Thursday, July 27, 2006 6:05 PM
To: Brand, Rachel; Bounds, Ryan W (OLP)
Subject: RE: Prosecution Issues

Attachments: tmp.htm



tmp.htm (9 KB)

Ryan,

Yes to both questions. Yuma Sector, the only other sector in our state, has seen a dramatic increase in narcotic and human smuggling so we have a lower threshold there; bounds with the same exceptions listed earlier. The Yuma County Attorney accepts all cases under that threshold.

Paul

From: Bounds, Ryan W (OLP)
Sent: Thursday, July 27, 2006 2:14 PM
To: Brand, Rachel; Charlton, Paul (USAAZ)
Subject: Fw: Prosecution Issues

Mr. Charlton,

Is the answer to both of these follow-up questions "yes"? If so, what is the guideline outside of the Tucson sector?

Thanks.

Ryan Bounds

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From: Douglas_B._Baker@who.eop.gov <Douglas_B._Baker@who.eop.gov>
To: Brand, Rachel
CC: Bounds, Ryan W (OLP); Robert_Jacobs@who.eop.gov
<Robert_Jacobs@who.eop.gov>
Sent: Thu Jul 27 16:29:42 2006
Subject: RE: Prosecution Issues

Rachel:

A quick question for clarity purposes. Is Nogales in the Tucson sector? And more importantly, does the USA apply a different policy in other sectors in Arizona? (OK so two questions)

Thanks,

Doug

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From: Rachel.Brand@usdoj.gov [mailto:Rachel.Brand@usdoj.gov]
Sent: Wednesday, July 26, 2006 6:38 PM
To: Baker, Douglas B.
Cc: Jacobs, Robert; Ryan.W.Bounds@usdoj.gov; Rachel.Brand@usdoj.gov
Subject: RE: Prosecution Issues

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Sent: Tuesday, July 25, 2006 5:54 PM

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Doug

Bounds, Ryan W (OLP)

From: Bounds, Ryan W (OLP)
Sent: Thursday, July 27, 2006 6:19 PM
To: Charlton, Paul (USAAZ); Brand, Rachel
Subject: Re: Prosecution Issues

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From: Charlton, Paul (USAAZ)
To: Brand, Rachel; Bounds, Ryan W (OLP)
Sent: Thu Jul 27 18:04:31 2006
Subject: RE: Prosecution Issues

Ryan,

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Sent: Wednesday, July 26, 2006 6:38 PM
To: Baker, Douglas B.
Cc: Jacobs, Robert; Ryan.W.Bounds@usdoj.gov; Rachel.Brand@usdoj.gov
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Sent: Tuesday, July 25, 2006 5:54 PM

To: Brand, Rachel

Cc: Robert_Jacobs@who.eop.gov

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was raised in meeting with POTUS.

Thanks,

Doug

Bounds, Ryan W (OLP)

From: Brand, Rachel
Sent: Friday, July 28, 2006 10:47 AM
To: McNulty, Paul J; Elston, Michael (ODAG); Nash, Stuart (ODAG)
Cc: Bounds, Ryan W (OLP)
Subject: FW: Prosecution Issues

Fyi - we responded to this follow-up based on info Charlton gave us.

We have an inquiry back to Charlton about why there's this difference, since I wouldn't be surprised if we get that follow-up question from the WH.

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

From: Bounds, Ryan W (OLP)
Sent: Thursday, July 27, 2006 7:43 PM
To: 'Douglas_B._Baker@who.eop.gov'; Brand, Rachel
Cc: Robert_Jacobs@who.eop.gov
Subject: RE: Prosecution Issues

Nogales is indeed in the Tucson sector. The only other sector in the District of Arizona is the Yuma sector, for which the USAO maintains a 500 pound threshold for marijuana cases with the same exceptions that apply in the Tucson sector. (We are told that the Yuma County Attorney accepts all cases that are referred for failing to meet the 500 pound threshold.)

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

From: Douglas_B._Baker@who.eop.gov [mailto:Douglas_B._Baker@who.eop.gov]
Sent: Thursday, July 27, 2006 4:30 PM
To: Brand, Rachel
Cc: Bounds, Ryan W (OLP); Robert_Jacobs@who.eop.gov
Subject: RE: Prosecution Issues

Rachel:

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Sent: Wednesday, July 26, 2006 6:38 PM
To: Baker, Douglas B.
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Bounds, Ryan W (OLP)

From: Charlton, Paul (USAAZ)
Sent: Friday, July 28, 2006 8:51 PM
To: Brand, Rachel; Bounds, Ryan W (OLP)
Subject: Re: Prosecution Issues

Ryan - be glad to talk with you t this. Paul

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

From: Bounds, Ryan W (OLP)
Sent: Thursday, July 27, 2006 06:17 PM Eastern Standard Time
To: Brand, Rachel; Charlton, Paul (USAAZ)
Subject: Re: Prosecution Issues

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Thanks,

Doug

Bounds, Ryan W (OLP)

From: Bounds, Ryan W (OLP)
Sent: Monday, July 31, 2006 5:10 PM
To: 'Wayne.Baker@dhs.gov'
Subject: RE: Draft 4: For Your Review: Immigration AUSAs Announcement

Importance: High

Yes---sorry. Now Dan Fridman is out for the week, but I know that we were planning to set up a call. Let me get back to you on this. I'll have to check with Mike Elston (I was not in direct communication with Mr. Charlton myself.)

On another front, I wanted to set up a briefing with Assistant Secretary Myers, Gary Lang, and Bill Howard on the directives that the Attorney General is likely to announce as a result of his comprehensive review of the Executive Office for Immigration Review. We are hoping we can put something together for Wednesday, because the AG is scheduled to announce his conclusions at the IJ conference next Wednesday (so everything needs to be finalized well before then). I don't know whether this is of particular interest to you, but I was hoping either way that you might have some guidance on the best way to set up a fast-track briefing with your front office.

Ryan
305-4870

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

From: Wayne.Baker@dhs.gov [mailto:Wayne.Baker@dhs.gov]
Sent: Monday, July 31, 2006 10:54 AM
To: Bounds, Ryan W (OLP)
Subject: FW: Draft 4: For Your Review: Immigration AUSAs Announcement

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

From: Baker, Wayne L
Sent: Monday, July 31, 2006 10:50 AM
To: 'Ryan.W.Bounds@SMOJMD.USDOJ.gov'
Subject: FW: Draft 4: For Your Review: Immigration AUSAs Announcement

Ryan,
In light of the new AUSAs, and the Press Release, has DOJ any new thoughts about the zero tolerance coyote policy, Operation Roadrunner. Has the AZ AUSA been contacted for discussion? Last we left off I had suggested a phone conference with all the interested parties.

thanks,
Wayne

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

From: Myers, Julie L
Sent: Monday, July 31, 2006 10:43 AM
To: Baker, Wayne L
Subject: FW: Draft 4: For Your Review: Immigration AUSAs Announcement

Look at the final release - mentions DHS dedicating its lawyers to SW border....

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

From: Smith, Nick J
Sent: Monday, July 31, 2006 9:05 AM

To: Myers, Julie L
Subject: FW: Draft 4: For Your Review: Immigration AUSAs Announcement

fyi...

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

From: Bergman, Cynthia [mailto:Cynthia.Bergman@dhs.gov]
Sent: Monday, July 31, 2006 8:55 AM
To: Montgomery, Kathleen; Knocke, William R; Smith, Nick J; Agen, Jarrod
Subject: Fw: Draft 4: For Your Review: Immigration AUSAs Announcement

Hopefully final release
Announcement at 3:30 new mexico time

Sent from my BlackBerry Wireless Handheld

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

From: Brian.Roehrkasse@usdoj.gov <Brian.Roehrkasse@usdoj.gov>
To: Cynthia.Bergman@dhs.gov <Cynthia.Bergman@dhs.gov>
Sent: Mon Jul 31 08:53:23 2006
Subject: Fw: Draft 4: For Your Review: Immigration AUSAs Announcement

<<Draft AG press releaseDRAFT 4.doc>>
Fyi

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

From: Block, Jonathan <Jonathan.Block@SMOJMD.USDOJ.gov>
To: Bounds, Ryan W (OLP) <Ryan.W.Bounds@SMOJMD.USDOJ.gov>; Fridman, Daniel (ODAG) <Daniel.Fridman@SMOJMD.USDOJ.gov>; Nash, Stuart (ODAG) <Stuart.Nash@SMOJMD.USDOJ.gov>; Grider, Mark (ODAG) <Mark.Grider@SMOJMD.USDOJ.gov>; Brand, Rachel <Rachel.Brand@SMOJMD.USDOJ.gov>; Seidel, Rebecca <Rebecca.Seidel@SMOJMD.USDOJ.gov>; Roehrkasse, Brian <Brian.Roehrkasse@SMOJMD.USDOJ.gov>; Card, Jean <Jean.Card@SMOJMD.USDOJ.gov>; Scolinos, Tasia <Tasia.Scolinos@SMOJMD.USDOJ.gov>

Sent: Mon Jul 31 08:41:17 2006
Subject: Draft 4: For Your Review: Immigration AUSAs Announcement

<<Draft AG press releaseDRAFT 4.doc>> For your review, I've attached the Fourth (and hopefully final) draft of the press release regarding the addition of more than twenty-five AUSAs to the federal law enforcement districts along the U.S./Mexico border.

The release is schedule to be distributed to the media TODAY, Monday, July 31.

Feel free to share with relevant colleagues who I may have missed.

Thanks.

Staffed to:
ODAG: Dan Fridman,
OCDETF: Stuart Nash, Mark Grider
Legal Policy: Rachel Brand, Ryan Bounds
OLA: Rebecca Seidel
OPA: Tasia Scolinos, Brian Roehrkasse, Jean Card

Bounds, Ryan W (OLP)

From: Seidel, Rebecca
Sent: Wednesday, August 02, 2006 6:56 PM
To: Voris, Natalie (USAEO); Epley, Mark D; Otis, Lee L; Bounds, Ryan W (OLP); Mullane, Hugh
Cc: Scott-Finan, Nancy; Roland, Sarah E
Subject: FW: Lam is meeting with Issa and Sensenbrenner

Sounds like she handled well and it was actually constructive. See below.

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

From: Lam, Carol (USACAS)
Sent: Wednesday, August 02, 2006 6:50 PM
To: Seidel, Rebecca
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Sorry, meant to email you earlier but other events overtook me.

It was fine (at least I think it was). The tone was civil and at times even friendly. I was accompanied by my appellate chief Roger Haines and our Intake supervisor Steve Peak. Issa and Sensenbrenner had about 4 staffers there total. Chrm Sensenbrenner had a single theme he kept coming back to, which is that we aren't doing enough coyote prosecutions and that they are the key to controlling the border. (This is obviously the Border Patrol complaint that was channelled through Issa to Sensenbrenner). I noted that the first 3 times we prosecute a coyote, we get sentences of 60 days, 6 months, and maybe a year, respectively, if we are lucky; whereas the same attorney resources can be used to prosecute criminal aliens with priors for rape, murder and child molestations and we can get sentences of 7-8 years. We have more of the latter type of case than we can handle, so essentially I must make a choice -- prosecute the coyotes who are smuggling but not endangering anyone, or the rapists and murderers who are coming back to rape and murder again.

He noted that among the Southwest Border USAOs, our felony immigration filings are low. I explained that we set out a couple of years ago to deliberately seek higher sentences for the worst offenders; this meant more cases would go to trial, but we would hold the line and not sell the cases for less time. The statistics show that we have, in fact, achieved significantly higher average sentences in our immigration cases; the cost was that our immigration trial rate more than DOUBLED (from 42 trials in 2004 to 89 trials in 2005) and we had to reduce the number of low-end coyote cases we filed. Cong Issa seemed to grasp this concept quickly; he commented that it is too bad we don't have statistics that reflect the matrix of felony immigration filings against lengths of sentences.

We urged them to fully fund the President's budget; thanked Chrm Sensenbrenner for the enforcement provisions in his immigration bill; and some observations were exchanged about the difficulties of prosecuting cases in the 9th Circuit. Congressman Issa asked me how the 4 additional SW border AUSA positions (announced by the AG on Monday) would help me; I said that they would allow me to fill attorney vacancies that I have had to leave vacant because of the budget situation. Issa noted to Sensenbrenner that he doesn't understand why their prior appropriations don't seem to be "trickling down" to the USAOs, and I interjected that the unfunded COLAs and government-wide rescissions were erasing what appeared to be additional appropriations.

That was about it. We left on very cordial terms without any request for follow-up information. Let me know if you need any additional information, and thanks for preparing me.

Carol

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

From: Seidel, Rebecca
Sent: Wednesday, August 02, 2006 3:16 PM
To: Lam, Carol (USACAS)
Cc: Epley, Mark D
Subject: RE: Lam is meeting with Issa and Sensenbrenner

How did the Issa/Sensenbrenner meeting go?

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

From: Lam, Carol (USACAS)
Sent: Wednesday, August 02, 2006 11:53 AM
To: Seidel, Rebecca; Parent, Steve (USAEO); Bevels, Lisa (USAEO); Voris, Natalie (USAEO)
Cc: Jordan, Wyevetra G; Epley, Mark D
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Thanks, Steve; this helps. -- Carol

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

From: Parent, Steve (USAEO)
Sent: Wednesday, August 02, 2006 5:24 AM
To: Lam, Carol (USACAS); Seidel, Rebecca; Bevels, Lisa (USAEO); Voris, Natalie (USAEO)
Cc: Epley, Mark D; Jordan, Wyevetra G
Subject: Re: Lam is meeting with Issa and Sensenbrenner

The 29 percent figure is actual funded position increase from FY 2000 to present.

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

From: Lam, Carol (USACAS) <CLam@usa.doj.gov>
To: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>; Parent, Steve (USAEO) <SParent@usa.doj.gov>; Bevels, Lisa (USAEO) <LBevels@usa.doj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
CC: Epley, Mark D <Mark.D.Epley@usdoj.gov>; Jordan, Wyevetra G <Wyevetra.G.Jordan@usdoj.gov>
Sent: Tue Aug 01 22:12:05 2006
Subject: Re: Lam is meeting with Issa and Sensenbrenner

I assume nobody is taking credit for the 29% figure, and I'm on my own?

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

From: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
To: Parent, Steve (USAEO) <SParent@usa.doj.gov>; Bevels, Lisa (USAEO) <LBevels@usa.doj.gov>; Lam, Carol (USACAS) <CLam@usa.doj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
CC: Epley, Mark D <Mark.D.Epley@usdoj.gov>; Jordan, Wyevetra G <Wyevetra.G.Jordan@usdoj.gov>
Sent: Mon Jul 31 18:01:45 2006
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Also adding Mark Epley and Wyevetra Jordan . Mark, Wye - where did the

29% increase number come from? (this is re the press release on the supplemental approps funding AUSAs)

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

From: Voris, Natalie (USAEO)
Sent: Monday, July 31, 2006 8:17 PM
To: Seidel, Rebecca; Lam, Carol (USACAS); Bevels, Lisa (USAEO); Parent, Steve (USAEO)
Subject: Re: Lam is meeting with Issa and Sensenbrenner

This is definitely a question for rmp - I have added lisa and steve to the email.

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

From: Lam, Carol (USACAS) <CLam@usa.doj.gov>
To: Voris, Natalie (USAEO) <NVoris@usa.doj.gov>; Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
Sent: Mon Jul 31 20:09:54 2006
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Thanks, Natalie. I do have one other concern -- the DOJ press release sent out today says that the "the number of AUSAs in the Southwest border districts has increased 29 percent since 2000, to a total of 561." I'm not sure where the 29% figure came from; my own FTE increased from 119 to 125 during the last 4 years; I think the percentage increase has been similar in the other districts. Can anyone tell me how the 29% increase was calculated, in case the Congressmen use this figure in our discussion?

From: Voris, Natalie (USAEO)
Sent: Monday, July 31, 2006 4:08 PM
To: Lam, Carol (USACAS)
Subject: FW: Lam is meeting with Issa and Sensenbrenner

Carol,
Lisa Bevels is traveling to the Budget Officers training at the NAC this week, but she gives you the best times for a conversation with her below. I clarified with Lisa that it's human trafficking approps Issa is interested in, not prosecutions. Lisa said that she was unaware of any specific human trafficking funds ever going to USAOs.

Please let me know if you need anything else. I'm not the budget expert, but I can try to point you in the right direction.

nv

From: Bevels, Lisa (USAEO)
Sent: Monday, July 31, 2006 6:16 PM
To: Voris, Natalie (USAEO); Parent, Steve (USAEO)
Subject: RE: Lam is meeting with Issa and Sensenbrenner

I will be giving a speech at the BO Conference on Wednesday. If she wants, she can email me and set up a time to talk tomorrow or Wednesday last morning or all afternoon. Civil Rights tracks the Human Trafficking case data for the Department. I'm not sure if Barbara Tone can come up with these cases through our system--they are probably part

of immigration or some could even be in child abuse (women and children trafficking for sexual exploitation). Dave Smith asked us a few weeks ago about Human Trafficking and we did not have the data.

From: Voris, Natalie (USAEO)
Sent: Monday, July 31, 2006 6:02 PM
To: Bevels, Lisa (USAEO); Parent, Steve (USAEO)
Subject: Lam is meeting with Issa and Sensenbrenner

On Wednesday at 11 a.m. PST. OLA has approved this meeting. Carol knows that Issa is curious about what happened to human trafficking funds that Issa believes were provided to USAOs a year ago. Do we have any info on that? Lisa - Carol will probably give you a call in the next day to go over a few things prior to the meeting.

Thanks,
nv

Bounds, Ryan W (OLP)

From: Fridman, Daniel (ODAG)
Sent: Wednesday, August 23, 2006 5:05 PM
To: Bounds, Ryan W (OLP)
Subject: Fw: Operation Roadrunner

Fyi.

-----Original Message-----
From: Fridman, Daniel (ODAG)
To: Moye, Pam
Sent: Wed Aug 23 17:04:03 2006
Subject: Re: Operation Roadrunner

Did his office ask him if he wants to be on the call. He may want to call in from vacation. The meeting concerns the allocation of SAUSAs to his office from DHS and the implementation of a zero tolerance plan toward smugglers. Tell them the AGs deputy chief of staff and the GC for DHS will be there. Make sure he knows.

Dan

-----Original Message-----
From: Moye, Pam
To: Fridman, Daniel (ODAG)
CC: Bounds, Ryan W (OLP)
Sent: Wed Aug 23 12:52:25 2006
Subject: RE: Operation Roadrunner

Dan: Parent has been invited - hasn't responded and Charlton will not be available on Monday by phone (he is on vacation).

-----Original Message-----
From: Fridman, Daniel (ODAG)
Sent: Wednesday, August 23, 2006 12:33 PM
To: Moye, Pam
Cc: Bounds, Ryan W (OLP)
Subject: Fw: Operation Roadrunner

Pam --

Please work today with Courtney Elwood's assistant to get Charlton and Parent to attend the meeting (Charlton by phone) on Monday. Talk to Ryan Bounds if you have any questions.

Dan

-----Original Message-----
From: Elwood, Courtney
To: Bounds, Ryan W (OLP); Fridman, Daniel (ODAG)
Sent: Tue Aug 22 20:30:59 2006
Subject: RE: Operation Roadrunner

Sure. Happy to include them both.

-----Original Message-----
From: Bounds, Ryan W (OLP)
Sent: Tuesday, August 22, 2006 6:51 PM
To: Fridman, Daniel (ODAG); Elwood, Courtney
Subject: RE: Operation Roadrunner

I agree (as Mr. Fridman already knows).

From: Fridman, Daniel (ODAG)
Sent: Tuesday, August 22, 2006 6:50 PM
To: Elwood, Courtney
Cc: Bounds, Ryan W (OLP)
Subject: Operation Roadrunner

Courtney --

If we are going to focus our meeting with DHS on Monday on what it would take to make Operation Roadrunner work, we should probably have Paul Charlton, the AZ USA, on conference call with us. I would also suggest inviting Steve Parent from EOUSA who has been helping us research the costs and infrastructure needs (such as detention beds and deputy U.S. Marshals) of increased enforcement on the border.

Dan

Daniel S. Fridman, Esq.
Counsel to the Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Office # 4114
Washington, D.C. 20530
Tel: (202) 514-5650
Daniel.Fridman2@usdoj.gov

Bounds, Ryan W (OLP)

From: Bounds, Ryan W (OLP)
Sent: Wednesday, August 23, 2006 5:38 PM
To: Fridman, Daniel (ODAG)
Subject: RE: Operation Roadrunner

Well, I guess he'll have less latitude to scream when we decide he can make do with six or seven SAUSAs.

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

From: Fridman, Daniel (ODAG)
Sent: Wednesday, August 23, 2006 5:37 PM
To: Bounds, Ryan W (OLP)
Subject: Fw: Operation Roadrunner

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

From: Moye, Pam
To: Fridman, Daniel (ODAG)
Sent: Wed Aug 23 17:12:57 2006
Subject: RE: Operation Roadrunner

Per Courtney's assistant - Courtney sent an email providing background information regarding the conference call for Monday August 28th, she also indicated if he was free we welcome his participation but understands if his schedule doesn't permit.

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

From: Fridman, Daniel (ODAG)
Sent: Wednesday, August 23, 2006 5:04 PM
To: Moye, Pam
Subject: Re: Operation Roadrunner

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CC: Bounds, Ryan W (OLP)
Sent: Wed Aug 23 12:52:25 2006
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Office # 4114
Washington, D.C. 20530
Tel: (202) 514-5650
Daniel.Fridman2@usdoj.gov

Tracking:

Recipient

Fridman, Daniel (ODAG)

Read

Read: 8/23/2006 5:53 PM

Bounds, Ryan W (OLP)

From: Fridman, Daniel (ODAG)
Sent: Wednesday, August 23, 2006 5:53 PM
To: Bounds, Ryan W (OLP)
Subject: Re: Operation Roadrunner

Yep.

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

From: Bounds, Ryan W (OLP)
To: Fridman, Daniel (ODAG)
Sent: Wed Aug 23 17:37:48 2006
Subject: RE: Operation Roadrunner

Well, I guess he'll have less latitude to scream when we decide he can make do with six or seven SAUSAs.

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Sent: Wednesday, August 23, 2006 5:37 PM
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Cc: Bounds, Ryan W (OLP)
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Dan

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Sent: Tuesday, August 22, 2006 6:51 PM
To: Fridman, Daniel (ODAG); Elwood, Courtney
Subject: RE: Operation Roadrunner

I agree (as Mr. Fridman already knows).

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To: Elwood, Courtney
Cc: Bounds, Ryan W (OLP)
Subject: Operation Roadrunner

Courtney --

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Office # 4114
Washington, D.C. 20530
Tel: (202) 514-5650
Daniel.Fridman2@usdoj.gov

Bounds, Ryan W (OLP)

From: Brand, Rachel
Sent: Tuesday, October 17, 2006 10:47 AM
To: Bounds, Ryan W (OLP)
Subject: Fw: DHS Concerns

Fyi

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

From: Brand, Rachel
To: Charlton, Paul (USAAZ)
Sent: Tue Oct 17 10:46:28 2006
Subject: Re: DHS Concerns

Yes- I have been meaning to call you about that. Thanks for reminding me. I have been running around like crazy -am out of town again for a speech in san diego today- but I'll call when I'm back in DC.

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

From: Charlton, Paul (USAAZ)
To: Brand, Rachel
Sent: Mon Oct 16 18:44:19 2006
Subject: DHS Concerns

Rachel,

ODAG told me that during your border tour you "got an earful" from DHS about my office not prosecuting cases. Would you mind calling me and filling me in. I would like to see what I can do about those concerns. Thanks ,

Paul Charlton
602.809.3749

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

Bounds, Ryan W (OLP)

From: Seidel, Rebecca
Sent: Wednesday, January 17, 2007 1:30 AM
To: Sampson, Kyle; Elwood, Courtney; Friedrich, Matthew (OAG); Elston, Michael (ODAG); Moschella, William; Brand, Rachel
Cc: Hertling, Richard; Tracci, Robert N; Scolinos, Tasia; Bounds, Ryan W (OLP); Roehrkasse, Brian; Goodling, Monica; Seidel, Rebecca
Subject: SJC Member issues - additional intel
Attachments: Additional Intel re SJC Member issues.1-16-06.doc; B-9 recordkeeping for porn producers (updated 1-16).doc; AG 09-19-06 Banking Transcript.txt

As we mentioned, we met with Republican counsels this afternoon and some pulled me aside after to discuss specific issues they were drafting questions on. Please see attached.

Also spoke with Feinstein's Chief counsel tonight again (also included in the attached)

Note re Feinstein and USA firings - her counsel tells me Feinstein has not talked to Carol Lam at all. That she is ginned up seeing press articles that quote an FBI agent as saying Lam's removal would be disruptive to their cases.

Counsel also read off topics that Feinstein's other staff had written questions on and that she (Chief counsel) was reviewing tonight. These topics are listed on the attached. *** Gun Trace Data was one issue - her counsel referenced Feinstein's amendment from last year. We don't have a paper on it in the book - but Richard, could you briefly explain to AG in tomorrow's prep?

Attached to this email (which I will bring to the AG prep Wed afternoon):

- 1) Summary of new intel on SJC member issues
- 2) Revised 227 regs paper
- 3) Meese Anti porn commission - transcript of Banking Committee hearing on Child porn with AG - **go to p 15-16 for exchange with Sen Bennett



Additional Intel re.
SJC Member...



B-9 recordkeeping
for porn pro...



AG 09-19-06
Banking Transcrip...

**Additional Intel re SJC Member issues
(From direct conversations with SJC staff 1/16/06)**

Feinstein:

- 1) *USA firings* – Chief Counsel tells me likely a lot of her questions will be on this. It is very much on her mind.
 - a. Feinstein was saying on the floor that she is hearing a lot of rumors about what is going on, and pointed out that they are just rumors, but it would be better if they knew what is really going on.
 - b. Feinstein has seen press stories that quote an FBI agent as saying USA Lam's departure will be disruptive to their cases.

Bounds, Ryan W (OLP)

From: Seidel, Rebecca
Sent: Wednesday, January 24, 2007 3:14 PM
To: Bounds, Ryan W (OLP)
Cc: Scott-Finan, Nancy; Marshall, C. Kevin
Subject: FW: Circulate for views / letter asap

Attachments: US Attorney vacancy-appointment points.pdf

Ryan, discussed with Will and Monica this morning and we think OLP should take final pen. Attached are the talkers we already have on it, so you may want to task someone with turning these into a views letter now, and then they can add any additional info we get from components (especially more info on the constitutional issues hopefully from OLC). Cc'ing OLC here to give them heads up as this is somewhat tight turnaround to get a cleared views letter.



US Attorney
vacancy-appointmen.

From: Seidel, Rebecca
Sent: Wednesday, January 24, 2007 3:11 PM
To: Blackwood, Kristine
Cc: Scott-Finan, Nancy
Subject: Circulate for views / letter asap
Importance: High

Kristine, please circulate for views asap S. 214, To Amend Chapter 25 of Title 28, To Preserve the Independence of U.S. Attorneys. Have comments due back by Friday morning to get to OMB by Friday afternoon with goal of having cleared views letter by COB Tues 1/30.

Make sure OLC is on distribution, and cc me. I think OLP will have final pen, make sure they are on initial distribution too.

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 serve at the pleasure of the President, and 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.

OLP00000093

The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 125 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.

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, 11 vacancies have been created. Of those 11 vacancies, the Administration nominated candidates to fill five of these positions (three were confirmed to date) and has interviewed candidates for the other six positions – all in consultation with home-state Senators.

The 11 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 5 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;
 - 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.
- 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.

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;
- Rodger 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 11 new U.S. Attorney vacancies that have arisen. For five of the 11 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). 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);
- Northern District of Iowa – FAUSA Judi Whetstine is acting United States Attorney;

- **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).

For six of the 11 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; and
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned (John Wood was nominated).

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 nine times since the authority was amended in March 2006. In two of the nine 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 one 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 the five 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;
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Bounds, Ryan W (OLP)

From: Seidel, Rebecca
Sent: Tuesday, January 30, 2007 7:34 PM
To: Sampson, Kyle; Moschella, William; Elston, Michael (ODAG); Brand, Rachel; Bounds, Ryan W (OLP); Goodling, Monica
Cc: Scott-Finan, Nancy; Nowacki, John (USAEO); Clifton, Deborah J; Blackwood, Kristine; Hertling, Richard
Subject: FW: SJC U.S. Attorneys hearing Draft testimony
Importance: High
Attachments: DRAFT Testimony -- US Attorneys Hearing.doc

Thank you John. Debbie and Kristine are gone for the evening, but will circulate within DOJ first thing in the morning. OAG, ODAG and OLP - wanted to get to you directly so you don't have to wait till morning circulation. Debbie, we need OMB clearance by Friday COB, so that means we have to get to OMB Wed COB at latest.

note the hearing is now Tuesday the 6th instead of Wed the 7th.

From: Nowacki, John (USAEO) [mailto:John.Nowacki@usdoj.gov]
Sent: Tuesday, January 30, 2007 7:30 PM
To: Seidel, Rebecca; Scott-Finan, Nancy
Subject: SJC U.S. Attorneys hearing

The draft testimony for the DAG is attached.

<<DRAFT Testimony -- US Attorneys Hearing.doc>>

[Faint, mostly illegible text, likely bleed-through from the reverse side of the page]

DRAFT TESTIMONY FOR
DEPUTY ATTORNEY GENERAL PAUL MCNULTY

Hearing before the Subcommittee on the Courts
Committee on the Judiciary
U.S. Senate

Wednesday, February 7, 2007

Chairman Schumer, Senator Sessions, and members of the Subcommittee, thank you for the invitation to discuss the importance and the independence of the Justice Department's United States Attorneys. As a former United States Attorney, I particularly appreciate this opportunity to address the critical role U.S. Attorneys play in enforcing our Nation's laws and carrying out the priorities of the Department of Justice.

I have often said that being a United States Attorney is one of the greatest jobs you can ever have. It is a privilege and a challenge—one that carries a great responsibility. As former Attorney General Griffin Bell and Daniel Meador wrote, U.S. Attorneys are "the front-line troops charged with carrying out the Executive's constitutional mandate to execute faithfully the laws in every federal judicial district." 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. They 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.

U.S. Attorneys are not only prosecutors; they are government officials charged with managing and implementing the policies and priorities of the Executive Branch. 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. For these reasons, the Department is committed to having the best person discharging the responsibilities of that office at all times and in every district.

When a U.S. 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 United States Attorney. In some cases, the First Assistant U.S. Attorney is the appropriate person to serve in that capacity, but there are reasons he or she may not be, including: an impending retirement; an indication that the First Assistant has no desire to serve as an Acting U.S. Attorney, an IG or OPR matter in his or her file, which may make elevation inappropriate; an unfavorable recommendation by the outgoing U.S. Attorney; or that the individual does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition. In those

situations, the Attorney General has appointed another individual to lead the office during the transition.

In every single case where a vacancy occurs, it is the goal of the Bush Administration to have a United States Attorney that is confirmed by the Senate. Every single time that 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. Let me be perfectly clear—at no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refused to move forward in consultation with home-state Senators on the selection, nomination, and confirmation of a new U.S. Attorney. Consultation and confirmation is the method preferred by the Senate, and that is the 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 seven positions, and is waiting to receive names to set up interviews for one position—all in consultation with home-state Senators.

However, while that process continues, the Department must continue to manage the important prosecutions and work of these offices. In order to ensure an effective and smooth transition during those vacancies, the office of the U.S. Attorney was filled on an interim basis using a range of authorities.

In four cases, the First Assistant was selected to lead the office and took over under the provisions of the Vacancy Reform Act, at 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period. In a fifth case, the First Assistant was selected under that provision of the Vacancy Reform Act but took federal retirement a month later. The Department then selected another Department employee to serve as an interim U.S. Attorney under an Attorney General appointment until a nomination is submitted to the Senate.

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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 Attorney General and I 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 may be removed, or asked or encouraged to resign. 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. Any suggestion to the contrary is simply irresponsible.

With 93 U.S. Attorneys across the country, the Department often averages between eight to 15 vacancies at any given time. Given this occasional turnover, career investigators and prosecutors exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. The effect of a U.S. Attorney's departure on an ongoing investigation would be minimal.

Given these facts, the Department of Justice strongly opposes S. 214, which would radically change the way in which U.S. Attorney vacancies are temporarily filled, taking the authority to appoint members of his own staff from the Attorney General and delegating it instead to another branch of government.

OLP000000104

As you know, prior to last year's amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for only 120 days; 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 several 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 then required to make multiple 120-day interim appointments. Other district courts ignored the inherent conflicts and the oddity, and sought to appoint as interim U.S. Attorneys unacceptable candidates without the required clearances or appropriate qualifications. Last year's amendment of section 546, which brought the section largely into conformity with the Vacancies Reform Act, was necessary and entirely appropriate.

S. 214, on the other hand, would not only fail to ensure that those problems did not recur; it would exacerbate them by making appointment by the district court the only means of temporarily filling a vacancy—a step inconsistent with sound separation-of-powers principles. We are aware of no other 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. 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

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S. 214 seems aimed at solving a problem that does not exist. When a vacancy in the office of U.S. Attorney occurs, the Department often 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 may look to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration consistently seeks to consult with home-state Senators and fill the vacancy with a Presidentially-nominated and Senate-confirmed nominee.

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

OLP000000106

Bounds, Ryan W (OLP)

From: Bounds, Ryan W (OLP)
Sent: Wednesday, January 31, 2007 9:40 AM
To: Seidel, Rebecca
Cc: Clifton, Deborah J; Davis, Valorie A
Subject: RE: SJC U.S. Attorneys hearing Draft testimony
Attachments: S 214 testimony (OLP redline).doc

Tracking:

Recipient	Read
Seidel, Rebecca	Read: 1/31/2007 9:51 AM
Clifton, Deborah J	Read: 1/31/2007 9:40 AM
Davis, Valorie A	Read: 1/31/2007 9:42 AM

I am attaching a redline of the draft testimony with some proposed emendations; they are all stylistic.

Ryan Bounds
OLP
x54870

From: Seidel, Rebecca
Sent: Tuesday, January 30, 2007 7:34 PM
To: Sampson, Kyle; Moschella, William; Elston, Michael (ODAG); Brand, Rachel; Bounds, Ryan W (OLP); Goodling, Monica
Cc: Scott-Finan, Nancy; Nowacki, John (USAEO); Clifton, Deborah J; Blackwood, Kristine; Hertling, Richard
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Importance: High

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Subject: SJC U.S. Attorneys hearing

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Committee on the Judiciary
U.S. Senate

Wednesday, February 7, 2007

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OLP000000110

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Bounds, Ryan W (OLP)

From: Davis, Valorie A
Sent: Wednesday, January 31, 2007 9:30 AM
To: Bounds, Ryan W (OLP)
Cc: Wilcox, Matrina (OLP)
Subject: FW: DAG McNulty draft testimony for a 02/06/07 hearing re Preserving Prosecutorial Independence

Importance: High

Attachments: S214control.pdf; DRAFT Testimony -- US Attorneys Hearing.doc

Hello Ryan

Whom shall I forward this to? Cook and macklin perhaps?

From: Clifton, Deborah J
Sent: Wednesday, January 31, 2007 9:23 AM
To: Benderson, Judith (USAEO); Nowacki, John (USAEO); Smith, David L. (USAEO); Voris, Natalie (USAEO); Beth Beers; Carol Keeley; Denyse Coates; Erin Sanford; Kristan Mack; Rene Morton Nevens; Theresa Spinola; Ficaretta, Teresa; Rubenstein, Steve R.; Alexander, Robert (USMS); Conway, Janice (USMS); Edgar, Eliza (USMS); Mayer, Diana (USMS); McNulty, John (USMS); Noory, John (USMS); Brown, Jason F.; Dudley, John A.; Flaherty, Connor; Jameson, Dana B; Kripp, Joseph W.; Newman, Yvette; Shoemaker, Sheldon R; Whelan, Colleen; Cummings, Holly (CIV); Gunn, Currie (SMO); Katsas, Gregory; Shaw, Aloma A; Lofton, Betty; Massie, Patricia; Opl, Legislation; Samuels, Julie
Cc: Sampson, Kyle; Moschella, William; Elston, Michael (ODAG); Bounds, Ryan W (OLP); Goodling, Monica; Caballero, Luis (ODAG); Davis, Valorie A; Jackson, Wykema C; Wilcox, Matrina (OLP); Scott-Finan, Nancy; Seidel, Rebecca; Blackwood, Kristine
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Importance: High

**YOU WILL NOT RECEIVE A HARD COPY OF THIS REQUEST.
PLEASE PROVIDE COMMENTS TO KRISTINE BLACKWOOD,
OLA, NO LATER THAN 3 pm 01/31/07.**



S214control.pdf (12 KB)



DRAFT Testimony -- US Attorney...

Department Of Justice
Office Legislative Affairs
Control Sheet

Date Of Document: 01/30/07
Date Received: 01/30/07
Due Date: 01/31/07 3 pm

Control No.: 070131-13228
ID No.: 435231

From: ODAG (SENATE JUDICIARY COMTE) (S.214) ((110TH
CONGRESS))

To: SENATE JUDICIARY COMTE

Subject:

ATTACHED FOR YOUR REVIEW AND COMMENT IS A COPY OF THE DRAFT STATEMENT OF
PAUL MCNULTY, DEPUTY ATTORNEY GENERAL, REGARDING PRESERVING
PROSECUTORIAL INDEPENDENCE: IS THE DEPARTMENT OF JUSTICE POLITICIZING
THE HIRING AND FIRING OF U.S. ATTORNEYS?, BEFORE THE SENATE JUDICIARY
COMTE, TO BE GIVEN ON FEBRUARY 6, 2007

Action/Information:

Signature Level: OLA

Referred To:

Assigned: Action:

EOUSA, FBI, ATF, USMS,
DEA, CIV, ASG, CRM

01/31/07 COMMENTS DUE TO OLA/BLACKWOOD BY 3 PM
01/31/07: CC: OAG, ODAG, OLP,
OLA/SCOTT-FINAN/SEIDEL

Remarks:

Comments:

File Comments:

Primary Contact: KRISTINE BLACKWOOD, 514-2113

OLP000000116

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Hearing before the Subcommittee on the Courts
Committee on the Judiciary
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Wednesday, February 7, 2007

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However, while that process continues, the Department must continue to manage the important prosecutions and work of these offices. In order to ensure an effective and smooth transition during those vacancies, the office of the U.S. Attorney was filled on an interim basis using a range of authorities.

In four cases, the First Assistant was selected to lead the office and took over under the provisions of the Vacancy Reform Act, at 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period. In a fifth case, the First Assistant was selected under that provision of the Vacancy Reform Act but took federal retirement a month later. The Department then selected another Department employee to serve as an interim U.S. Attorney under an Attorney General appointment until a nomination is submitted to the Senate.

In one 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.

In the eight remaining cases, the Department selected another Department employee to serve as interim U.S. Attorney under an Attorney General appointment until such time as a nomination is submitted to the Senate.

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 Attorney General and I 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 may be removed, or asked or encouraged to resign. 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. Any suggestion to the contrary is simply irresponsible.

With 93 U.S. Attorneys across the country, the Department often averages between eight to 15 vacancies at any given time. Given this occasional turnover, career investigators and prosecutors exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. The effect of a U.S. Attorney's departure on an ongoing investigation would be minimal.

Given these facts, the Department of Justice strongly opposes S. 214, which would radically change the way in which U.S. Attorney vacancies are temporarily filled, taking the authority to appoint members of his own staff from the Attorney General and delegating it instead to another branch of government.

As you know, prior to last year's amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for only 120 days; 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 several 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 then required to make multiple 120-day interim appointments. Other district courts ignored the inherent conflicts and the oddity, and sought to appoint as interim U.S. Attorneys unacceptable candidates without the required clearances or appropriate qualifications. Last year's amendment of section 546, which brought the section largely into conformity with the Vacancies Reform Act, was necessary and entirely appropriate.

S. 214, on the other hand, would not only fail to ensure that those problems did not recur; it would exacerbate them by making appointment by the district court the only means of temporarily filling a vacancy—a step inconsistent with sound separation-of-powers principles. We are aware of no other 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. 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 of both the Executive and Judicial Branches. Furthermore, 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. S. 214 would undermine the effort to achieve a unified and consistent approach to prosecutions and federal law enforcement.

S. 214 seems aimed at solving a problem that does not exist. When a vacancy in the office of U.S. Attorney occurs, the Department often 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 may look to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration consistently seeks to consult with home-state Senators and fill the vacancy with a Presidentially-nominated and Senate-confirmed nominee.

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

Bounds, Ryan W (OLP)

From: Davis, Valorie A
Sent: Friday, February 23, 2007 4:54 PM
To: Bounds, Ryan W (OLP)
Subject: FW: 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 KB)
Testimony.doc ...

Whom shall I forward to white?

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

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, Matriona (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 (USAE0); Nowacki, John (USAE0); Smith, David L. (USAE0); Voris, Natalie (USAE0); 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

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

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

**COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

OLP000000125

**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

OLP000000126

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.

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

OLP000000133

Bounds, Ryan W (OLP)

From: Bounds, Ryan W (OLP)
Sent: Monday, February 26, 2007 1:58 PM
To: Silas, Adrien
Cc: Davis, Valorie A
Subject: FW: 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

Tracking:

Recipient	Read
Silas, Adrien	Read: 2/26/2007 4:52 PM
Davis, Valorie A	Read: 2/26/2007 2:24 PM

Adrien,

Attached is a redline with OLP's proposed edits and one question.

Ryan
x54870

From: Davis, Valorie A
Sent: Monday, February 26, 2007 10:13 AM
To: Bounds, Ryan W (OLP)
Subject: FW: ODAG Moschella draft testimony for a 03/06/07 hearing re the Importance of the Justice Department's United States Attorneys

Hello Ryan

Kirsch is out today.. This bill is due today at 2:00pm today are there any comments/

From: Davis, Valorie A
Sent: Monday, February 26, 2007 9:35 AM
To: Kirsch, Thomas
Subject: FW: ODAG Moschella draft testimony for a 03/06/07 hearing re the Importance of the Justice Department's United States Attorneys

Any comments? **Due today at 2:00pm.**

From: Davis, Valorie A
Sent: Friday, February 23, 2007 4:55 PM
To: Kirsch, Thomas
Subject: FW: ODAG Moschella draft testimony for a 03/06/07 hearing re the Importance of the Justice Department's United States Attorneys

Any comments? Due Date 2/26 at 2:00pm.

3/30/2007

OLP000000134

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

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 (USAE0); Nowacki, John (USAE0); Smith, David L. (USAE0); Voris, Natalie (USAE0); 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

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.

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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

OLP000000136

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; 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 their respective districts, U.S. Attorneys lead our efforts to protect America from terrorist attacks, to fight violent crime, to combat illegal drug trafficking, to ensure the integrity of government and the marketplace, to enforce our immigration laws, and to prosecute the perpetrators of crimes that endanger children and families—including offenses involving child pornography, obscenity, and human trafficking.

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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.

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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.

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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 U.S. 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 to interfere with or to 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.

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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, most U.S. Attorneys leave as a matter of course, and the new President nominates a successor for confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even throughout the term of an

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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 original four-year term,

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Given the reality of turnover among the U.S. 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.

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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 U.S. 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.

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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.

While that nomination process continues, however, the Department must have a leader in place to supervise the important work of these offices. To ensure an effective and smooth transition during U.S.

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Attorney vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Attorney General determines that the First Assistant should lead the office under the Vacancy Reform Act ("VRA"), 5 U.S.C. § 3345(a)(1), or appoints another Department employee under 28 U.S.C. § 546. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. If the Attorney General appoints someone else pursuant to 28 U.S.C. § 546, 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.

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- Comment [r1]: Is it always another Department employee? The statute doesn't require that.
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- Deleted: authority in
- Deleted: when another Department employee is chosen
- Comment [r2]: Is it always another Department employee? The statute doesn't require that.
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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.

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: Justice

ODAG, JMD/PERSONNEL/GC, 02/23/07 COMMENTS DUE TO OLA/SILAS BY 2 PM
OARM, OLP, OLC, CRM, CIV, 02/26/07. CC: OLA/SCOTT-FINAN/
EOUSA SEIDEL

Remarks:

Comments:

File Comments:

Primary Contact: ADRIEN SILAS, 514-7276

OLP000000144

Karp, David J

From: Charlton, Paul
Sent: Thursday, February 24, 2005 10:18 PM
To: Karp, David J
Subject: Taped Confessions

David,

I am the U.S. Attorney in Arizona, and Paul Cassell suggested that I contact you. I would like to see DOJ institute a policy that interrogations, where possible, be recorded. I know that this is an issue you are familiar with and would very much appreciate an opportunity to visit with you when you have a moment.

Paul Charlton
U.S. Attorney
District of Arizona
(602) 514-7590

Karp, David J

From: Karp, David J
Sent: Friday, February 25, 2005 4:09 PM
To: Hertling, Richard
Cc: Bryant, Dan; Brand, Rachel
Subject: FW: Taped Confessions

The U.S. Attorney for Arizona wants to talk to me about recording of interrogations, on referral by Judge Cassell (message below). He says that he "would like to see DOJ institute a policy that interrogations, where possible, be recorded." I would like to respond by sending him an e-mail which tells him what I know on the subject in general terms, and following up with whatever further discussion he wants.

However, I thought you should be aware of this upfront, since it is an issue with large implications for the Department's operations, and it will quickly work its way to the top of the Department if it is seriously pursued. We have history on this going back to the mid-1980s, when we looked at recording of interrogations as part of a possible alternative interrogation policy to the Miranda procedures. The bottom line is that the Department's investigative agencies (including FBI and DEA) have, in my experience, strongly resisted any regular policy or practice of recording (either audiorecording or videorecording) custodial interrogations. So the ultimate resolution would probably depend on whether the Attorney General will decide to adopt such a policy and direct the Department's investigative agencies to implement it over their objections.

As to the merits of such a policy, I agree with Charlton. I think it is indefensible to leave the reconstruction of what was done and said in custodial interrogations to the conflicting testimony of the defendant and the interrogating agents, when simple and inexpensive technological means are available to create an objective record. Not recording interrogations, despite the availability of the means to do so, has aptly been compared to not creating any objective record of trial proceedings and then requiring appellate courts to decide appeals based on the conflicting testimony of prosecutors and defense lawyers about what happened at the trial.

There are at this point a number of states, and quite a few local jurisdictions, which regularly record interrogations. Based on my admittedly limited knowledge of this area, I think their experience with it has generally been positive. Among the potential benefits are: (i) foreclosing false denials by defendants concerning their admissions and confessions, (ii) rebutting false claims of coercion or Miranda violations, (iii) the greater vividness and impact when courts and juries can directly hear and (if there is videorecording) observe the defendant's admissions (or insupportable denials) in custodial interrogation, and (iv) enabling courts and juries to observe the defendant in his natural condition at the time of arrest, as opposed to the prettified and rehearsed version of the defendant that his lawyer presents in the courtroom.

However, the Department's investigative agencies lack practical experience with extensive recording of interrogations, and their basic attitude towards it has been one of anxiety when I have discussed it with them. The specific concerns are varied, but perhaps the most basic one relates to what they see as the objective of custodial interrogation, and how they pursue that objective. The objective of custodial interrogation, as they see it, is to extract a confession from the arrestee. In pursuit of this objective, they do a lot of nasty stuff -- pressure tactics, psychological manipulation, deception, etc., directed against the arrestee -- which they think will not play well if judges and jurors can observe it directly. (However, the experience in jurisdictions that do regularly record, to the extent I am familiar with it, does not bear out the concern that this results in problems which outweigh the benefits of recording.)

So my specific request is a go-ahead to respond to Charlton, which I think I should do. But the foreseeable follow-up if this goes anywhere will necessarily be a major policy project leading up to a decision by the Attorney General whether to adopt the policy that Charlton proposes, or some other Departmental policy regarding the recording of custodial interrogations. (Currently, the decision about recording interrogations is left to the individual investigative agencies in the Department and, as far as I know, they rarely do it.)

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To: Karp, David J
Subject: Taped Confessions

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Paul Charlton
U.S. Attorney
District of Arizona
(602) 514-7590

Karp, David J

From: Hertling, Richard
Sent: Friday, February 25, 2005 4:53 PM
To: Karp, David J
Cc: Bryant, Dan; Brand, Rachel
Subject: RE: Taped Confessions

David: I am wrapping up some things today and will be on leave next week, so I am not able to spend much time on this today (and will certainly not be doing so next week). I would like to discuss this issue with you upon my return. It is a very interesting issue, and I can see both sides of the argument. I certainly have an open mind on the topic and no predisposition either way. I would want to learn more about the experience in court in jurisdictions that do record interviews. I suggest you respond to Charlton indicating a willingness on OLP's part to hear him out and consider the issue. When I get back, you and I can chat, and then we can perhaps do a conference call with Charlton. rah

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

From: Karp, David J
Sent: Friday, February 25, 2005 4:09 PM
To: Hertling, Richard
Cc: Bryant, Dan; Brand, Rachel
Subject: FW: Taped Confessions

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Paul Charlton
U.S. Attorney
District of Arizona
(602) 514-7590

Karp, David J

From: Karp, David J
Sent: Friday, February 25, 2005 5:35 PM
To: Charlton, Paul
Cc: Hertling, Richard; Brand, Rachel; Bryant, Dan
Subject: RE: Taped Confessions

I have been involved in previous go-rounds in the Department on recording of interrogations, though the extent and currency of my knowledge about it may be more limited than you might have gathered from Paul's referral. I do have an interest in the subject, and I have brought your message to the attention of others in OLP. We would be interested in hearing your views and experience on this issue and in considering your recommendation regarding Departmental policy.

Unfortunately, the relevant people on our end are about to become unavailable for a while. The responsible Deputy, Richard Hertling, will be out all next week, and I will be gone from Monday through Wednesday of the week after that. I will contact you again when everyone is back -- i.e., March 10 and thereafter -- to arrange further communication. Perhaps we can set up a conference call with you at that time to discuss this issue.

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Sent: Thursday, February 24, 2005 10:18 PM
To: Karp, David J
Subject: Taped Confessions

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Paul Charlton
U.S. Attorney
District of Arizona
(602) 514-7590

Karp, David J

From: Charlton, Paul
Sent: Friday, February 25, 2005 5:43 PM
To: Karp, David J
Cc: Hertling, Richard; Brand, Rachel; Bryant, Dan
Subject: RE: Taped Confessions

Thanks David - I look forward to that opportunity. Paul

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

From: Karp, David J
Sent: Friday, February 25, 2005 3:35 PM
To: Charlton, Paul
Cc: Hertling, Richard; Brand, Rachel; Bryant, Dan
Subject: RE: Taped Confessions

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Sent: Thursday, February 24, 2005 10:18 PM
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Paul Charlton
U.S. Attorney
District of Arizona
(602) 514-7590

4/8/05

Havana
+ Tokyo USA
from CIA/CIA
on detail to CIA

w. Richard Hertling, call w Paul Chertan, Aniz. USA
re recording of interrogations

[Want play well will inhibit suspects
disclosure of info]

Chertan: Aniz. police record, FBI's DAdant

voluntary
not legal
requirement

waited issue at NSA conference w Tim & Mullen

AGAC - same conversation, Chertan not on it

juries less likely to credit agents now than in past
- helps to have tapes, can't justify cost
having them

Tosh asks about Britton - Paul says redact
tapes or transcript

Suggested follow-up ~~req~~: look to jurisdictions
that now require it & USAs therein; get empirical
info; look to England & Canada
He will work it up (get clerk to do research), find
support for pitch

Mueller
strongly
opposed

Emphasized to him both types support needed -
empirical + endorsement of someone they know & trust



UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF LEGAL POLICY

950 Pennsylvania Avenue, NW
Washington, DC 20530

IMPORTANT: This facsimile is intended only for the use of the individual or entity to whom it is addressed. It may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law. If the reader of this transmission is not the intended recipient or the employee or agent responsible for delivering the transmission to the intended recipient, you are hereby advised that any dissemination, distribution, copying, or use of this transmission or its contents is strictly prohibited. If you have received this transmission in error, please notify us by telephoning, and please return the original transmission to us at the above address.

DATE: 4/21/05
TO: PAUL CHARLTON
FAX: 602-514-7670
PAGES: 27 (excluding cover)

FROM: David Karp
VOICE: 202-514-3273
FAX: 202-³⁰⁵⁻⁴⁶⁰²514-2424

MESSAGE: Materials on recording of interrogations-
see next page (e-mail) for description of contents.

OLP000000153

Karp, David J

From: Karp, David J
Sent: Thursday, April 21, 2005 6:37 PM
To: Charlton, Paul
Cc: Hertling, Richard; Sanchez, Sandra; Dokken, Carrie
Subject: materials on recording of interrogations

Following up on our phone conversation of April 8, I will be faxing to you (at 602-514-7670) some materials which were generated during the Department's consideration of recording of interrogations in 1987. While these materials are obviously fairly ancient at this point, I think they may be useful to you as a starting point in identifying the considerations that are raised for and against recording, and in assessing arguments pro and con.

The specific items I will be sending by fax are as follows:

(1) A thirteen-page memorandum dated March 19, 1987, which summarizes the responses I received from prosecutors and police officials in a couple of jurisdictions that regularly recorded interrogations concerning their experience with the practice. (I informed the respondents that the information they provided would be used by individuals in the Department in assessing possible reforms in recording policy, but that we wouldn't disclose their identities/answers more broadly without their permission -- please limit further dissemination of this document accordingly.)

(2) A one-page memo dated February 6, 1987, which provided similar information about selective videorecording of interrogations in D.C.

(3) A two-page memo dated December 14, 1987, which summarized the results of empirical research on videotaping of interrogations in Canada that was being conducted at the time. As I mentioned in our phone conversation, I believe that recording of interrogations became common in Canada following the favorable results of the research in the 1980s, and that England regularly requires recording of police interrogations. It presumably would not be difficult to get information about current recording policies in the most comparable foreign jurisdictions (Canada and England).

(4) A draft three-page memo dated February 5, 1987, which provided cost estimates for implementing a videotape or sound recording program at FBI, DEA, and INS field offices.

(5) A seven-page memo dated February 22, 1988, which provided suggestions to NIJ for further empirical research concerning recording of interrogations. As far as I know, NIJ did not follow up on this, but a current literature search or inquiry with other institutions involved in research on policing-related matters would presumably turn up some empirical study on the subject that has since been done by other entities or individuals.

Karp, David J

From: Charlton, Paul

Sent: Thursday, April 21, 2005 6:37 PM

To: Karp, David J

Subject: Out of Office AutoReply: materials on recording of interrogations

I am currently out of the office and my blackberry is inoperable. If you need to contact me please

Karp, David J

From: Charlton, Paul
Sent: Friday, April 29, 2005 5:09 PM
To: Karp, David J
Subject: RE: materials on recording of interrogations

Thank you David. This issue came up during the USA conference and it looks like there may be some positive movement. I'll keep you up to speed if you don't mind and may reach out to you from time to time for your thoughts.
Paul

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

From: Karp, David J
Sent: Thursday, April 21, 2005 3:37 PM
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Cc: Hertling, Richard; Sanchez, Sandra; Dokken, Carrie
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Karp, David J

From: Charlton, Paul
Sent: Friday, April 29, 2005 5:14 PM
To: Hertling, Richard
Cc: Howard, Joshua; Karp, David J; Brand, Rachel
Subject: RE: Recording of interrogations

Thanks so much Richard. This subject came up during the USA conference last week and I believe there is positive movement on this issue. I expect to hear more during in the near future and will be back in touch. Thanks again for your thoughts and time.

Paul

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

From: Hertling, Richard
Sent: Friday, April 22, 2005 7:31 AM
To: Charlton, Paul
Cc: Howard, Joshua; Karp, David J; Brand, Rachel
Subject: Recording of interrogations

Paul: It was nice chatting with you the other week on the subject of changing the practice of DOJ investigative agencies to require the recording of interviews. I think OLP is interested in this issue and would be pleased to work with you as it moves forward. As I indicated during our conversation, before I had to leave it prematurely to attend my other meeting (at least now I know you do not have daylight time in AZ), I believe very strongly that this entire issue should be handled through the instrumentality of the AGAC. I do not think that a few USAs pushing the issue in concert with OLP (and while sympathetic to your view, I must be clear that OLP as yet has no position on the issue) is the way to effectuate the change you seek in components' practice on this score. Confronted with what I expect will be solid opposition from our investigative components who will argue from their real-world experience, I cannot fathom how OAG would direct any change in their practice unless the formal voice of DOJ prosecutors pushed the change hard also by relying on your real-world experiences in the courtrooms around the country. ANother method would be to convene a working group under OLP to study the issue. Such a group could have USAs on it, and would also include FBI, DEA, USMS, and ATF. However, the resulting recommendations of such a working group would not be a foregone conclusion in support of your position.

In any case, I am happy to chat further with you about pursuing this issue, so feel free to give me a call if you wish. If we do pursue the issue, Josh Howard (an AUSA detailed to OLP) and I will be your points of contact here. Have a good weekend. rah

Best, David T

From: Hardos, Debbie (USAEO)
Sent: Friday, September 15, 2006 2:25 PM
To: Washington, Tracy T; Walker, Shelia M; Sampson, Kyle; Margolis, David; Coehins, Bridget C; Best, David T; Battle, Michael (USAEO); MGoodling@usa.doj.gov; Nowacki, John (USAEO); Robinson, Michelle D (USAEO); courtwright_s@who.eop.gov; Thompson, Antionette (USAEO); Voris, Natalie (USAEO)
Subject: USA Appointment Summary
Attachments: tmp.htm; !USA APPOINTMENT SUMMARY.wpd; !USA APPOINTMENT SUMMARY.pdf



tmp.htm (787 B)



!USA



!USA

APPOINTMENT SUMMARY.APPOINTMENT SUMMARY.

Attached is the most recent USA Appointment Summary

(WP and .pdf):

<<!USA APPOINTMENT SUMMARY.wpd>> <<!USA APPOINTMENT SUMMARY.pdf>>

UNITED STATES ATTORNEYS – APPOINTMENT SUMMARY

3/30/07

PRESIDENTIALLY APPOINTED – 81

ARIZONA	PAUL K. CHARLTON	11/14/01
ARKANSAS/EASTERN	H.E. "BUD" CUMMINS, III	1/9/02
CALIFORNIA/NORTHERN	KEVIN V. RYAN	8/2/02
CALIFORNIA/SOUTHERN	CAROL C. LAM	11/18/02

MICHIGAN/WESTERN	MARGARET M. CHIARA	11/02/01
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NEVADA	DANIEL G. BOGDEN	11/02/01
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NEW MEXICO	DAVID C. IGLESIAS	10/17/01
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WASHINGTON/WESTERN

JOHN McKAY, JR.

10/30/01

OLP000000161

PENDING COMMISSION

PENDING CONFIRMATION

PENDING BI

INTERVIEWED and PENDING WH DECISION

ARKANSAS/EASTERN

H.E. "BUD" CUMMINS (Presidentially-
appointed)

VACANCY and PENDING CANDIDATE

}

VACANCIES REFORM ACT APPOINTMENTS - 3

DISTRICT	NAME	APPT DATE	EXP DATE	NOMINATION DATE/NOMINEE
Illinois/S	Randy G. Massey	3/20/06	10/16/06	6/9-Green
West Virginia/N	Rita Valdrini	4/17/06	11/13/06	6/9-Potter
North Carolina/E	George E.B. Holding	6/30/06	1/26/07	6/9-Holding

ATTORNEY GENERAL APPOINTMENTS - 7

DISTRICT	NAME	APPT DATE
Illinois/C	Rodger A. Heaton	12/1/05
West Virginia/S	Charles T. Miller	2/24/06
Minnesota	Rachel K. Paulose	3/1/06
Missouri/W	Bradley J. Schlozman	3/25/06
Puerto Rico	Rosa Rodriguez-Velez	6/9/06
Tennessee/E	James R. Dedrick	6/19/06
Alaska	Nelson P. Cohen	8/23/06

COURT APPOINTMENTS - 2

DISTRICT	NAME	DATE OF OATH
Maine	Paula D. Silsby	9/3/01
Alabama/S	Deborah J. Rhodes	1/29/06

RESIGNATIONS FORTHCOMING

Arkansas/E	H.E. "Bud" Cummins	TBD
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CALIFORNIA/SOUTHERN	CAROL C. LAM	11/18/02

MICHIGAN/WESTERN	MARGARET M. CHIARA	11/02/01
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NEVADA	DANIEL G. BOGDEN	11/02/01
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NEW MEXICO	DAVID C. IGLESIAS	10/17/01
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WASHINGTON/WESTERN

JOHN MCKAY, JR.

10/30/01

OLP000000166

PENDING COMMISSION

PENDING CONFIRMATION

PENDING BI

INTERVIEWED and PENDING AWH DECISION

ARKANSAS/EASTERN	H.E. "BUD" CUMMINS (Presidentially-appointed)
------------------	---

VACANCY and PENDING CANDIDATE

3

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Arkansas/E	H.E. "Bud" Cummins	TBD
------------	--------------------	-----

Best, David T

From: Hardos, Debbie (USAEO)
Sent: Wednesday, September 27, 2006 9:33 AM
To: Best, David T
Subject: BI

Attachments: tmp.htm



tmp.htm (724 B)

Hi David:

Do you have projected completion dates for Griffin/ARE and

Thank you,
Debbie

Best, David T

From: Best, David T
Sent: Wednesday, September 27, 2006 3:31 PM
To: Hardos, Debbie (USAEO)
Subject: RE: BI

Griffin - 10/6

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

From: Hardos, Debbie (USAEO)
Sent: Wednesday, September 27, 2006 9:33 AM
To: Best, David T
Subject: BI

Hi David:
Do you have projected completion dates for Griffin/ARE and

Thank you,
Debbie



U.S. Department of Justice

Office of Legal Policy

Washington, D.C. 20530

TO: Federal Bureau of Investigation
Special Investigation and General Background Investigations United
Chief, SIGBIU

FROM: David T. Best
Nominations Counsel

SUBJECT: NAME: John Timothy Griffin

DATE: August 31, 2006

Please initiate a background investigation of captioned individual, a candidate for a Presidential appointment as: **United States Attorney for the Eastern District of Arkansas**

The home address and telephone number of the candidate:

Telephone:

The Candidate is currently employed as **Special Assistant to Potus, Executive Office of the Present, 1600 Pennsylvania Avenue, N.W., Washington, D.C. 20502**

Work telephone:

I have have not attached a SF-86.

OLP000000171



U.S. Department of Justice

*United States Attorney
Western District of Washington*

700 Stewart Street, Suite 5220
Seattle, Washington 98101-1271

Tel: (206) 553-7970
Fax: (206) 553-2054

December 14, 2006

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I hereby submit my resignation as United States Attorney for the Western District of Washington, effective midnight January 26, 2007.

It has been my privilege to serve with you during these challenging times for our country. I am deeply appreciative of your faith and confidence in me and our District's talented prosecutors, trial attorneys, support staff and law enforcement personnel as we have worked to secure this district from terrorism and violent crime.

As always, you are in my prayers as you continue to lead our country, and to these I add my wishes to you, Mrs. Bush and all of your family for a happy and joyous Christmas.

Sincerely,

A handwritten signature in black ink, appearing to read "John McKay".

John McKay
United States Attorney

OLP000000172



U. S. Department of Justice

*United States Attorney
District of Arizona*

*2 Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408*

*(602) 514-7500
FAX (602) 514-7670*

December 18, 2006

The President
The White House
Washington, DC 20500

Dear Mr. President:

I am hereby submitting my resignation as United States Attorney for the District of Arizona of the United States, effective midnight January 31, 2007.

I deeply appreciate the opportunity you have given me to serve as United States Attorney. I wish you and your administration the best of luck and success.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Paul K. Charlton", written over a large, sweeping flourish.

PAUL K. CHARLTON
United States Attorney
District of Arizona

OLP000000173



U.S. Department of Justice

Carol C. Lam
United States Attorney
Southern District of California

(619) 557-5690
Fax (619) 557-5782

San Diego County Office
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8893

Imperial County Office
321 South Waterman Avenue
Room 204
El Centro, California 92243-2215

January 16, 2007

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

I am hereby submitting my resignation as United States Attorney for the Southern District of California, effective midnight February 15, 2007. It has been a great honor and privilege to have served these past four years as a United States Attorney under your appointment.

I deeply appreciate the opportunity to have served as the United States Attorney for the Southern District of California. I wish you and your administration the best of luck and success.

Sincerely,

A handwritten signature in cursive script that reads "Carol C. Lam".

CAROL C. LAM
United States Attorney

OLP000000174



U.S. Department of Justice

*United States Attorney
District of Nevada*

*Daniel G. Bogden
United States Attorney*

*333 Las Vegas Boulevard South
Suite 5000
Las Vegas, Nevada 89101*

*Telephone (702) 388-6336
FAX: (702) 388-6296*

January 17, 2007

The President
The White House
Washington, DC 20500

Dear Mr. President:

I am hereby submitting my resignation as United States Attorney for the District of Nevada, effective midnight February 28, 2007.

I deeply appreciate the outstanding opportunity to have served as United States Attorney. I wish you and your administration the best of luck and success.

Sincerely,

A handwritten signature in cursive script that reads "Daniel G. Bogden".

DANIEL G. BOGDEN
United States Attorney
District of Nevada

OLP000000175



U.S. Department of Justice

David C. Iglesias

*United States Attorney
District of New Mexico*

REPLY TO:

*David C. Iglesias
Direct: (505) 224-1459*

*Post Office Box 607
Albuquerque, New Mexico 87103*

*(505) 346-7274
(505) 346-7224
FAX (505) 346-6883*

January 17, 2007

The President
The White House
Washington, DC 20500

Dear Mr. President:

I am hereby submitting my resignation as United States Attorney for the District of New Mexico, effective midnight February 28, 2007.

I knew when I first met you at the El Pinto restaurant in Albuquerque, New Mexico in the Summer of 2000, that I wanted to be part of your team. I deeply appreciate the opportunity to have served as United States Attorney and being part of your administration in a watershed period of America's history. Along with my service in the United States Navy, I count being U.S. Attorney as my greatest honor. Thank you for giving me a chance to give back to a country that has given me so much. As the son of an immigrant father from Panama, I know the American dream lives on.

I pray for you frequently and trust the Almighty grant you the wisdom of Solomon during the rest of your administration.

Very Respectfully,

A handwritten signature in black ink that reads "D.C. Iglesias".

DAVID C. IGLESIAS
United States Attorney
District of New Mexico

DCI:lg

OLP000000176

Mullane, Hugh

From: Seidel, Rebecca
Sent: Wednesday, August 02, 2006 6:56 PM
To: Voris, Natalie (USAEO); Epley, Mark D; Otis, Lee L; Bounds, Ryan W (OLP); Mullane, Hugh
Cc: Scott-Finan, Nancy; Roland, Sarah E
Subject: FW: Lam is meeting with Issa and Sensenbrenner

Sounds like she handled well and it was actually constructive. See below.

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

From: Lam, Carol (USACAS)
Sent: Wednesday, August 02, 2006 6:50 PM
To: Seidel, Rebecca
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Sorry, meant to email you earlier but other events overtook me.

It was fine (at least I think it was). The tone was civil and at times even friendly. I was accompanied by my appellate chief Roger Haines and our Intake supervisor Steve Peak. Issa and Sensenbrenner had about 4 staffers there total. Chrm Sensenbrenner had a single theme he kept coming back to, which is that we aren't doing enough coyote prosecutions and that they are the key to controlling the border. (This is obviously the Border Patrol complaint that was channelled through Issa to Sensenbrenner). I noted that the first 3 times we prosecute a coyote, we get sentences of 60 days, 6 months, and maybe a year, respectively, if we are lucky; whereas the same attorney resources can be used to prosecute criminal aliens with priors for rape, murder and child molestations and we can get sentences of 7-8 years. We have more of the latter type of case than we can handle, so essentially I must make a choice -- prosecute the coyotes who are smuggling but not endangering anyone, or the rapists and murderers who are coming back to rape and murder again.

He noted that among the Southwest Border USAOs, our felony immigration filings are low. I explained that we set out a couple of years ago to deliberately seek higher sentences for the worst offenders; this meant more cases would go to trial, but we would hold the line and not sell the cases for less time. The statistics show that we have, in fact, achieved significantly higher average sentences in our immigration cases; the cost was that our immigration trial rate more than DOUBLED (from 42 trials in 2004 to 89 trials in 2005) and we had to reduce the number of low-end coyote cases we filed. Cong Issa seemed to grasp this concept quickly; he commented that it is too bad we don't have statistics that reflect the matrix of felony immigration filings against lengths of sentences.

We urged them to fully fund the President's budget; thanked Chrm Sensenbrenner for the enforcement provisions in his immigration bill; and some observations were exchanged about the difficulties of prosecuting cases in the 9th Circuit. Congressman Issa asked me how the 4 additional SW border AUSA positions (announced by the AG on Monday) would help me; I said that they would allow me to fill attorney vacancies that I have had to leave vacant because of the budget situation. Issa noted to Sensenbrenner that he doesn't understand why their prior appropriations don't seem to be "trickling down" to the USAOs, and I interjected that the unfunded COLAs and government-wide rescissions were erasing what appeared to be additional appropriations.

That was about it. We left on very cordial terms without any request for follow-up information. Let me know if you need any additional information, and thanks for preparing me.

Carol

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

From: Seidel, Rebecca
Sent: Wednesday, August 02, 2006 3:16 PM
To: Lam, Carol (USACAS)
Cc: Epley, Mark D
Subject: RE: Lam is meeting with Issa and Sensenbrenner

How did the Issa/Sensenbrenner meeting go?

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

From: Lam, Carol (USACAS)
Sent: Wednesday, August 02, 2006 11:53 AM
To: Seidel, Rebecca; Parent, Steve (USAEO); Bevels, Lisa (USAEO); Voris, Natalie (USAEO)
Cc: Jordan, Wyevetra G; Epley, Mark D
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Thanks, Steve; this helps. -- Carol

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

From: Parent, Steve (USAEO)
Sent: Wednesday, August 02, 2006 5:24 AM
To: Lam, Carol (USACAS); Seidel, Rebecca; Bevels, Lisa (USAEO); Voris, Natalie (USAEO)
Cc: Epley, Mark D; Jordan, Wyevetra G
Subject: Re: Lam is meeting with Issa and Sensenbrenner

The 29 percent figure is actual funded position increase from FY 2000 to present.

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

From: Lam, Carol (USACAS) <CLam@usa.doj.gov>
To: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>; Parent, Steve (USAEO) <SParent@usa.doj.gov>; Bevels, Lisa (USAEO) <LBevels@usa.doj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
CC: Epley, Mark D <Mark.D.Epley@usdoj.gov>; Jordan, Wyevetra G <Wyevetra.G.Jordan@usdoj.gov>
Sent: Tue Aug 01 22:12:05 2006
Subject: Re: Lam is meeting with Issa and Sensenbrenner

I assume nobody is taking credit for the 29% figure, and I'm on my own?

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

From: Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
To: Parent, Steve (USAEO) <SParent@usa.doj.gov>; Bevels, Lisa (USAEO) <LBevels@usa.doj.gov>; Lam, Carol (USACAS) <CLam@usa.doj.gov>; Voris, Natalie (USAEO) <NVoris@usa.doj.gov>
CC: Epley, Mark D <Mark.D.Epley@usdoj.gov>; Jordan, Wyevetra G <Wyevetra.G.Jordan@usdoj.gov>
Sent: Mon Jul 31 18:01:45 2006
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Also adding Mark Epley and Wyevetra Jordan . Mark, Wye - where did the 29% increase number come from? (this is re the press release on the supplemental approps funding AUSAs)

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

From: Voris, Natalie (USAEO)
Sent: Monday, July 31, 2006 8:17 PM
To: Seidel, Rebecca; Lam, Carol (USACAS); Bevels, Lisa (USAEO); Parent,

Steve (USAEO)
Subject: Re: Lam is meeting with Issa and Sensenbrenner

This is definitely a question for rmp - I have added lisa and steve to the email.

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

From: Lam, Carol (USACAS) <CLam@usa.doj.gov>
To: Voris, Natalie (USAEO) <NVoris@usa.doj.gov>; Seidel, Rebecca <Rebecca.Seidel@usdoj.gov>
Sent: Mon Jul 31 20:09:54 2006
Subject: RE: Lam is meeting with Issa and Sensenbrenner

Thanks, Natalie. I do have one other concern -- the DOJ press release sent out today says that the "the number of AUSAs in the Southwest border districts has increased 29 percent since 2000, to a total of 561." I'm not sure where the 29% figure came from; my own FTE increased from 119 to 125 during the last 4 years; I think the percentage increase has been similar in the other districts. Can anyone tell me how the 29% increase was calculated, in case the Congressmen use this figure in our discussion?

From: Voris, Natalie (USAEO)
Sent: Monday, July 31, 2006 4:08 PM
To: Lam, Carol (USACAS)
Subject: FW: Lam is meeting with Issa and Sensenbrenner

Carol,
Lisa Bevels is traveling to the Budget Officers training at the NAC this week, but she gives you the best times for a conversation with her below. I clarified with Lisa that it's human trafficking approps Issa is interested in, not prosecutions. Lisa said that she was unaware of any specific human trafficking funds ever going to USAOs.

Please let me know if you need anything else. I'm not the budget expert, but I can try to point you in the right direction.

nv

From: Bevels, Lisa (USAEO)
Sent: Monday, July 31, 2006 6:16 PM
To: Voris, Natalie (USAEO); Parent, Steve (USAEO)
Subject: RE: Lam is meeting with Issa and Sensenbrenner

I will be giving a speech at the BO Conference on Wednesday. If she wants, she can email me and set up a time to talk tomorrow or Wednesday last morning or all afternoon. Civil Rights tracks the Human Trafficking case data for the Department. I'm not sure if Barbara Tone can come up with these cases through our system--they are probably part of immigration or some could even be in child abuse (women and children trafficking for sexual exploitation). Dave Smith asked us a few weeks ago about Human Trafficking and we did not have the data.

From: Voris, Natalie (USAEO)
Sent: Monday, July 31, 2006 6:02 PM
To: Bevels, Lisa (USAEO); Parent, Steve (USAEO)
Subject: Lam is meeting with Issa and Sensenbrenner

On Wednesday at 11 a.m. PST. OLA has approved this meeting. Carol

knows that Issa is curious about what happened to human trafficking funds that Issa believes were provided to USAOs a year ago. Do we have any info on that? Lisa - Carol will probably give you a call in the next day to go over a few things prior to the meeting.

Thanks,
nv

White House Judicial Selection Committee



June 21, 2006

Copy No. 18 of 23:

Kristi Macklin

OLP000000181

WHITE HOUSE JUDICIAL SELECTION COMMITTEE

Agenda: Meeting of June 21, 2006

I. New Business

A.

B.

C.

II. Old Business

A.

OLP000000182

B.

C.

D.

E. United States Attorney for the Eastern District of Arkansas

i. J. Timothy Griffin

F.

G.

III. Confirmation Update

OLP000000183

J. TIMOTHY GRIFFIN
Candidate for the United States Attorney
for the Eastern District of Arkansas

Age: 37

Residence: Little Rock, Arkansas

Education:

Tulane University School of Law, J.D. *cum laude*, 1994.
Oxford University, Pembroke College, 1990-1991.
Hendrix College, B.A. *cum laude*, 1990.

Legal and Professional Experience:

Special Assistant to the President and Deputy Director, Office of Political Affairs, The White House, 2005- present. (Currently on Military Leave)
Research Director and Deputy Communications Director, 2004 Presidential Campaign, Republican National Committee, 2002-2004.
Special Assistant to the Assistant Attorney General, Criminal Division, U.S. Department of Justice, 2001-2002.
Special Assistant United States Attorney, Eastern District of Arkansas, 2001-2002.
Deputy Research Director, 2000 Presidential Campaign, Republican National Committee, 1999-2001.
Senior Investigative Counsel, Committee on Government Reform, U.S. House of Representatives, 1997-1998 and 1998-1999.
Campaign Manager, Betty Dickey for Attorney General, State of Arkansas, 1998.
Associate Independent Counsel, U.S. Office of Independent Counsel David M. Barrett, 1995-1997.
Associate, Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P., 1994-1995.

Military Service:

Trial Counsel and Special Assistant U.S. Attorney, Judge Advocate General's Corps, U.S. Army Reserves, 2005- present. (Active duty.)
Captain, Judge Advocate General's Corps, U.S. Army Reserves, 2000- present.
First Lieutenant, Judge Advocate General's Corps, U.S. Army Reserves, 1996-2000.

Professional and Civic Activities:

Member, Arkansas Bar Association, 1995- present.
Member, Annual Meeting Subcommittee on Technology, 2002.
Member, The Oxford Society, 1991- present.
Board Member, Florence Crittenton Services, 2001-2002.
Member, Pulaski County Bar Association, 2001-2002.
President, New Orleans Lawyers Chapter, The Federalist Society, 1995.
Life Member, Reserve Officers Association.

OIP

From: Andrea_B._Looney@who.eop.gov
Sent: Tuesday, July 25, 2006 2:10 PM
To: Sampson, Kyle
Cc: Macklin, Kristi R; Jennifer_R._Brosnahan@who.eop.gov
Subject: RE: Tim Griffin

We would offer a call to Tim in Iraq. So sounds like that is ok then, yes?

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

From: Kyle.Sampson@usdoj.gov [mailto:Kyle.Sampson@usdoj.gov]
Sent: Tuesday, July 25, 2006 2:08 PM
To: Looney, Andrea B.
Cc: Kristi.R.Macklin@usdoj.gov; Brosnahan, Jennifer R.
Subject: RE: Tim Griffin

If the President has already approved Griffin, then part of our "consultation" (to meet the "advice and consent" requirements of Constitution) would be to tell them we were going to start a BI on Griffin. I assume this has already happened. If so, then it shouldn't be a surprise that we're looking at Griffin, and I would have no objection to a meeting (is Tim back from Iraq?).

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

From: Andrea_B._Looney@who.eop.gov [mailto:Andrea_B._Looney@who.eop.gov]
Sent: Tuesday, July 25, 2006 2:02 PM
To: Sampson, Kyle
Cc: Macklin, Kristi R; Jennifer_R._Brosnahan@who.eop.gov
Subject: Tim Griffin
Importance: High

I will see Sen. Pryor later today and wanted to offer him a chance to speak with Tim Griffin. Is that a problem since he has not yet been nominated for US Attorney? Please let me know asap as my meeting is at 4pm. Thanks!

OIP

From: Charlton, Paul (USAAZ)
Sent: Tuesday, July 25, 2006 7:45 PM
To: Nash, Stuart (ODAG); Brand, Rachel
Cc: Bounds, Ryan W (OLP); Macklin, Kristi R; Knauss, Dan (USAAZ)
Subject: RE: Prosecution Issues

Attachments: tmp.htm; narc defs charged.pdf; narc cases opened.pdf; narc cases charged.pdf



tmp.htm (6 KB)



narc defs charged.pdf (8 KB)



narc cases opened.pdf (8 KB)



narc cases charged.pdf (8 KB)

Rachel - we cannot break out weight limits

on our prosecutions. Nor can I obtain the numbers of cases taken by the county attorney as a result of our policy. Below are our overall narcotics prosecutions for the years 2000 to present. They are good numbers but show a drop in 2005 when we could not hire. I just got off of the phone with the fourth county attorney's criminal chief and would modify my earlier response to say as follows:

We have altered our threshold guidelines for the Tucson Sector so that we prosecute marijuana cases of 500 pounds and above. There are exceptions. If the marijuana is found on the Tohono O'odham Indian Reservation, we take all of their cases, regardless of weight, because of our trust obligation. In any other area of the Tucson Sector, we take the case regardless of weight if there is an ongoing investigation regarding the smuggling ring, or some other compelling factor exists, such as endangerment, assault on the officer, or a repeat offender. Three of the four county attorney's have agreed to take cases under our marijuana threshold, the fourth has not issued a blanket policy to accept those cases, but has agreed to take them on a case by case basis. To date, we are unaware of any case that was referred to the county attorney that was declined for threshold reasons alone.

Let me know if you need more.

Paul

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 4:03 PM
To: Nash, Stuart (ODAG); Charlton, Paul (USAAZ)
Cc: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Subject: Re: Prosecution Issues

Do you know how many marijuana cases you prosecute over 500 lbs in a year and how many are taken by the county attorneys?

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

From: Charlton, Paul (USAAZ)
To: Nash, Stuart (ODAG); Brand, Rachel
CC: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Sent: Tue Jul 25 18:51:04 2006

Subject: RE: Prosecution Issues

It is true. We no longer have the resources to prosecute marijuana cases under 500 pounds. The exception is the Tohono O'odham Indian reservation, where we will prosecute all drug cases based on our trust obligation. Three of the four border county attorneys have agreed to prosecute marijuana cases under 500 pounds, filling the void we have left. It is unclear what the policy of the fourth county attorney will be. We have heard of no cases going unprosecuted based on our new guidelines.

Paul

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 3:21 PM
To: Nash, Stuart (ODAG); Charlton, Paul (USAAZ)
Cc: Bounds, Ryan W (OLP); Macklin, Kristi R
Subject: Fw: Prosecution Issues

Gentlemen: what's the response to this?

-----Original Message-----
From: Douglas_B._Baker@who.eop.gov <Douglas_B._Baker@who.eop.gov>
To: Brand, Rachel
CC: Robert_Jacobs@who.eop.gov <Robert_Jacobs@who.eop.gov>
Sent: Tue Jul 25 17:53:58 2006
Subject: Prosecution Issues

<<tmp.htm>> Rachel:

I understand that Barry Jackson has asked a question about the variable prosecution policies by AUSA Sector for illegal immigration. We have another question posed by Speaker Hastert. He understands that the AUSA for Nogales will not prosecute marijuana possession for amounts less than 500 lbs. Seems unlikely to me, but need to get to the truth as this

was raised in meeting with POTUS.

Thanks,

Doug

Narcotics Cases Opened

	2000	2001	2002	2003	2004	2005	2006	Total
Total	983	978	1,235	1,460	1,659	1,537	911	8,763

7/25/2006

Narcotics Defendants Charged

	2000	2001	2002	2003	2004	2005	2006	Total
Total	1,696	1,700	2,036	2,490	2,406	2,417	1,314	11,761

7/25/2006

Rachel - we cannot break out weight limits on our prosecutions. Nor can I obtain the numbers of cases taken by the county attorney as a result of our policy. Below are our overall narcotics prosecutions for the years 2000 to present. They are good numbers but show a drop in 2005 when we could not hire. I just got off of the phone with the fourth county attorney's criminal chief and would modify my earlier response to say as follows:

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Let me know if you need more.

Paul

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 4:03 PM
To: Nash, Stuart (ODAG); Charlton, Paul (USAAZ)
Cc: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Subject: Re: Prosecution Issues

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

From: Charlton, Paul (USAAZ)
To: Nash, Stuart (ODAG); Brand, Rachel
CC: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Sent: Tue Jul 25 18:51:04 2006
Subject: RE: Prosecution Issues

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Paul

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 3:21 PM
To: Nash, Stuart (ODAG); Charlton, Paul (USAAZ)
Cc: Bounds, Ryan W (OLP); Macklin, Kristi R

OLP000000190

Subject: Fw: Prosecution Issues

Gentlemen: what's the response to this?

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

From: Douglas_B._Baker@who.eop.gov <Douglas_B._Baker@who.eop.gov>

To: Brand, Rachel

CC: Robert_Jacobs@who.eop.gov <Robert_Jacobs@who.eop.gov>

Sent: Tue Jul 25 17:53:58 2006

Subject: Prosecution Issues

<<tmp.htm>> Rachel:

I understand that Barry Jackson has asked a question about the variable prosecution policies by AUSA Sector for illegal immigration. We have another question posed by Speaker Hastert. He understands that the AUSA for Nogales will not prosecute marijuana possession for amounts less than 500 lbs. Seems unlikely to me, but need to get to the truth as this

was raised in meeting with POTUS.

Thanks,

Doug

OLP000000191

3/30/2007 3:45 PM

Narcotics Defendants Charged

	2000	2001	2002	2003	2004	2005	2006	Total
Total	1,696	1,700	2,036	2,490	2,406	2,417	1,314	11,761

7/25/2006

Narcotics Cases Opened

	2000	2001	2002	2003	2004	2005	2006	Total
Total	983	978	1,235	1,460	1,659	1,537	911	8,763

7/25/2006

Narcotics Cases Charged

	2000	2001	2002	2003	2004	2005	2006	Total
Total	1,069	1,075	1,347	1,510	1,503	1,418	624	7,102

7/25/2006

OIP

From: Charlton, Paul (USAAZ)
Sent: Tuesday, July 25, 2006 7:13 PM
To: Brand, Rachel; Nash, Stuart (ODAG)
Cc: Bounds, Ryan W (OLP); Macklin, Kristi R; Knauss, Dan (USAAZ)
Subject: RE: Prosecution Issues

Attachments: tmp.htm



tmp.htm (4 KB)

Well said. I'm working on your previous question Rachel. Paul

From: Nash, Stuart (ODAG)
Sent: Tuesday, July 25, 2006 4:11 PM
To: Brand, Rachel; Charlton, Paul (USAAZ)
Cc: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Subject: Re: Prosecution Issues

I would add one additional observation. The recent focus of OCDETF prosecutions has been on eradicating entire organizations, not necessarily on responding to specific enforcement events. For that reason, the exclusive focus on the drug weight threshold is somewhat misleading.

Transactions involving much smaller amounts will be prosecuted (usually as overt acts in a conspiracy), if they can be strung together to prove the ongoing operation of a trafficking organization over an extended period of time.

Sent from my BlackBerry Wireless Handheld

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

From: Charlton, Paul (USAAZ)
To: Nash, Stuart (ODAG); Brand, Rachel
CC: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Sent: Tue Jul 25 18:51:04 2006
Subject: RE: Prosecution Issues

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Paul

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 3:21 PM
To: Nash, Stuart (ODAG); Charlton, Paul (USAAZ)

Cc: Bounds, Ryan W (OLP); Macklin, Kristi R
Subject: Fw: Prosecution Issues

Gentlemen: what's the response to this?

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

From: Douglas_B._Baker@who.eop.gov <Douglas_B._Baker@who.eop.gov>
To: Brand, Rachel
CC: Robert_Jacobs@who.eop.gov <Robert_Jacobs@who.eop.gov>
Sent: Tue Jul 25 17:53:58 2006
Subject: Prosecution Issues

<<tmp.htm>> Rachel:

I understand that Barry Jackson has asked a question about the variable prosecution policies by AUSA Sector for illegal immigration. We have another question posed by Speaker Hastert. He understands that the AUSA for Nogales will not prosecute marijuana possession for amounts less than 500 lbs. Seems unlikely to me, but need to get to the truth as this

was raised in meeting with POTUS.

Thanks,

Doug

OIP

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 7:03 PM
To: Charlton, Paul (USAAZ); Nash, Stuart (ODAG)
Cc: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Subject: Re: Prosecution Issues

Do you know how many marijuana cases you prosecute over 500 lbs in a year and how many are taken by the county attorneys?

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

From: Charlton, Paul (USAAZ)
To: Nash, Stuart (ODAG); Brand, Rachel
CC: Macklin, Kristi R; Bounds, Ryan W (OLP); Knauss, Dan (USAAZ)
Sent: Tue Jul 25 18:51:04 2006
Subject: RE: Prosecution Issues

It is true. We no longer have the resources to prosecute marijuana cases under 500 pounds. The exception is the Tohono O'odham Indian reservation, where we will prosecute all drug cases based on our trust obligation. Three of the four border county attorneys have agreed to prosecute marijuana cases under 500 pounds, filling the void we have left. It is unclear what the policy of the fourth county attorney will be. We have heard of no cases going unprosecuted based on our new guidelines.
Paul

From: Brand, Rachel
Sent: Tuesday, July 25, 2006 3:21 PM
To: Nash, Stuart (ODAG); Charlton, Paul (USAAZ)
Cc: Bounds, Ryan W (OLP); Macklin, Kristi R
Subject: Fw: Prosecution Issues

Gentlemen: what's the response to this?

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

From: Douglas_B._Baker@who.eop.gov <Douglas_B._Baker@who.eop.gov>
To: Brand, Rachel
CC: Robert_Jacobs@who.eop.gov <Robert_Jacobs@who.eop.gov>
Sent: Tue Jul 25 17:53:58 2006
Subject: Prosecution Issues

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Doug