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Three of those lawyers who received calls from Virginia last week said they were told the probe was initiated by a top-level official.

"The caller indicated it had been ordered by the DAG," said one lawyer. Deputy Attorney General Paul McNulty is the top-ranking official after Attorney General Alberto Gonzales. A Justice Department spokesman did not return a call by press time.

Ryan's management has been questioned almost since he took office in 2004, after which a string of disgruntled assistants left.

As the departures continued, Ryan insisted he was doing an effective job, pursuing high-profile cases like the ongoing stock options backdating probe while also focusing on terrorism and gang crime.

But early this year, a routine audit of the office -- called an EARS review, since it's conducted every three years by the Justice Department's Evaluation and Review Staff -- delivered Ryan and his managers a harsh assessment.

While they didn't criticize the office's handling of cases, reviewers told Ryan and top management at a March 31 meeting that his staff perceives him as unapproachable and unable to gain the confidence of his subordinates, resulting in low morale.

Under the EARS process, Ryan had the opportunity to contest the findings. And he did -- vigorously, according to sources with knowledge of the process.

The negative review, Ryan's vehement response, plus a letter Assistant U.S. Attorney George Bevan Jr. sent earlier this year requesting that auditors interview departed assistants, have apparently prompted a deeper investigation.

The further inquiry seems likely to provide some satisfaction to both the disgruntled current and former staffers and office management. Critics have long wanted reviewers to speak with departed assistants, while office management will get a second chance after the bitter initial review.

A spokesman for Ryan's office wouldn't say Friday who in the office was being interviewed, or whether the follow-up inquiry was out of the ordinary.

"It's part of an ongoing evaluation process, and we look forward to the opportunity to engage in a constructive dialogue and receive useful input from the team," Luke Macaulay said.

The inquiry comes at a strange time for Ryan: He has been a visible public presence in recent months due to his office's involvement in investigating the ongoing stock options backdating scandal, which has resulted in better press in general and a quieting of the criticism that he wasn't pursuing enough securities cases.

Criticism of Ryan by assistants -- and at least one judge who contacted the deputy attorney general's office -- has fallen off over the last 18 months or so, since the time many alienated prosecutors left.

Their complaints were apparently reified, though, by the EARS audit. Justice Department veterans say it's rare for an EARS review to produce serious consequences for a U.S. attorney -- but that it's even more rare for a secondary audit to be conducted.

However, Rory Little, a professor at Hastings College of the Law and a former associate deputy attorney general, cautioned against assuming the review will have serious consequences.

"The deputy's office makes lots of informal calls," he said. "Part of their job is to manage problems in the U.S. attorney's offices."

Luke Macaulay  
Public Affairs Officer  
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415-436-6757  
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## Elston, Michael (ODAG)

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From: Elston, Michael (ODAG)  
Sent: Wednesday, November 01, 2006 11:07 AM  
To: Blomquist, Kathleen M  
Subject: Re: EARS media inquiry

I left you a voice mail message on this, Kat.

ME

-----Original Message-----  
From: Blomquist, Kathleen M  
To: Elston, Michael (ODAG)  
Sent: Wed Nov 01 10:00:03 2006  
Subject: EARS media inquiry

Hi Mike,

I understand you're traveling today, but Tasia and Brian suggested I touch base with you to let you know that we received our first inquiry in this office regarding the San Fran EARS follow-up. He wants to know whether it's unusual to have this type of follow-up, what the EARS is all about, etc. The inquiry comes from one of our in-house beat reporters. I'm not sure what kind of response we want to give here--ranging from not commenting and just providing background on EARS evaluations to saying something on the record. Here's a recent piece that ran on this below.

-kat

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October 23, 2006

DOJ TO SEND REVIEW TEAM TO RYAN'S OFFICE

NEWS

By Justin Scheck

The U.S. Justice Department is taking an unusual step in trying to evaluate criticisms of U.S. Attorney Kevin Ryan's management style.

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Reporter Justin Scheck's e-mail address is jscheck@alm.com.

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202/514-2007

February 21, 2006

**MEMORANDUM FOR THE ACTING DEPUTY ATTORNEY GENERAL**

THROUGH: Uttam Dhillon  
Associate Deputy Attorney General

Michael Elston  
Chief of Staff

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

SUBJECT: Project Safe Neighborhoods  
Review of FY 2005 District Performance

CC: William Mercer  
Principal Associate Deputy Attorney General

**I. Executive Summary**

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

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

- The Acting Deputy Attorney General should contact the following districts to recognize their efforts and successful PSN initiatives:
  
- The following districts experienced a decrease in Federal firearms prosecutions of 25% or

more in FY 2005, and the Acting Deputy Attorney General should contact the U.S. Attorneys to offer encouragement, confirm that PSN remains a Presidential initiative, and in some cases, express concern about the districts' PSN initiatives: The Southern District of California.

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

## **II. Background**

### **A. General**

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

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

Although numerical counts of arrests and convictions are important indicators, the success of any particular strategy is not reducible to those measures alone. Accordingly, the goal of the accountability component of the initiative is not to judge the United States Attorneys' efforts based on a predetermined target number of arrests and convictions in their districts. Rather, the accountability component should serve primarily as a means for the United States Attorneys and their PSN

partners to keep abreast of the changes occurring in the districts, to assist them in evaluating their efforts in light of those challenges, and to provide them and their partners with an opportunity to retool their gun plans to address the emerging issues in the districts.

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

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

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

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

## **B. The 2004 Review**

The first review of USAO district performance was initiated by a memorandum dated March 10, 2004 (see Tab 1), from then-EOUSA Director Guy Lewis to then-Counsel to the Attorney General Kyle Sampson identifying sixteen districts that appeared to be prosecuting Federal firearms offenses below their potential. The list was based in part on FY 2003 statistics

for Federal firearms cases filed and Federal firearms defendants, but EOUSA considered other factors, including national prosecution statistics, violent crime statistics, and EOUSA's "EARS" reports.

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

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

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

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

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

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

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

### III. National Trends Based on FY 2005 Prosecution Numbers

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

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

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

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

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

District of Puerto Rico	H.S. Garcia	35	35	48	36	-25.0%	80
<b>District</b>	<b>U.S. Attorney</b>	<b>Federal Firearms Cases Brought in FY 2002</b>	<b>Federal Firearms Cases Brought in FY 2003</b>	<b>Federal Firearms Cases Brought in FY 2004</b>	<b>Federal Firearms Cases Brought in FY 2005</b>	<b>Percent Change from FY 2004 - FY 2005</b>	<b>FY 2005 Ranking (out of 94)</b>
		107	125	153	110	-28.1%	82
		67	41	41	29	-29.3%	83
		105	167	188	129	-31.4%	84
		194	233	283	192	-32.2%	85
* Southern District of California	Carol Lam	24	17	18	12	-33.3%	86
		73	61	72	47	-34.7%	87
		42	49	101	64	-36.6%	88
		190	246	271	170	-37.3%	89
		16	4	20	12	-40.0%	90
		133	129	143	83	-42.0%	91
		21	45	50	29	-42.0%	92
		35	24	61	30	-50.8%	93

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

#### **IV. Some Common Explanations**

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

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

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

#### **V. Districts With Exceptional PSN Initiatives**

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

##### **A.**

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

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

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

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

**B. District of \_\_\_\_\_**

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

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

**C. District of \_\_\_\_\_**

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

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

**D. District of**

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

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

The number of Federal firearms cases in the District of decreased from 187 in FY 2004 to 161 in FY 2005, but (a) the 161 number is a substantial increase over the years dating back to FY 1994, and (b) the number of Federal firearms defendants in the district

increased more than 17% from 148 in FY 2004 to 174 in FY 2005.

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

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

#### **E. District of**

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

U.S. Attorney has held that position since March 2002. The District has implemented its PSN initiative in an ethnically and geographically diverse district that includes, and The district's sources of gun violence range from domestic violence to armed felons to gang-related crime and drug trafficking in methamphetamine, prescription drugs, and crack cocaine. The district has assigned AUSAs to multiple sites, and it has implemented an aggressive "Project Sentry" initiative to address juvenile gun crime. According to UCR data comparing the first half of 2004 to the first half of 2005, the numbers of violent crime and murder stayed essentially the same in In, the number of violent crimes increased 4.3%, but homicides decreased 16% from 50 to 42. In violent crime fell 11% and homicides decreased 26% from 11 to 8.

#### **F. Other Noteworthy Districts**

**Margaret Chiara** has been the U.S. Attorney for the **Western District of Michigan** since the Fall of 2001. The number of Federal firearms cases filed by that district increased from

72 in FY 2004 to 109 in FY 2005 – a 51.4% increase. Nationally, the district had the seventh highest percentage increase in cases filed in FY 2005. With the exception of a dip in prosecution numbers in FY 2004, the district has steadily increased its firearms prosecutions, which have nearly doubled since 58 cases were filed in FY 2001.

**The Districts.** The [redacted] respectively filed the second, tenth, eleventh, and twelfth highest number of Federal firearms cases in FY 2005. Under U.S. Attorney [redacted] the **District** filed 285 cases in FY 2004 – its highest ever and more than triple the 89 cases filed in FY 2000. Under U.S. Attorney [redacted] until his resignation in June 2005 and then U.S. Attorney [redacted] the **District** filed 223 Federal firearms cases in FY 2005, a slight dip since the district filed 252 cases in FY 2004, but still a substantial volume of cases.<sup>1</sup> Under U.S. Attorney [redacted], the **District** filed 214 Federal firearms cases in FY 2005 – its highest since at least FY 1994. Under U.S. Attorney [redacted] the **District** filed 211 Federal firearms cases in FY 2005 – a 40.7% increase over the 150 cases filed by the district in FY 2004 and the ninth highest percentage increase for FY 2005. In all, the [redacted] districts prosecuted 933 cases in FY 2005 and more than 3,800 firearms cases since 2001.

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

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

**A. Southern District of California**

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

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

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

The Southern District of California was among those identified as underperforming in the March 2004 memo from EOUSA to Kyle Sampson. The memorandum notes that the PSN Task Force was established in October 2002, after **Carol Lam** became the U.S. Attorney. The memorandum notes, however, that "[t]he most glaring statistic for this district is the overall dearth of firearms prosecutions." In a conference call with DAG Jim Comey prior to July 20, 2004, U.S. Attorney Carol Lam acknowledged that there were problems with the district's PSN initiative, but explained that part of the problem was that the district had an enormous immigration problem and lacked adequate prosecutorial resources to focus on PSN. U.S. Attorney Lam expected the district's PSN effort to improve through a new case-screening system with local prosecutors and a new point of contact in the U.S. Attorney's Office who was to oversee the intake of all firearms cases.

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

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

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

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

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

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

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

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

**B. District**

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		177	234	246	185	-24.8%	78

ATF Referrals	207	252	250	226	-9%
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\_\_\_\_\_ was only confirmed as the U.S. Attorney for the \_\_\_\_\_ of \_\_\_\_\_ in July 2005. The fact that U.S. Attorney \_\_\_\_\_ had little, if anything, to do with the decreased prosecution numbers is an opportunity. I recommend that the Acting Deputy Attorney General contact the U.S. Attorney to emphasize the importance of PSN, note some concern about the district's prosecution numbers, and offer encouragement.

\_\_\_\_\_ was confirmed as the U.S. Attorney for the \_\_\_\_\_ District of \_\_\_\_\_ in July 2005. He was an \_\_\_\_\_

Federal firearms cases in the \_\_\_\_\_ District \_\_\_\_\_ slipped 24.8% from 246 in FY 2004 to 185 in FY 2005, although the FY 2005 number is still substantially above those filed in other recent years. The number of firearms defendants are proportionate – slipping from 333 in 2004 to 292 in 2005, but still above the numbers for other recent years. It is noteworthy that ATF referrals also declined from 250 in 2004 to 226 in 2005, and that the district likely is not lacking in armed felons. Crime statistics are not available specifically for the district, but UCR data for \_\_\_\_\_ shows decreasing violent crime and murder rates. Violent crime declined 3% in the first half of 2005 compared to the same period in 2004, and murders declined 14% -- down from 278 in 2004 to 238 in 2005.

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

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

PSN Enforcement in the \_\_\_\_\_ District - In the Southern District \_\_\_\_\_, the PSN task force includes the U.S. Attorney's Office, ATF, FBI, \_\_\_\_\_ District Attorney's Office, \_\_\_\_\_ District \_\_\_\_\_

Attorney's Office, Crimestoppers, Division of Criminal Justice Services, YMCA, Boys and Girls' Club, Overall Economic Development Organization, Urban Institute, National Crime Prevention Council, and the U.S. Department of Housing and Urban Development. As an example of the cooperation within the task force, the U.S. Attorney's Office, , and the and District Attorneys' Offices review firearms-related arrests and determine whether State or Federal prosecution will be more effective in individual cases. The and County District Attorneys' Offices have received PSN grants to support gun prosecutor positions.

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

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

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

It is important to note that has benefitted from PSN grant funding in the past for the hiring of State and local gun crime prosecutors, prevention, media outreach, research, and strategic planning. You may be aware that PSN State and local grant funding provided to in FY 2001 totaled \$5,725,948; in FY 2002 totaled \$4,458,008; in FY 2003 totaled

\$3,396,006 and in FY 2004 totaled \$2,766,815. Without sustained funding, these programs will not be able to continue.

C. District of

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

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

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

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



**D District of**

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		194	233	283	192	-32.2%	85

ATF Referrals	124	203	309	294	-4.8%
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The District of has been among the most involved and active districts since PSN's inception. The recent decrease in firearms prosecution numbers does not cause concern because of the district's prior performance and because even the decreased FY 2005 number of cases filed represents an enormous increase over pre-PSN numbers. I recommend contact by the Acting Deputy Attorney General because there is an opportunity here: The interim U.S. Attorney has only held that post since October 2005, and he had little, if anything, to do with FY 2005 prosecution numbers. The Acting Deputy Attorney General would be able to recognize the district's past performance and emphasize the importance of PSN as a Presidential initiative without the contact being construed as a reprimand.

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

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

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

The district does have some valid reasons for the decreased prosecution numbers in FY 2005. In response to an inquiry about decreasing prosecution numbers by the district's main DOJ point of contact, the following explanations were offered: The PSN Coordinator had a baby in

the middle of the year, the U.S. Attorney resigned in October, the district lost an AUSA in their gun unit and was not allowed to hire a replacement, a Special AUSA left the office and the replacement SAUSA was then deployed to Iraq, and the district (which does not have a separate appellate section) has been swamped with Blakely appeals.

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

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

**A. District of**

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		35	35	48	36	-25.0%	80
ATF Referrals		23	73	81	149	84%	

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

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



**B. District of**

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		50	82	124	93	-25.0%	79
ATF Referrals		64	130	202	165	-18%	

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

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

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

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

**C. District of**

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		103	147	186	135	-27.4%	81

ATF Referrals	124	131	152	187	23%
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The District of \_\_\_\_\_ is another district in need of some follow-up, but it is engaged and its decreased prosecution statistics do not yet rise to the level that necessitate contact from the Acting Deputy Attorney General.

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

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

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

When asked about the declining prosecution numbers by a main DOJ PSN contact, the district PSN Coordinator explained that the decrease was due to the following circumstances: (a) the district prosecuted so many PSN cases in FY 2004 that it had a backlog of cases in FY 2005,

(b) the district has been swamped with post-Booker appeals, and (c) the primary PSN AUSA in [redacted] tried a capital murder case while still bringing 50 PSN cases. The Main DOJ PSN point of contact for the district reports that the PSN Coordinator, [redacted], has been helpful, cooperative, and supportive of PSN.

**D. District**

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		107	125	153	110	-28.1%	82
ATF Referrals		140	211	226	266	17%	

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

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

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

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



**E. District of**

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		67	41	41	29	-29.3%	83
ATF Referrals		71	60	57	39	-32%	

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

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

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

The district's report to the Attorney General generally demonstrates engagement in PSN. It notes task forces members in \_\_\_\_\_ and elsewhere, and the district reports that it is very satisfied with its research partner, Data Statistical Analysis Center. I am concerned about the district's method of measuring its performance. The report states in relevant part that "[t]he PSN Program will measure effectiveness by the percentage increase in charged Federal firearms

offenders compared to pre-PSN levels. . . ." As an indication of success, the report boasts, "Since the beginning of our PSN efforts in September

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

**F. District**

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		105	167	188	129	-31.4%	84

ATF Referrals	179	227	259	348	34.3%
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The District's presence in this memorandum is puzzling. The district's PSN program has been a model one, and its PSN Coordinator is involved in the district's efforts. Given some of the PSN Coordinator's stated reasons for the decline in Federal firearms prosecutions, crime statistics that have shown some improvement, and the district's selection as a new ATF VCIT site, I recommend against raising the issue to the level of the Acting Deputy Attorney General. I instead recommend further staff-level contact with the district to obtain additional information and to monitor the district's progress for the remainder of the fiscal year.

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

The district's crime statistics show a generally improving trend. UCR data comparing the first half of 2005 to the same period in 2004 indicates that violent crime decreased 14% and that homicides fell 31%. In October 2005, the district reported that the effectiveness of its PSN program is demonstrated by significant decreases in crime rates: From 2003-2005, homicides were down 38%, robberies decreased by 25%, shootings decreased by 40%, shooting victims by

37% and gun crimes by 41%. The district noted that the number of firearms seized during the same period increased 38%. In its request for ATF VCIT resources, the district pointed out lower violent crime and homicide numbers, but noted that \_\_\_\_\_'s murder rate in 2004 was worse than that of all of the then-current VCIT cities aside from D.C., Baltimore, and Richmond.

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

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

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

Many offenders, particularly in the PSN focus neighborhoods recognize possessing or carrying a firearm puts them at risk for Federal prosecution. Although many of these offenders continue to contribute to firearms violence, they are not armed when arrested or when a search warrant is executed. The Firearms & Local Impact Offenses section uses whatever Federal criminal statutes may be reasonably available to impact violent crime, particularly crime in the PSN focus neighborhoods. One example is a series of seven indictments against 15 defendants operating a heroin distribution ring in the PSN focus area unsealed July 28, 2005. These indictments charged few or no firearms charges, so their numbers would not appear in the 18 U.S.C. §§ 922, 924 statistics. Another example of charges not appearing in the EOUSA firearms statistics is a 15-defendant machine gun indictment returned August 14, 2005. Just those two examples alone change the percentage drop from 31.4% to 15.4%. Researching

all the cases filed by the section would doubtless narrow the number even more significantly. Another example of a more complex prosecution completed during 2005 is one begun by an Assistant when she was in the Narcotics & OCDEF section and completed in May 2005, after she transferred to the Firearms & Local Impact Offenses. This case began as a 10 defendant drug trafficking conspiracy, and, on May 5, 2005, the three defendants who did not plead guilty were convicted at trial, two of them on firearms charges, as well as on drug charges. The three have been sentenced: one to life in prison, plus 15 years; one to 15 years, and the other to 9 years. The preparation and trial took an estimated 6 weeks.

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

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

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

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

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

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

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

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

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

**G. District of**

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		42	49	101	64	-36.6%	88
ATF Referrals		82	91	109	65	-40.3%	

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

performance.

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

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

The District of 's commitment to PSN is evident from the district's October 2005 report to the Attorney General. The district's task force includes a multitude of state and local law enforcement partners, prosecutors, and probation offices. With the help of designated prosecutors in 33 district attorneys' offices, cases are screened to identify those that are eligible for and warrant Federal prosecution. Using statistical data, the district focuses its efforts in the ten counties that experience the most significant gun crime.

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

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

In those communities where PSN is active violent crime is down and anecdotal information ties these violent crime reductions to our own efforts. Indeed, by every empirical measure which we have reviewed, our Project Safe Neighborhoods initiative is highly successful. Three statistics aptly illustrate the success of this effort: First, this initiative has resulted in a significant increase in firearms presentations throughout the district, with firearms prosecutions increasing by more than 100% over the lifetime of this program. Second, these prosecutions are exacting substantial sentences, with 98% of the cases resulting in

prison terms and 56% of these prosecutions yielding jail terms exceeding 5 years. Third, this initiative is fostering stronger, local, state and Federal partnerships with more than half of our district's county district attorneys actively participating in the program in some fashion. Beyond these empirical measures of success, anecdotal evidence indicates that this district's initiative is having a concrete, positive impact on the communities we serve. Prosecutors [and] police agencies report that arrested felons and drug traffickers are stating that they have refrained from firearms possessions in order to avoid Federal prosecution. Morale among local police agencies and prosecutors who are actively participating in this program is extremely high because those agencies can see the immediate benefits which they are deriving from Project Safe Neighborhoods.

**H. District of**

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		190	246	271	170	-37.3%	89

ATF Referrals	111	134	113	127	12.4%
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Federal firearms prosecutions decreased in the [redacted] by more than 37% from FY 2004 to FY 2005. I am concerned about the degree of the decrease, but prosecution statistics are an inadequate basis on which to evaluate the effectiveness of this district's PSN program. I advise against raising the issue to the level of the Acting Deputy Attorney General and the U.S. Attorney for the District of [redacted]

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

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

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

(down 2.9%), to 7,138 in 2004 (down 16.9%). According to preliminary data from the [redacted], there were 7,612 non-homicide violent crimes in the District in 2005 - an increase of 6.6%. However, the police department warns that this preliminary data is preliminary and is not necessarily what will be reported to the FBI for the UCR. In addition, the categories are different - instead of the "forcible rape, robbery, and aggravated assault" categories listed in the 2004 report, the 2005 statistics list "sexual assault, robbery, and assault with a deadly weapon."

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

The U.S. Attorney's Office for

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

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

**I. District of the**

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

Federal firearms prosecution numbers in the District of \_\_\_\_\_ fell by a substantial percentage in FY 2005, but the actual number is 8 fewer cases. Given some of the history with this district, the recent tenure of the U.S. Attorney, and the district's small size, I recommend against raising the issue to the level of the Acting Deputy Attorney General at this time.

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

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

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

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

new participants be given an opportunity, and that the district's efforts be monitored to for the remainder of the fiscal year.

**J. District of**

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		133	129	143	83	-42.0%	91

ATF Referrals	285	219	218	171	-21.6%
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The District of 's PSN program is active and healthy. While the number of cases filed slipped considerably in FY 2005, the number of Federal firearms defendants tells a different story - the district had its second highest year since FY 1995. I recommend that there be no additional follow-up.

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

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

The district's PSN report to the Attorney General in October 2005 demonstrates that the district is engaged in the initiative. It identifies a long list of partners that include the ATF, FBI, DEA, USMS, Weed and Seed, and a host of local law enforcement partners in and . The district and its local partners screen arrests to identify appropriate Federal cases, and local prosecutors have been cross-designated to prosecute firearms cases federally. The district provides detailed numbers for the more than 3,000 firearms cases prosecuted locally by its partners in 2004 and 2005, and it provides factual details about high-profile organized

crime, MS-13, and other cases that started as PSN cases. The district has determined that its two most significant sources of gun violence are gangs and drugs. It does not list "illegal possession" as one of the offenses on which its efforts are focused. Rather, the task force focuses on all firearms offenses in focused areas (usually coinciding with Weed and Seed sites),

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

**K. District of**

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		21	45	50	29	-42.0%	92

ATF Referrals	31	37	48	31	-35.4%
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Despite a significant decrease in the percentage of Federal firearms cases filed in FY 2005 as compared to FY 2004, the District of is engaged in PSN. I recommend further staff-level follow-up, but I do not see the need to raise the issue to the level of contact between the Acting Deputy Attorney General and the U.S. Attorney.

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

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

U.S. Attorney has held his position since January 2002. In the district's PSN Report to the Attorney General in October 2005, it reported that its task force included the ATF, FBI, USMS, IRS, ICE, and a number of state and local law enforcement agencies. The task force screens arrests to determine the appropriate venue for prosecution, but it has not cross-designated local prosecutors to prosecute Federal cases. The district's PSN Coordinator is the anti-gang coordinator and the Project Sentry coordinator. He also is active with DEA and OCDETF and coordinates proactive cases with PSN. The district identified drugs and chronic offenders as its most significant sources of gun violence, although it listed felons in

possession as another source. The district reported that it focuses on illegal possession, as well as specific offenders and criminal organizations and gangs. The district identified "increased Federal prosecution of firearms-related cases" as one of five strategies it has implemented. The report noted that the previous PSN Coordinator, \_\_\_\_\_ was detailed to EOUSA, and that the new Coordinator, \_\_\_\_\_ needed some time to transition. At the time of the report, the district was planning a conference for PSN training in 2006.

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

**L. District of \_\_\_\_\_**

District	U.S. Attorney	2002	2003	2004	2005	% Change	Rank
		35	24	61	30	-50.8%	93

ATF Referrals		37	91	54	37	-31.5%	
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Although the \_\_\_\_\_ District \_\_\_\_\_ experienced a substantial drop in Federal firearms prosecutions in FY 2005, the district is engaged in PSN, and it has some reasonable explanations for its decreased firearms prosecution numbers in FY 2005. I do not believe that the district's performance requires the attention of the Acting Deputy Attorney General.

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

2000.

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

In its October 2005 PSN Report to the Attorney General, the district lists a full complement of Federal and local task force partners, including the FBI and DEA. The district focuses its PSN efforts in [redacted] and [redacted]. It screens local gun-related arrests to determine the best venue for prosecution. The district reports using federal firearms cases to prosecute the leaders of [redacted] gang and using PSN relationships to investigate and successfully prosecute those gang members for the subsequent murder of a key government witness. The district identified gangs and drugs as the primary sources of its gun violence, although it listed felons in possession as another source. The district has implemented a number of PSN's "Best Practices," including increased federal firearms prosecutions, gang investigations, directed police patrols, and chronic offender lists.

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

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

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

The gun crime in [redacted] remained stable near its drastically reduced level. The big emerging news is that [redacted] has reduced its violent gun

crime by 54% over the last two years, going from 261 violent gun crimes in 2003 to 119 in 2005.

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

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





**Michael J. Elston**

**Chief of Staff**

DAILY CALL LOG

Date: Week of February 5, 2007

Completed	Time	Out	NAME/OFFICE	PHONE #	MESSAGE
217					
✓	9:31				
	11:45				
	12:30				
	<del>X</del>	<del>X</del>			
	2:25				
	3:30		Bud Cunnings		- Will e-mail you -
	3:45				
218					
	10:12				
	10:49				
	1:44				
	4:57				
	VM. 5:54				

LW = Left Word  
 LVM = Left Voice Mail  
 N/A = No Answer

NNTRC = No Need To Return Call  
 OBE = overtaken by events  
 ASAC = As Soon As Convenient

FYI = For Info Only  
 X = Call Completed

CA = Called Again  
 WCB = Will Call Back

RYC = Return Your Call  
 T/O = Take Off, per DAG

**Michael J. Elston**

**Chief of Staff**

**DAILY CALL LOG**

Date: Week of February 12, 2007

DATE	TIME	STATUS	NAME/OFFICE	PHONE #	MESSAGE
2/12/07					
	✓ 9:25	✓			
	✓ 9:40	✓			
	✓ 12:54				
	✓ 1:01				
	✓ 3:09				
	✓ 3:39				
2/13	✓ 8:40		Margaret Chiara		
	✓ 9:12				
	10:25				
	✓ 10:36				
	✓ 11:49				
	12:32				
	✓ 12:52		Euni Choi-us40 <small>Sara Francisco</small>		Has one quick question.

LW = Left Word  
 LVM = Left Voice Mail  
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## Moschella, William

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**From:** Margolis, David  
**Sent:** Thursday, October 05, 2006 12:16 PM  
**To:** Battle, Michael (USAE0); Kelly, John (USAE0); Parent, Steve (USAE0); Nowacki, John (USAE0); Elston, Michael (ODAG); Moschella, William; Mercer, William W; Shults, Frank (ODAG); Barnes, Christopher (USAOHS) EARS  
**Subject:** FW: Thought you might be interested in this; it's from a local weekly  
**Attachments:** tmp.htm; ole0.bmp; ole1.bmp; ole2.bmp; ole3.bmp; ole4.bmp



tmp.htm (34 KB) ole0.bmp (532 B) ole1.bmp (532 B) ole2.bmp (532 B) ole3.bmp (532 B) ole4.bmp (532 B)

fyi

Kevin Ryan must have felt like a man invited to his own stoning. A hive of Department of Justice auditors had spent a week interviewing the U.S. Attorney's staff about his command of the office. Such on-site appraisals, performed every three years by review teams dispatched from Washington, D.C., climax with evaluators airing employee criticisms of the boss.

Ryan and his division supervisors joined the D.C. crew in a large conference room in the U.S. Attorney's Office, nestled on the 11th floor of the Federal Building at 450 Golden Gate Ave. A video feed transmitted the meeting to the agency's branch offices in Oakland and San Jose. Sitting in silence, Ryan listened while, one by one, auditors pelted him with a litany of staff complaints.

Attorneys in the office disparaged him as isolated, inflexible, and disengaged from the agency's work. They blamed his managerial style for poisoning morale and neutering the authority of supervisors. Several accused him of granting too much control over personnel and legal decisions to his first assistant, creating an autocracy by proxy. Those who attended the meeting or watched the simulcast suspected that, as he absorbed the harsh remarks, fury roiled beneath Ryan's rigid exterior. When the auditors finished their presentation, he said little before stalking from the room. "I'm sure it was unpleasant for him," one federal prosecutor says. "But he shouldn't have been surprised."

The review, conducted in March, proved a dramatic drop-off from Ryan's first evaluation in 2003, a year after President Bush appointed him to the post. Back then, he enjoyed robust staff support, and the Justice Department rated the Northern District of California as arguably the strongest of its U.S. Attorney offices. Over the next three years, owing to a mass emigration of veteran prosecutors who chafed under Ryan's rule, the goodwill waned, along with the office's status. Seven months past the latest audit, the staff's mood remains as dour as its opinions of the man in charge.

"There's still a sense of malaise," another attorney in the office says, "and he's still bunkered."

Indeed, in interviews with two dozen current and former prosecutors, defense lawyers, and federal judges, an image emerges of Ryan as either oblivious to or dismissive of the unrest around him. More than 50 attorneys have quit on his watch, depriving the office of some of its longest-serving criminal and civil litigators. Legal observers regard the turnover as the primary reason for the office's caseload falling during the Ryan era, a trend evinced by a steep decline in white-collar prosecutions.

By contrast, the number of tactical blunders committed by prosecutors appears on the rise. A recent spate of gaffes, including one that ignited an ongoing federal probe, has magnified a perception of Ryan as out of touch. Beyond the interest he shows in BALCO and a handful of other marquee cases, his critics contend, the post of U.S. Attorney stands vacant.

"I'm smart enough to know what I don't know," Ryan told the San Jose Mercury News a month before he assumed office. With his reappointment looming, some wonder if he knows why the almost universal praise he enjoyed four years ago has curdled. <<Picture (Metafile)>> The audit marked only the latest and loudest geyser of vitriol to spew within Ryan's office. Before leaving for private practice last year, Prosecutor John Hemann e-mailed his colleagues a copy of an open letter addressed to Ryan. He described a staff beset by low spirits and high attrition, and a U.S. Attorney inclined to ignore their concerns.

"There are problems in the office now that have not existed in kind or magnitude since I

got here in 1995 ...," wrote Hemann, who served on the federal Enron task force that prosecuted the company's executives. "It is no solution to deny these problems exist. ... People in the office - lawyers and staff - are unhappy and frustrated. People outside the office are critical and, increasingly, derisive."

In January, two months before the on-site appraisal, another longtime prosecutor, George Bevan, broached similar themes in a letter he sent to Justice Department officials handling the audit. According to excerpts published in The Recorder, a Bay Area legal journal, Bevan wrote of an office "in crisis" and faulted "gross mismanagement" for the attorney exodus.

Bevan, a criminal prosecutor in the agency's Oakland branch, declined to comment to SF Weekly. Hemann, a partner at the San Francisco office of Morgan Lewis, did not respond to interview requests.

But their claims jibe with those offered by other attorneys in the office and ex-prosecutors who worked under Ryan. They depict him as aloof, quick to anger, and intolerant of debate, a manager who considers it a breach of fidelity to question his decisions. "It doesn't matter how much you know about the law or how much experience you have," a prosecutor says. "To him, what matters is loyalty; asking questions is disloyal."

Alluding to that "climate of suspicion," as one attorney called it, prosecutors who spoke to SF Weekly requested anonymity, fearing reprisals; former prosecutors also were loath to talk for attribution, citing professional and personal ties to the office. Yet the sheer number of lawyers voicing discontent suggests an agency in upheaval.

The friction began intensifying in fall 2003, burning through the good cheer that insulated Ryan during his first year. In July 2002, he inherited the office from interim U.S. Attorney David Shapiro, who filled in for a year after Robert Mueller departed to head the FBI.

Mueller bequeathed a U.S. Attorney's Office whose reputation he dusted off and buffed to a high sheen. His predecessor, Michael Yamaguchi, resigned in 1998, forced out by Justice Department officials amid the office's sinking caseload and fractured morale. Armed with a reformer's mandate, Mueller jettisoned a dozen supervisors in his first six months and ordered his attorneys to start filing more cases.

The ex-Marine's blunt manner earned him the label of dictator. Yet during his three-year tenure, Mueller also nurtured a collective pride among his attorneys, gaining respect for his work ethic and legal acumen. He visited courtrooms to observe them in action, and whether they won or lost a verdict, he seldom forgot to praise their effort. He played the role of staff advocate in court, appearing with his lawyers on occasion to press the prosecution's argument if a judge doubted its merit.

Revitalized by Mueller, the office filed 1,512 cases in 2000, almost double its total two years earlier, when Yamaguchi stepped down. Prosecutors hunted big game, indicting members of the Nuestra Familia gang by exploiting racketeering laws; pursuing a massive corporate-fraud case against drug giant McKesson HBOC; and charging former Ukrainian Prime Minister Pavlo Lazarenko in a money-laundering scam.

The Northern District office prosecutes criminal and civil offenses across a region stretching from Monterey to the California-Oregon border, and the U.S. Attorney ranks as the area's top law enforcement official. As the office flourished under Mueller, the FBI and other federal agencies - if given a choice of court venues based on a crime's geographic range - started referring more cases to the Northern District. He rode that swell of success to his post with the FBI in 2001.

"He had the pulse of the entire office," one veteran prosecutor says. "But he trusted his division chiefs and he gave people the freedom to make decisions."

Shapiro more or less sustained the momentum between Mueller's exit and Ryan's entrance. Following a six-year stint as a Municipal and Superior Court judge in San Francisco, Ryan arrived as an esteemed trial jurist and a devoted Republican: Visitors to his court chambers at the Hall of Justice could expect to hear the radio tuned to Rush Limbaugh's show.

"He's a real Boy Scout," says former federal prosecutor Rory Little, a professor at Hastings College of the Law. "He believes in the work."

A San Francisco native and former Alameda County prosecutor, Ryan, 48, won the U.S. Attorney job despite lacking federal court experience. Most legal experts disregarded that hole in his résumé, including Joseph Russoniello, the U.S. Attorney before Yamaguchi, who surmounted the same deficiency.

Russoniello chaired the search committee that recommended Ryan to White House officials. In a 2002 newspaper interview, he downplayed the need for the incoming U.S. Attorney to possess federal bona fides. "What is important is the capacity to manage a lot of people who do have a deep understanding of the rules," Russoniello said.

On that count, Ryan's critics brand him both inept and indolent. In the words of one former prosecutor, "While he's been there, the soul of the office has left." <Picture

(Metafile)>>

After Ryan's relatively calm first year, the honeymoon ended in October 2003. That month, Ryan named Eumi Choi as his first assistant, a position with oversight of the criminal division and the narcotics task force, as well as the Oakland and San Jose branches. A federal prosecutor for six years in Washington, D.C., before she moved to San Francisco in 2000, Choi already supervised the civil, tax, and administrative divisions as the executive assistant U.S. Attorney. The dual managerial roles and Ryan's blessing gave her, in effect, carte blanche over the office.

Current and former prosecutors assert that, from the moment of her promotion, Choi clashed with supervisors and attorneys alike. Sources allege that she usurped the authority of division chiefs, forcing them to clear charging decisions with her and dictating case strategy. Section meetings, once free-flowing affairs in which managers and prosecutors swapped ideas, turned funereal, the staff loath to contradict Choi's edicts.

"It became all about following directions," a prosecutor says.

Likewise, Choi wielded a heavy hand in personnel matters: She remains under investigation as part of a federal probe into the firing of an administrative officer last summer. Attorneys joked that the only aspect of office life unscathed by her influence were the farewell parties held for outgoing colleagues.

Last year, over the span of four months, the staff hosted goodbye soirees for Jonathan Howden, Ross Nadel, and Ben Burch, who together boasted some 60 years of experience working in the office. At the time of their respective departures, Howden headed the narcotics task force, Nadel ran the criminal division, and Burch oversaw the Oakland branch. Howden and Nadel accepted early retirement packages to join private firms, while Burch moved to the Superior Court bench in Contra Costa County.

Yet several of their onetime co-workers insist that, to varying degrees, the three men sought a career change out of frustration with their loss of autonomy. "Those guys were the lifer type," says a former federal prosecutor about the trio, none of whom agreed to talk with SF Weekly. "They had stuck around through all these other [U.S. Attorneys]. That office was where they wanted to be."

Former colleagues characterize the loss of Burch, who preceded Nadel as criminal division chief, as the stiffest blow to the staff. Revered as a walking index of the federal code, he knew the intricacies of the law as acutely as he understood the tendencies of Northern District judges. "Ben was the guy who could help you on the little issues, the judgment calls where he could give you answers based on his own experience," an ex-prosecutor says. "There's nobody left like that."

A total of 101 prosecutors make up the Northern District's three-branch office. The exodus of more than 50 attorneys during Ryan's reign peaked last year, when 17 walked away. Ten have packed up this year, and rumors persist that two others may follow by month's end. Current prosecutors and their departed cohorts link the turnover to Choi's greater influence and Ryan's diminished visibility. In his first year, Ryan mingled with the staff, urging attorneys to stop by his office anytime and soliciting their opinions on whom to promote. But after elevating Choi to first assistant, his detractors contend, he withdrew, ceding the day-to-day grind of running the office to her. He closed his open door, requiring attorneys who wanted to see him to arrange an appointment through his secretary, and meeting only if Choi also had time to attend.

"She's the gatekeeper," another ex-prosecutor says of Choi. "People have to go through or past her to talk to him."

Ryan's time as a state judge and county prosecutor provided scant training for supervising a big office rife with the outsized egos common to prosecutors. Shy by nature, according to those who have worked with him, he appears to rely on Choi as a buffer - perhaps to his detriment. "It just makes him seem more remote," one prosecutor says. "Being U.S. Attorney is not an impossibly difficult job. Slap people on the back; thank them for their work, and then take all the credit. But just talking to people seems beyond him."

Mueller, the former U.S. Attorney, strolled the hallways around 5 p.m. each day to perform "bed checks," chatting with his lawyers about their cases. The visits, though annoying to some, served to motivate the staff to match his zeal. If Ryan made similar rounds, another prosecutor says, he would find rows of empty offices.

"People don't hang around till 8:30 at night anymore - they're out by 5. Why would you stick around? Morale sucks."

Attorneys conveyed that attitude during the Justice Department appraisal in March. Precisely what Ryan or Choi thought of the review is harder to discern - neither agreed to an interview with SF Weekly. Discussing the office's status quo fell to spokesman Luke Macauley, who pointed out that the auditors' presentation involved preliminary findings; a final written report will detail "positive accomplishments."

An average of 11 prosecutors quit in the two years before Ryan took office, compared to 13 a year since his arrival. Macauley quotes the statistics to counter claims of a soaring attrition rate under Ryan, ascribing the departures to the office's retirement buyout

offer and the lure of bigger salaries in private practice. He provides more numbers in disputing the perception of a staff bereft of veteran attorneys. Since 2002, the office has hired 24 prosecutors from other U.S. Attorney districts and Justice Department agencies.

In assessing the turnover at the office of his putative adversary, Barry Portman, the federal Public Defender for the Northern District of California, downplays its impact. "If you have people who are there too long, things can get stale," says Portman, who declined to talk about Ryan. "New blood can be healthy."

Likewise, says Little, the Hastings law professor, grouching about staff departures occurs under every U.S. Attorney. He recalls joining Russoniello's office in 1989 to replace a prosecutor who left after four years. Skeptics said the office would miss the man's experience - the same refrain that trailed Little out the door in 1994.

"History is remarkably short-sighted," he says. "People used to say Joe Russoniello wasn't doing a good job. Then after he was gone, they started calling those the golden days." But the number of lawyers who have bolted from Ryan's staff may matter less than the accrued institutional knowledge they took with them. By conservative estimate, the office has lost prosecutors with a total of more than 500 years of experience in the Northern District. Aside from Burch, Nadel, and Howland, longtime prosecutors who departed include Steven Gruel, former chief of the major crimes unit, and Patrick Robbins, who ran the securities fraud section. The two logged a combined quarter-century in the office. Both lawyers, now in private practice, declined to comment. Even so, they belong to the growing diaspora of ex-prosecutors who, while working under Robert Mueller's direction, turned the Northern District into one of the nation's most vaunted U.S. Attorney's offices. Such acclaim has fallen mute. <<Picture (Metafile)>>

In his role as federal lawman, Ryan shows a state prosecutor's relish for bagging thugs. During his 11 years with the Alameda County District Attorney's Office, he prosecuted dozens of murder and gang-related cases. Over the last year, his office, applying racketeering and trigger-lock laws, indicted two dozen members of the Down Below and Page Street gangs. The aggressive push has occurred at a time when the San Francisco District Attorney's Office has moved slowly in prosecuting gang-related homicides. Between 2004 and last year, Ryan's gang crackdown boosted the number of organized-crime cases from eight to 61; weapons-related prosecutions jumped from 89 to 110. The rising figures elicit hosannas from San Francisco police. "Kevin Ryan has given us great support," says Capt. Kevin Cashman, head of the SFPD's investigations bureau. "He understands what we're up against."

Ryan has tagged along with DEA agents on a pair of drug stings the last two years. Javier Pena, special agent in charge of the DEA's San Francisco office, describes him "as a man who wants to be involved, someone who's always open to ideas."

The gang and drug busts, though lesser known than BALCO, land on the list of high-profile cases handled by Ryan's office. Macauley, his spokesman, ticks off others: convictions of 10 people on charges related to trafficking of prostitutes from South Korea to San Francisco brothels; Operation Copycat, a nationwide music, movie, and software piracy case that so far has seen 32 defendants convicted; and the ongoing prosecution of Reliant Energy executives accused of price-fixing during the state energy crisis in 2000. But beneath the headlines lies the small print that reveals a plunge in the office's overall caseload. In 2001, with Mueller and then Shapiro in charge, prosecutors filed 1,291 cases, according to a Syracuse University database that tracks Justice Department statistics. The next year, Ryan's first, the number tumbled to 1,013, and from 2003 to 2005, the office averaged 947 prosecutions a year, a drop of nearly 27 percent in four years.

Ryan's critics rap him hardest for the drop in white-collar cases. Prosecutors filed 93 last year, down from 214 in 2000, the same year Mueller formed the office's high-tech crimes unit, the first of its kind in the country. The decrease in cases, while mirroring a national trend that bespeaks the feds' greater emphasis on antiterrorism efforts, troubles legal experts, given that Ryan's office patrols Silicon Valley.

"Just because the number of cases has gone down doesn't mean human venality has changed," says Peter Keane, dean emeritus of the Golden Gate University School of Law. "You would think there would be a steady stream of dot-com fat cats heading into court."

The ongoing stock options back-dating probe may portend at least a trickle, with executives of Brocade indicted in August and other companies under federal scrutiny. Yet Keane, a former San Francisco public defender, argues that Ryan has abdicated the U.S. Attorney's traditional role of prosecuting large-scale tax, fraud, and political corruption cases. "A district attorney will go after gang cases and gun cases," he says.

"But it's really only the federal prosecutor who can do the big white-collar cases." Prosecutors in Ryan's office contend that the constant staff churn slows pursuit of complex white-collar crimes, as new attorneys must spend weeks, sometimes months, bushwhacking through documents to learn a case. The ongoing federal probe of state Senator

Don Perata's business dealings has lagged since last year, when Burch, the Oakland branch chief handling the case, quit the office. Last week's departure of Haywood Gilliam, the lead attorney on the Reliant Energy case, could further bog down that long-running prosecution.

Budget cuts have trimmed Ryan's staff by a dozen prosecutors since 2004. The shortage of bodies, coupled with veteran attorneys burning time to break in recent arrivals, hampers the office's ability to cultivate fresh cases, an ex-prosecutor says. "You should be able to do both - violent crimes and white-collar. But there's a lot of new people playing catch-up, so you don't see as many [white-collar] cases being brought."

Or as much rapport between the U.S. Attorney's Office and law enforcement agencies seeking to refer cases to it. A prosecutor recounts that, in the Mueller era, federal agents would hang out in the hallways, pestering attorneys for a 10-minute meeting to sell a case.

"It's a lot quieter these days," the lawyer says.

Similarly, Kathleen Bisaccia, former head of the SEC's San Francisco branch, noticed that as longtime attorneys left the Northern District, their replacements returned fewer calls on potential cases. "When you lose that relationship with someone who's been there for years, it's going to slow things down."

Yet the number of cases filed barely scrapes at the top soil of the office's deeper work, argues Mark Krotoski, the acting criminal division chief. He offers the example of BALCO. The probe, while counting as only two indictments, prodded Congress to strengthen steroids laws and Major League Baseball to conduct its own investigation.

"Numbers just tell part of the story," Krotoski says. "You have to look at the complexity of the case."

Portman, the Federal Public Defender, credits that measured approach to Ryan. "The office under him seems more concerned with large cases, as opposed to rounding up a bunch of illegal immigrants."

At the same time, considering the thousands of hours Ryan's office has pumped into BALCO, the small courtroom returns - five convictions - raise questions about its worth. Judge Susan Illston grazed that topic last October during the sentencing of BALCO founder Victor Conte Jr., who received a term of four months after the U.S. Attorney's Office nixed 40 of 42 charges against him and two co-defendants. In the future, Illston said, prosecutors ought to weigh potential charges "at the beginning and not the end of the case."

Attorneys who have worked with Ryan believe he should heed the words. More than one portrayed him as "consumed" by the BALCO-inspired media craze, holding countless meetings with his prosecutors on the case. As the scandal lurches into its fourth year, one lawyer in his office asks, "Shouldn't he pay that much attention to every case?" <<Picture (Metafile)>>

Illston's tut-tutting marked yet another small disgrace for Ryan's prosecutors in front of a federal judge. Perhaps the most embarrassing episode occurred last year before U.S. District Judge Charles Breyer during the trial of an alleged cocaine dealer.

Much of the prosecution's case relied on a one-time drug trafficker turned DEA informant, whom the FBI had fired ("Bait and Snitch," SF Weekly, Nov. 23, 2005). On cross-examination by a defense lawyer, a DEA agent first insisted he had no idea why the FBI released the snitch, then later admitted he knew.

Realizing the agent might have committed perjury, Breyer pointedly asked whether prosecutors wanted to drop the charges. He went so far as to summon Choi, Ryan's first assistant, from her office on the 11th floor of the federal building to his courtroom on the 19th. She opted to press on with the case.

It proved a ruinous choice. By leaving the agent on the stand after his apparent contradiction, prosecutors virtually forced him to invoke his rights against self-incrimination. Once he stepped down, Breyer threw out his testimony, crippling the case. After a feeble effort to continue, prosecutors finally dismissed the charges later that day.

The fiasco prompted Breyer to order a federal probe into possible misconduct by the snitch, the agent, and the DEA. He spared prosecutors, praising them for their ethics, noting that they provided key details on the informant to the defense. Yet it's fair to ask whether the two relatively inexperienced attorneys who bungled the case adequately prepped the agent for his testimony, or whether Choi should have spiked the tainted case when Breyer asked.

Current and former prosecutors assert the two prosecutors needed the kind of veteran oversight that has seeped out of the office the last three years. Meanwhile, defense lawyers portray Choi's mulish refusal to drop the case as symptomatic of Ryan's legal ethos.

"It's part of a win-at-all-costs mentality," says Ian Loveseth, the defense attorney in the case. "There's been a loss of rational perspective."

Critics fault that tunnel vision for a series of toe-stubbings by Ryan's prosecutors. In April, Breyer ordered a retrial in a death threat case after prosecutors neglected to

he details to the defense about an expert's potential testimony. During a theft last year, Judge Jeffrey White excoriated prosecutors for failing to cough up information on the defendant to his lawyer; they soon dropped the case.

Those flare-ups were cool breezes compared to Judge William Alsup's eruption this summer over the steady refusal of prosecutors to release to defense lawyers the names of witnesses and informants in an ongoing murder case. Prosecutors maintain that divulging the identities invites retaliation on the sources from allies of the gang members facing homicide charges; defense attorneys argue they need the names to investigate the case. During a pretrial hearing, Alsup, after months of futile prodding of prosecutors, blew up at them. He swatted away the retaliation rationale as "bogus" and charged that prosecutors sought only a "tactical advantage." They have appealed a sanction imposed by him that could exclude the unnamed sources from testifying.

"Prosecutors are going to fight tooth and nail to give as little as they can and not turn over anything until the very last minute," says Richard Mazer, who represents a defendant in the case. "They're going to stonewall as much as they can."

If that tactic represents a change in the Northern District, Macauley, Ryan's spokesman, counters that federal prosecutors across the country employ the strategy. Without concealing their identities, he adds, the sources could end up dead.

Legal observers theorize that the tensions between Ryan's office and the federal bench would abate if he forged stronger ties with the judges. Instead, attorneys in the office claim, he eschews reaching out to judges, and his absence at an annual judicial conference last year caused a stir. "That's like saying 'fuck you' to the judges," one prosecutor says.

Former federal prosecutor Little, who talks to Ryan on occasion, doubts the U.S. Attorney will change his approach. Still, despite the heavy criticism lobbed at Ryan, Little places him on par with former U.S. Attorney Joseph Russoniello, and well ahead of Michael Yamaguchi. As for comparisons to another U.S. Attorney, Little says, "Bob Mueller was an exceptional federal prosecutor. To say Kevin Ryan is not Bob Mueller is not a bad thing." <<Picture (Metafile)>>

In 2002, Ryan applied for a vacancy on the Northern District bench. As the story goes, White House officials urged him to instead take the job of U.S. Attorney, assuring him that after gaining a bit of federal seasoning, he would don a judge's robe.

Whether Ryan still carries that career ambition is unknown. Yet considering his cold relationship with the region's federal judges and the speculation in legal circles that Justice Department officials would prefer that he step down, the optimism of four years ago seems a distant glimmer.

A month before he took office, Ryan told the Mercury News, " ... I think I have an advantage because I'm not coming from within the system. To use an overused phrase, I'll be able to think outside the box."

He's had a more difficult time stepping out of his bunker.

## Moschella, William

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**From:** Sampson, Kyle  
**Sent:** Wednesday, January 17, 2007 10:11 PM  
**To:** Elston, Michael (ODAG); Scolinos, Tasia; Roehrkasse, Brian; Goodling, Monica; Moschella, William  
**Subject:** Re: "Without Cause"

Got it.

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

**From:** Elston, Michael (ODAG)  
**To:** Sampson, Kyle; Scolinos, Tasia; Roehrkasse, Brian; Goodling, Monica; Moschella, William  
**Sent:** Wed Jan 17 22:07:03 2007  
**Subject:** "Without Cause"

I am not going to discuss whether a particular United States Attorney has been asked to resign or what the reasons might be for such a decision. But when a United States Attorney leaves, we have a process for filling that vacancy which we have followed throughout this Administration and which we will continue to follow. That process includes nominating a candidate for consideration by the Senate. For each vacancy, we will seek well-qualified candidates who will support the Administration's priorities and enforce the law to the fullest extent.

While I will not comment on any particular United States Attorney's resignation, let me say this: I would never, never consent to the removal of a United States Attorney for political reasons. To suggest that a U.S. Attorney was removed to influence a case for political reasons is irresponsible, reckless and harmful to the criminal justice system.

## Moschella, William

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**From:** Hertling, Richard  
**Sent:** Tuesday, March 06, 2007 8:24 AM  
**To:** Moschella, William; Sampson, Kyle; 'christopher\_g.\_oprison@who.eop.gov'  
**Cc:** 'Michael\_Y.\_Scudder@who.eop.gov'  
**Subject:** RE: Letter For Tomorrow's Hearing from HJC

I second that strongly.

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

**From:** Moschella, William  
**Sent:** Tuesday, March 06, 2007 7:18 AM  
**To:** Sampson, Kyle; 'christopher\_g.\_oprison@who.eop.gov'; Hertling, Richard  
**Cc:** 'Michael\_Y.\_Scudder@who.eop.gov'  
**Subject:** Re: Letter For Tomorrow's Hearing from HJC

That is the answer.

-----

Sent from my BlackBerry Wireless Handheld

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

**From:** Sampson, Kyle  
**To:** 'christopher\_g.\_oprison@who.eop.gov' <christopher\_g.\_oprison@who.eop.gov>; Moschella, William; Hertling, Richard  
**CC:** 'Michael\_Y.\_Scudder@who.eop.gov' <Michael\_Y.\_Scudder@who.eop.gov>  
**Sent:** Tue Mar 06 07:16:18 2007  
**Subject:** Re: Letter For Tomorrow's Hearing from HJC

No. If asked, Will will note that the request came in late last night and that the Dep't will work as quickly as possible to respond to it. Will/Rich, correct me if I'm wrong.

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

**From:** Oprison, Christopher G. <Christopher\_G.\_Oprison@who.eop.gov>  
**To:** Sampson, Kyle; Moschella, William; Hertling, Richard  
**CC:** Scudder, Michael Y. <Michael\_Y.\_Scudder@who.eop.gov>  
**Sent:** Tue Mar 06 07:11:29 2007  
**Subject:** RE: Letter For Tomorrow's Hearing from HJC

Hey gents - is the department going to be drafting responses to these questions prior to the hearing today? For number 4, can we discuss? Also, are there any other communications (other than Mike Elston's) that are potentially responsive to number 5?

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**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Monday, March 05, 2007 6:45 PM  
**To:** Oprison, Christopher G.  
**Subject:** FW: Letter For Tomorrow's Hearing from HJC

fyi

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**From:** Cabral, Catalina  
**Sent:** Monday, March 05, 2007 6:26 PM  
**To:** Moschella, William; Elston, Michael (ODAG); Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Roehrkasse, Brian; Scolinos, Tasia; Hertling, Richard; Burton, Faith; Battle, Michael (USAEO); Margolis, David

Subject: Letter For Tomorrow's Hearing from HJC

<<LettertoWEMfromHJCreUSA3.5.07.pdf>>

Catalina Cabral  
U.S. DEPARTMENT OF JUSTICE  
Office of Legislative Affairs  
Catalina.Cabral@USDOJ.gov  
(202) 514-4828

## **U.S. Attorney Kevin V. Ryan Announces Departure**

### ***Thanks U.S. Attorney's Office and Law Enforcement Agency Staff***

U.S. Attorney Kevin V. Ryan completes his tenure this Friday as the 48<sup>th</sup> U.S. Attorney for the Northern District of California. The prosecutions under Mr. Ryan's 4 ½-year tenure cover a wide range of areas including white collar crime, gang and violent crime, securities fraud, cybercrime, organized crime drug rings, healthcare fraud, child exploitation cases, alien harboring, and tax cases. Outside of the courtroom, Ryan has considerably diversified the office by hiring and promoting a significant number of extraordinary women and minorities. Mr. Ryan, who previously served as a California Superior Court Judge, was recently named one of the top 100 California Lawyers of 2006 by the *San Francisco Daily Journal*.

U.S. Attorney Kevin V. Ryan stated, "I am grateful to have had the opportunity to serve as the United States Attorney. I sincerely thank all of the staff at the office for their hard work to make our community a safer place to live. I also thank all of our partners in law enforcement who have put in countless hours in investigating and prosecuting crimes in Northern California."

"Kevin was instrumental in bringing diversity to the U.S. Attorney's Office," said Superior Court Judge C. Don Clay, who served as Ryan's top deputy from 2002-2003. "The women and minorities he hired fundamentally changed the dynamic of the office for the better. One of the things I noticed in working with Kevin was that he was not afraid to make people accountable for their actions. Most importantly, Kevin brought courage to, and a fresh look at, complex problems that merited the government's attention. Kevin was not afraid to pursue complex cases and issues, like terrorism, Balco, stock options backdating, and corporate fraud."

### **Gangs and Violent Crime:**

Ryan's tenure has been noted for taking an aggressive stance in criminal street gang cases, and using powerful federal RICO statutes to take violent offenders off the street. The office has also been productive in aggressively prosecuting felons possessing firearms as part of the President's Project Safe Neighborhoods initiative. Outside of the courtroom, Ryan has been instrumental in securing over \$3 million in federal funding to weed out the worst offenders, and to provide community organizations with funding to create and sustain programs and initiatives. Ryan supported the Northern District Gang Prevention Summit, which worked to build relationships to help prevent gang violence by bringing together nationally renowned experts, community leaders, policy makers, and law enforcement officials to discuss ongoing efforts to prevent gang violence.

Police Chief Heather Fong said, "We have had great successes, at all levels, because of our partnership with the Office of the U. S. Attorney. In San Francisco, we have made significant accomplishments in suppressing gun and gang violence, as well as human trafficking, due to our collaboration with the U. S. Attorney. All of us will miss

U. S. Attorney Kevin Ryan and his support and energy for our law enforcement endeavors.”

Some noteworthy cases in this area include:

- In October 2005, twelve members of the Down Below Gang – a violent street gang in San Francisco – were indicted on charges of seven murders and seven attempted murders. Eight pleaded guilty in December 2006. Four of those convicted received sentences of 15 years or more in federal prison.
- In March 2006, 15 associates of the Project Trojan criminal street gang in North Richmond individuals were indicted on conspiracy drug dealing charges.
- In March 2006, the final two defendants in a four-year prosecution – which netted 35 convictions of members and associates of the Big Block gang in San Francisco – were sentenced to 20 and 23 years in prison respectively.

"In my five years as City Attorney, Kevin Ryan helped forge an unprecedented level of cooperation between the U.S. Attorney's Office and mine on issues like gang violence and others." said San Francisco City Attorney Dennis Herrera. "Kevin has demonstrated himself to be an extremely capable, forward-thinking leader, and I'm confident he will continue to be an important force in the legal community for the cause of justice."

“Over the years, the San Francisco Police Bureau of Investigations has enjoyed an extremely close working relationship with U.S. Attorney Kevin Ryan,” said Deputy Chief of Police Morris Tabak. “His office has been instrumental in charging many of San Francisco's gang related murders and other gang associated crimes. An example is the many federal indictments issued resulting in the arrests of members of the Big Block, West Mob, Page Street and most recently the Down Below gangs, essentially dismantling them as a result. We also thank the U.S. Attorney for prosecuting a major out-of-state gun smuggling operation that was supplying firearms to San Francisco gang members. San Francisco is truly a much safer city today thanks to Kevin Ryan.”

District Attorney Tom Orloff stated, “During his term as United States Attorney, Kevin has been a great supporter of local law enforcement. He understood the issues we face and was always willing to work with us to protect our communities. I wish him the best in all future endeavors.

#### **White Collar Crime, Securities Fraud, Computer Hacking and Intellectual Property, Environmental Crimes:**

As a member of the President’s Corporate Fraud Task Force and the Department of Justice’s Intellectual Property Task Force, Kevin V. Ryan has overseen a number of significant ‘firsts’ in the prosecution of white collar crime and intellectual property offenses. Notably, Ryan established the Northern California U.S. Attorney’s Office as a national leader in prosecuting stock options backdating cases after he formed the

Northern California Stock Options Backdating Task Force. The office also had numerous successes in computer hacking and intellectual property, environmental crimes, as well as over \$129.4 million in payments from two large healthcare fraud cases.

Some of the noteworthy cases in these areas include:

- The country's first indictment for stock options backdating offenses against two executives of Brocade Communications Systems, Inc.
- Three Enron executives were convicted for their role in manipulating the energy markets during the California Energy Crisis.
- Williams Power Company paid \$50 million in a deferred prosecution agreement for knowingly submitting false natural gas price data to benefit their position in the market. Additionally, six natural gas traders have pleaded guilty for manipulating natural gas prices.
- The first conviction for pretexting involving Hewlett-Packard officials and journalists
- Two founders and four brokers of the Dorean Group have been indicted for their role in a fraudulent "mortgage elimination scheme." Investigators are continuing to investigate more than 550 properties throughout 35 states with a potential value of greater than \$88 million in loans that may have been affected by this alleged scheme
- Former Ukrainian Prime Minister, Pavel Lazarenko, was sentenced in August 2006 to nine years in prison and ordered to pay a \$10 million fine for extorting over \$40 million dollars from Ukrainian citizens and laundering over \$20 million through American banks.

#### **Healthcare Fraud:**

- Endovascular Technologies, Inc. a subsidiary of Guidant Corporation, pleaded guilty to 10 felonies and agreed to pay \$92.4 million to resolve criminal and civil charges that it covered up thousands of incidents in which a medical device used to treat aneurysms in the aorta malfunctioned. Among the thousands of incidents covered up by the company were 12 deaths and dozens of invasive surgeries.
- InterMune, Inc., a Brisbane, California biopharmaceutical company, agreed to enter into a deferred prosecution agreement and to pay nearly \$37 million to resolve criminal charges and civil liability in connection with its illegal promotion and marketing of its drug Actimmune (Interferon gamma-1b) in October 2006.

#### **Computer Hacking and Intellectual Property – The CHIP Unit:**

The CHIP Unit, which is based in the San Jose branch of the U.S. Attorney's Office, was established in 2000 and was the first federal specialized prosecution unit in a U.S. Attorney's Office. This model has been followed in other U.S. Attorney's Offices and there are now about twenty-five CHIP Units in offices around the country. Some of the noteworthy cases prosecuted by this unit include:

- The country's first conviction for violations of the Economic Espionage Act of 1996. Additionally, the CHIP Unit brought the second and third indictments in the country under the ten years of this statute. These cases involve trade secrets stolen with the intent to benefit foreign governments, including China, Malaysia, and Thailand.
- Operation Remaster netted approximately 494,000 CDs and 5,500 stampers in what the Recording Industry Association of America said was the largest seizure of counterfeit CDs in the country at that time. All three defendants in that case have pleaded guilty.
- Operation Copycat has yielded 35 convictions. Defendants have pleaded guilty to illegally distributing pirated movies, games and software over the Internet. Two film critics who sold pre-release movies for illegal distribution have been convicted, and the operation has yielded the first convictions in the country for camcording in a movie theater and uploading "pre-release" movies on the Internet.

#### **Environmental:**

- One of the world's largest shipping companies, A.P. Moller-Maersk, A/S of Denmark pleaded guilty in September 2005 to providing false documents to the U.S. Coast Guard during a routine inspection of one of its cargo ships to ensure compliance with the international MARPOL treaty, which limits oil pollution from ships.
- Earlier this week, Mr. Ryan announced that \$1.5 million has been designated for rehabilitating and restoring marine wildlife habitat in the San Francisco Bay to further protect the California leopard shark. Over \$900,000 came from payments by a San Leandro church, and restitution by the church's pastor and five other criminal defendants who were involved with an operation that poached thousands of California leopard sharks from the San Francisco Bay for more than ten years.

#### **Balco:**

U.S. Attorney Ryan has overseen the Balco steroids prosecution, which has resulted in five felony convictions to date, exposed the harmful side-effects of doping, and has shined a light on the surprisingly widespread use of performance-enhancing drugs in sports. Since the initiation of the investigation, more than 15 athletes have been disciplined by regulators in their various sports. Congress has held extensive hearings on

steroids in sports, including taking testimony from Major League Baseball players, and has classified Norbolethone and THG as Schedule III drugs. The U.S. Sentencing Commission has toughened federal sentencing guidelines for steroids-related offenses.

San Mateo District Attorney Jim Fox stated, "I have enjoyed the working relationship that my office has had with Kevin. In the cases we worked together, the level of cooperation was fabulous. I wish him the best."

### **Child Exploitation:**

Some of the noteworthy cases that the office has prosecuted to protect the most vulnerable members of our society include:

- In the first prosecution of its kind, Peace Corps volunteer Timothy Obert pleaded guilty in February 2006 to sexually assaulting a minor while serving as a Peace Corps volunteer in Costa Rica.
- In July 2005, a creator of child pornography websites, Edward Aaron Harvey, was indicted with advertisement of child pornography, transportation and attempted transportation of child pornography, and money laundering. Five subscribers from the Northern District of California were also charged.

### **Organized Crime Drug Enforcement Task Force – The OCDETF Section:**

"Kevin always demonstrated great integrity and moral courage and could be counted upon to follow his convictions on controversial issues, including his defense of the Patriot Act and the prosecution of large scale marijuana traffickers who were hiding behind medical marijuana as a defense to their multi-million dollar drug trafficking operations," stated Ron Brooks, Director of the Northern California High Intensity Drug Task Force. "Because of his vision, Kevin and his office were engaged in the early stages of the fight against to stop the violent street gangs that are threatening our neighborhoods. He was a leader in supporting the vigorous enforcement and prosecution of gang related crimes but he also recognized the importance of preventing gang crimes before they happen. Kevin was an innovator in Northern California by using his Project Safe Neighborhoods Grant Program to develop and fund prevention and outreach programs. He will be remembered by his colleagues as a tough but fair prosecutor, a champion of public safety, a person who placed service to his community before himself; and in my opinion, the finest United States Attorney I have ever known."

- Operation Ice Ax has resulted in the indictment of 19 individuals for conspiracy to distribute and distribution of methamphetamine and cocaine throughout the San Francisco Bay Area and Hawaii in May 2006.

"It has been a privilege to work side-by-side with U.S. Attorney Kevin Ryan in helping to make Northern California and the San Francisco Bay community a safer place for all citizens," said Special Agent in Charge Javier Pena. "When you are fighting international drug traffickers everyday, I can't tell you how important it is to have a U.S.

Attorney who is as equally dedicated to the challenge at hand. In Kevin, DEA is losing a great partner and Northern California is losing a great asset to the community. We wish him the best in his future endeavors.”

**Alien Harboring, Public Corruption, and other Notable Cases:**

Additionally, Mr. Ryan oversaw a number of cases involving public corruption, alien harboring, and public safety:

- Five California DMV employees and five “brokers” were charged and convicted in 2005 and 2006 for their role in selling hundreds of fraudulent California Driver’s Licenses for up to \$4,500.
- Operation Gilded Cage has charged over 30 Bay Area brothel owners and others involved in the operation of massage parlors that allegedly harbored aliens for commercial advantage. Numerous defendants have pleaded guilty to date.
- Deputy District Attorney Robert Roland was convicted of accepting drugs from state court defendants in February 2006. He was sentenced to six months in prison.
- Four defendants were convicted and sentenced for stealing over 700 pounds of explosives from law enforcement bunkers on July 4, 2004.
- Marcus O. Armstrong, formerly the highest-ranking technology officer in San Francisco’s Department of Building Inspection, pleaded guilty to public corruption charges in July 2003, admitting that he defrauded San Francisco taxpayers out of more than half a million dollars through a phony invoicing and kickback scheme.

**Tax:**

Some of the noteworthy cases prosecuted by the Tax Division include:

- In April 2005, prominent estate planner and tax specialist Owen George Fiore pleaded guilty to tax evasion and was sentenced to 18 months in prison and ordered to pay \$626,623 in restitution.
- In December 2004, offshore tax shelter promoter and Canadian resident Jerome Schneider was sentenced to six months in prison, in addition to a \$4,000 fine and \$100,000 restitution, for his role in a conspiracy to defraud the Internal Revenue Service.

U.S. Attorney Kevin V. Ryan concluded, “It has been an honor and privilege to have served as U.S. Attorney. I thank the staff at the U.S. Attorney’s Office for their hard work on behalf of the Northern District of California, the Justice Department and the American people.”

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