

## Tenpas, Ronald J (ODAG)

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**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Tuesday, January 17, 2006 3:46 PM  
**To:** Elston, Michael (ODAG); Mercer, Bill (ODAG)  
**Subject:** RE: List of Early Disposition Programs

Ok. FYI, I've asked Linda to schedule time with Paul this week to make final decisions on FT authorities and/or withdrawal of authorities, now that the precinct of Elston has weighed in. Linda hasn't given me a time yet. One of you may want to indicate to her this is a priority since the clock is winding down and I'm Paul may want some pondering time before being comfortable with pulling the plug on some of these.

Ron

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

**From:** Elston, Michael (ODAG)  
**Sent:** Tuesday, January 17, 2006 3:41 PM  
**To:** Mercer, Bill (ODAG); Tenpas, Ronald J (ODAG)  
**Subject:** FW: List of Early Disposition Programs

The votes are in; we are going to disclose. I recommend making our decisions on EDPs first so we can note which programs we are terminating on the list we provide to USSC.

Ron, I will rely on you tasking someone to prepare the list within the parameters of Patty's e-mail below.

Thanks,  
The Commish

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

**From:** Hahn, Paul (USAE0)  
**Sent:** Tuesday, January 17, 2006 12:09 PM  
**To:** Elston, Michael (ODAG); Stemler, Patty  
**Subject:** RE: List of Early Disposition Programs

Mike, other than the formal disclosures we have made in responsive pleadings regarding illegal reentry prosecutions (responding to the disparity argument), I don't think we have made an official public disclosure on the fast-track programs. I agree with Patty in that I have no objection to identifying the fast-track programs that have been approved, limited to districts and the types of offenses covered. This may lead to more district judges complaining "Why their district, and not our district," but that is unavoidable.

Paul

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

**From:** Stemler, Patty  
**Sent:** Tuesday, January 17, 2006 11:07 AM  
**To:** Hahn, Paul (USAE0); Elston, Michael (ODAG)  
**Subject:** RE: List of Early Disposition Programs

We have disclosed in the SDNY and elsewhere the districts that have fast track programs for illegal reentry prosecutions. We have not disclosed the details of those programs. I see no problem with identifying the districts that have programs and the types of offenses covered by the programs but we should not go beyond that.

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

**From:** Elston, Michael (ODAG)  
**Sent:** Tuesday, January 17, 2006 11:01 AM  
**To:** Stemler, Patty; Hahn, Paul (USAE0)

Subject: FW: List of Early Disposition Programs

Paul and Patty:

Please see the e-mails below and advise me on how to respond to the request from the Sentencing Commission. Patty, I thought you might know whether we have disclosed the list in post-Booker litigation.

Thanks,ike

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

From: Tenpas, Ronald J (ODAG)  
Sent: Tuesday, January 17, 2006 9:26 AM  
To: Elston, Michael (ODAG); Mercer, Bill (ODAG)  
Subject: RE: List of Early Disposition Programs

I'm not sure if we have ever made it officially public but I suspect it has come out in litigation. There was a point where lots of districts were being asked by judges to brief the "disparity" issue as it relates to fast track versus non fast track districts. Districts were surveyed on whether they cared about whether their standards for fast track came out. I suspect that, at a minimum, we sometimes gave out a list of districts in terms of who had fast track and for what programs. Paul Hahn EOUSA might know the answer for sure, as he was point on this issue.

Also, I know anecdotally that a friend just had a sentencing in Maryland where the judge commented she thought it odd that there was fasttrack in Nebraska and a couple of other places, so that also suggests to me it is out.

I see no real principled basis on which to object to disclosing. For it truly to be helpful, we'd need to give both district and category of case I would think.

Ron

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

From: Elston, Michael (ODAG)  
Sent: Monday, January 16, 2006 8:32 AM  
To: Mercer, Bill (ODAG); Tenpas, Ronald J (ODAG)  
Subject: List of Early Disposition Programs

Bill and Ron:

Is the list of EDPs a public document? The sentencing commission, in connection with their Booker report work, would like to have the list. The thinking is that it will help them interpret the stats from those districts. What do you think?

Mike

## Tenpas, Ronald J (ODAG)

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Tuesday, January 17, 2006 3:54 PM  
**To:** Mercer, Bill (ODAG); Elston, Michael (ODAG)  
**Subject:** RE: List of Early Disposition Programs

Works for me and we are running out of options given Bill's schedule. I favor today b/c I'm betting Paul understandably won't walk out ready to pull the plug based on a single discussion. That would provide time to swing back to the issue later in the week or beginning of next.

Ron

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

**From:** Mercer, Bill (ODAG)  
**Sent:** Tuesday, January 17, 2006 3:50 PM  
**To:** Tenpas, Ronald J (ODAG); Elston, Michael (ODAG)  
**Subject:** Re: List of Early Disposition Programs

Maybe 5 today?

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Tenpas, Ronald J (ODAG) <Ronald.J.Tenpas@SMOJMD.USDOJ.gov>  
**To:** Elston, Michael (ODAG) <Michael.Elston@SMOJMD.USDOJ.gov>; Mercer, Bill (ODAG) <Bill.Mercer@SMOJMD.USDOJ.gov>  
**Sent:** Tue Jan 17 15:45:58 2006  
**Subject:** RE: List of Early Disposition Programs

Ok. FYI, I've asked Linda to schedule time with Paul this week to make final decisions on FT authorities and/or withdrawal of authorities, now that the precinct of Elston has weighed in. Linda hasn't given me a time yet. One of you may want to indicate to her this is a priority since the clock is winding down and I'm Paul may want some pondering time before being comfortable with pulling the plug on some of these.

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disparity argument), I don't think we have made an official public disclosure on the fast-track programs. I agree with Patty in that I have no objection to identifying the fast-track programs that have been approved, limited to districts and the types of offenses covered. This may lead to more district judges complaining "Why their district, and not our district," but that is unavoidable.

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Sent: Tuesday, January 17, 2006 11:01 AM  
To: Stemler, Patty; Hahn, Paul (USAEO)  
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Paul and Patty:

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Sent: Monday, January 16, 2006 8:32 AM  
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Mike



U. S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

February 1, 2006

MEMORANDUM FOR THE ACTING DEPUTY ATTORNEY GENERAL

THROUGH: William W. Mercer *WWM*  
Principal Associate Deputy Attorney General

FROM: Ronald J. Tenpas *RJT*  
Associate Deputy Attorney General

SUBJECT: Fastrack Authorization Extension

PURPOSE: To extend Fastrack authorization to complete review of proposals.

TIMETABLE: EXPEDITE

DISCUSSION: Fastracks must be authorized per statute. The current authorization expires 1/31/06. This will insure technical compliance while final review is completed.

RECOMMENDATION: I recommend that the Acting Deputy Attorney General sign the memorandum.

Attachment

APPROVE: \_\_\_\_\_

Concurring Components

None

DISAPPROVE: \_\_\_\_\_

Non-Concurring Components

None

OTHER: \_\_\_\_\_



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

January 31, 2006

MEMORANDUM

TO: United States Attorneys for the following districts: Arizona, Central District of California, Eastern District of California, Northern District of California, Southern District of California, Northern District of Georgia, Idaho, Nebraska, New Mexico, Eastern District of New York, North Dakota, Oregon, Southern District of Texas, Western District of Texas and the Western District of Washington

FROM: Paul J. McNulty *RM*  
Acting Deputy Attorney General

SUBJECT: Reauthorization of Early Disposition Program

Section 401(m)(2)(B) of the 2003 Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act ("PROTECT Act") instructed the Sentencing Commission to promulgate, by October 27, 2003, a policy statement authorizing a downward departure of not more than 4 levels "pursuant to an early disposition program authorized by the Attorney General and the United States Attorney." Pub. L. No. 108-21, § 401(m)(2)(B), 117 Stat. 650, 675 (2003). To that end, the United States Sentencing Commission promulgated a policy statement virtually tracking the language of the PROTECT Act. Although the PROTECT Act requirement of Attorney General authorization only applies by its terms to early disposition programs that rely on downward departures, the Attorney General issued his memo entitled "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" on September 22, 2003, that likewise requires Attorney General approval (approval that may be accomplished by obtaining the approval of the Deputy Attorney General<sup>1</sup>) for any early disposition program that relies upon "charge bargaining" — *i.e.*, a program whereby the Government agrees to charge less than the most serious, readily provable offense.

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<sup>1</sup>The requirement that a fast-track program be approved by the "Attorney General" under the PROTECT Act or under the Sentencing Guidelines may also be satisfied by obtaining the approval of the Deputy Attorney General. See 28 U.S.C. § 510; 28 C.F.R. § 0.15(a).

DAG000001831

On October 29, 2004, Deputy Attorney General James B. Comey authorized the following United States Attorney's Offices (USAOs) to implement early disposition programs as such programs relate to the following classes of cases:

- (1) District of Arizona — illegal reentry after deportation cases
- (2) District of Arizona — transportation or harboring of aliens cases
- (3) District of Arizona — alien baby/child smuggling and "bringing in" (i.e., cases involving defendants who are caught guiding defendants across the border) cases
- (4) District of Arizona — drug cases arising along the border
- (5) District of Arizona — first time marijuana offenses along the border involving less than 20 kilograms of marijuana and first time drug backpacking offenses (regardless of the amount of marijuana carried)
- (6) Central District of California — illegal reentry after deportation cases
- (7) Eastern District of California — illegal reentry after deportation cases
- (8) Northern District of California — illegal reentry after deportation cases
- (9) Southern District of California — illegal reentry after deportation cases
- (10) Southern District of California — transportation or harboring of alien cases
- (11) Southern District of California — drug cases arising along the border
- (12) Northern District of Georgia — illegal reentry after deportation cases
- (13) District of Idaho — illegal reentry after deportation cases
- (14) District of Nebraska — illegal reentry after deportation cases
- (15) District of New Mexico — illegal reentry after deportation cases
- (16) District of New Mexico — transportation or harboring of alien cases
- (17) District of New Mexico — drug backpacking cases
- (18) Eastern District of New York — drug courier cases arising out of John F. Kennedy International Airport
- (19) District of North Dakota — illegal reentry after deportation cases
- (20) District of Oregon — illegal reentry after deportation cases
- (21) Southern District of Texas — Laredo Division drug cases arising along the border
- (22) Southern District of Texas — illegal reentry after deportation cases
- (23) Southern District of Texas — transportation or harboring of alien cases
- (24) Western District of Texas — illegal reentry after deportation cases
- (25) Western District of Texas — transportation or harboring of alien cases
- (26) Western District of Washington — illegal reentry after deportation cases
- (27) Southern District of Florida — cases involving aliens using false fraudulent immigration documents
- (28) Western District of Texas — drug cases arising at border ports of entry.

All of the early disposition programs identified above were authorized through September 30, 2005. To continue a program thereafter, USAOs were required to submit a request for reauthorization to the Executive Office for United States Attorneys. The Office of the Deputy Attorney General recently received these requests for reauthorization and is in the process of reviewing the same. In order to facilitate this review, on September 23, 2005, Acting Deputy Attorney General Robert D. McCallum, Jr., authorized those early disposition programs identified above to continue through October 31, 2005 and, on October 28, 2005, he further extended this authorization through December 31, 2005. Because additional time was needed to complete the review, on December 28, 2005, I authorized these programs to continue through January 31, 2006. In order to allow further time to complete the review, I am further extending this authorization through March 3, 2006.

cc: The Attorney General  
The Associate Attorney General  
The Solicitor General  
The Assistant Attorney General, Criminal Division  
The Director, Executive Office for United States Attorneys  
The Chair, Attorney General's Advisory Committee  
The Chair, Sentencing Guidelines Subcommittee of the Attorney General's Advisory Committee  
The Assistant Director, Evaluation and Review Staff, Executive Office for U.S. Attorneys  
The Director, Office of Policy and Legislation, Criminal Division

**Tenpas, Ronald J (ODAG)**

---

From: Lam, Carol (USACAS)  
Sent: Friday, February 03, 2006 6:13 PM  
To: Tenpas, Ronald J (ODAG)  
Cc: Harrigan, Shane (USACAS)  
Subject: RE: Fast track

We'll do our best. Have a good weekend.

Carol

-----Original Message-----  
From: Tenpas, Ronald J (ODAG)  
Sent: Friday, February 03, 2006 3:10 PM  
To: Lam, Carol (USACAS)  
Subject: RE: Fast track

Yesterday?

Seriously, how about a week from today? If you need more let me know but we are really trying to not extend again past March 1 with these temporary authorizations.

Ron

-----Original Message-----  
From: Lam, Carol (USACAS)  
Sent: Friday, February 03, 2006 6:08 PM  
To: Tenpas, Ronald J (ODAG)  
Subject: RE: Fast track

Got it. What's our deadline?

-----Original Message-----  
From: Tenpas, Ronald J (ODAG)  
Sent: Friday, February 03, 2006 3:06 PM  
To: Lam, Carol (USACAS)  
Subject: RE: Fast track

No, you were right on and today was my day to get this done. Attached is a document that summarizes an analysis of places where the programs, at least as understood out here from your submission, appear that they may be offering a better deal than the equivalent of 4 levels. It would be helpful if you could let us know your response. I leave it to you but possible responses include things like 1. you've got our program wrong 2. you've got it right in theory but in fact we never have any defendants in the categories you identify 3. you've got it right but it is a small number of defendants involved 4. you've got it right but the burdens of making it compliant would be .

. . .  
5. something else altogether.

Ron

-----Original Message-----  
From: Lam, Carol (USACAS)  
Sent: Friday, February 03, 2006 5:47 PM  
To: Tenpas, Ronald J (ODAG)  
Subject: Fast track

Hi Ron,

Just following up on your phone call to me last week about our fast track programs. I thought you said you would be sending me a memo/email about the areas of concern, but I haven't received anything. I want to be sure that something didn't get lost in cyberspace.

Thanks.

Carol

## Tenpas, Ronald J (ODAG)

---

From: Tenpas, Ronald J (ODAG)  
Sent: Friday, February 03, 2006 6:31 PM  
To: Lam, Carol (USACAS)  
Subject: Re: Fast track

Have shane call me if you have a problem

-----  
Sent from my BlackBerry Wireless Handheld

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

From: Lam, Carol (USACAS) <Carol.Lam@usdoj.gov>  
To: Tenpas, Ronald J (ODAG) <Ronald.J.Tenpas@SMOJMD.USDOJ.gov>  
CC: Harrigan, Shane (USACAS) <Shane.Harrigan@usdoj.gov>  
Sent: Fri Feb 03 18:13:14 2006  
Subject: RE: Fast track

We'll do our best. Have a good weekend.

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Thanks.

Carol

## Tenpas, Ronald J (ODAG)

---

From: Charlton, Paul (USAAZ)  
Sent: Wednesday, February 08, 2006 2:17 PM  
To: Tenpas, Ronald J (ODAG)  
Subject: RE:

Attachments: tmp.htm



tmp.htm (3 KB)

Ron - thanks for the understanding and the suggested answers. We'll get back to you as soon as possible. Paul

---

From: Tenpas, Ronald J (ODAG)  
Sent: Wednesday, February 08, 2006 12:09 PM  
To: Charlton, Paul (USAAZ)  
Subject:

Attached is a document that summarizes an analysis of places where the programs, at least as understood out here from your submission, appear that they may be offering a better deal than the equivalent of 4 levels. It would be helpful if you could let us know your response. I leave it to you but possible responses include things like

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5. something else altogether.

Ron

My apologies for the timing. I understand the box many of the USAs are in right now with the budget situation. (My old district was struggling with budget some before I left as USA, but nothing in the way that this FY is now shaping up for folks). Unfortunately, to comply with the fasttrack statute we need to get these things right, requiring this kind of periodic review.

<<non-compliant fixes DAZ.wpd>>

---

Ronald J. Tenpas  
Associate Deputy Attorney General  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Room 4216  
Washington, D.C. 20530  
(202) 514-3286 / (202) 305-4343 (fax)

**Tenpas, Ronald J (ODAG)**

---

**From:** Harwood, Ann (USAAZ)  
**Sent:** Wednesday, February 08, 2006 5:57 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Cc:** Hernandez, Rachel (USAAZ); Charlton, Paul (USAAZ)  
**Subject:** Fast Track/District of Arizona

**Attachments:** tmp.htm



tmp.htm (1 KB)

Mr. Tenpas - You sent an E-mail to U.S. Attorney Charlton indicating that you felt we were non-compliant with the 4 level departure guideline on our fast-track program for alien smuggling cases. However, our numbering does not match up with the references in your attachment. Would you please send me the document to which your attachment refers so we can respond to your inquiry? Thank you.

Ann E. Harwood, FAUSA  
District of Arizona  
602-514-7737 (office)  
(cell)

**Tenpas, Ronald J (ODAG)**

---

**From:** Mercer, Bill (ODAG)  
**Sent:** Thursday, February 09, 2006 2:27 AM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Re: Fastrack

Sorry that I wasn't there to share the pain. I was hopeful that folks would be reasonable, but I am increasingly pessimistic.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Tenpas, Ronald J (ODAG) <Ronald.J.Tenpas@SMOJMD.USDOJ.gov>  
**To:** Elston, Michael (ODAG) <Michael.Elston@SMOJMD.USDOJ.gov>; Mercer, Bill (ODAG) <Bill.Mercer@SMOJMD.USDOJ.gov>  
**Sent:** Wed Feb 08 21:32:52 2006  
**Subject:** Fastrack

Spent the day in calls with usas and fausas in districts with non-compliant charge bargains. It made me think that I have not thanked you all enough for giving me a chance to be part of odag. If either of you can recall why it was a good idea for me to come to main, now would be a good time to remind me. Otherwise please just shoot me at first sight and end the misery.

Cheers.

-----  
Sent from my BlackBerry Wireless Handheld

## Tenpas, Ronald J (ODAG)

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Tuesday, February 21, 2006 9:28 AM  
**To:** Mercer, Bill (ODAG)  
**Subject:** RE: Fast Tracks

We've now spoken to all US Attorneys who are "at risk" or who have non-compliant programs. For each of those with a non-compliant (i.e. more than four levels), I shared our analysis and asked for comments back regarding the possibility of making changes to bring into compliance. I have not heard back from any of those. Let me follow-up and then we should take it into Paul for final decisions.

Ron

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**From:** Mercer, Bill (ODAG)  
**Sent:** Monday, February 20, 2006 8:15 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Fast Tracks

What's the timing on final decisions? Is there anything else that we need to do before making recommendations to the DAG? Wondering what, if anything, we need to tell him in advance of the ntl conference.

## Tenpas, Ronald J (ODAG)

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**Sent:** Tuesday, February 21, 2006 8:01 PM  
**To:** Mercer, Bill (ODAG)  
**Cc:** Tenpas, Ronald J (ODAG)  
**Subject:** Re: Fast Track

It was really interesting. Texas border judges and PDs essentially testified that fast tracks did nothing to encourage pleas and that dockets are moving fine even in those places w/o a fast-track program. I think we should get rid of them and make SCA come up with better case mgt techniques rather than giving them an easy way out.

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

**From:** Mercer, Bill (ODAG) <Bill.Mercer@SMOJMD.USDOJ.gov>  
**To:** Elston, Michael (ODAG) <Michael.Elston@SMOJMD.USDOJ.gov>; Tenpas, Ronald J (ODAG) <Ronald.J.Tenpas@SMOJMD.USDOJ.gov>  
**Sent:** Tue Feb 21 16:46:41 2006  
**Subject:** Re: Fast Track

Sounds like a barnburner of a mtg.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Elston, Michael (ODAG) <Michael.Elston@SMOJMD.USDOJ.gov>  
**To:** Mercer, Bill (ODAG) <Bill.Mercer@SMOJMD.USDOJ.gov>; Tenpas, Ronald J (ODAG) <Ronald.J.Tenpas@SMOJMD.USDOJ.gov>  
**Sent:** Tue Feb 21 15:59:18 2006  
**Subject:** Fast Track

Based on the testimony today, which I cannot wait to share, I think we should start weaning districts off fast track programs and ending them by 2008.

## Tenpas, Ronald J (ODAG)

---

**From:** Mercer, Bill (ODAG)  
**Sent:** Thursday, February 23, 2006 6:09 AM  
**To:** Tenpas, Ronald J (ODAG); Rybicki, James E  
**Subject:** FW: Mandatory Recording Issue

Paul mandated recording. DAG wants him to stand down long enough to develop a department-wide approach. I have communicated that to him.

Let's discuss. Either you or someone else told me that this issue has been subject to an interagency review with the last assignment directed at FBI to work up an options memo.

---

**From:** Rybicki, James E  
**Sent:** Wednesday, February 22, 2006 10:32 AM  
**To:** Mercer, Bill (ODAG)  
**Cc:** Elston, Michael (ODAG)  
**Subject:** Mandatory Recording Issue

Bill-

Tom Harrigan (DEA Chief of Enforcement Operations) mentioned to me at the Component Head meeting yesterday that the DEA had been made aware that Paul Charlton would be issuing a memo imminently on the recording of post-arrest interview/interrogations with an effective date of March 1. He hadn't seen the memo yet. Have you received any further updates on this? Tom was a member of our working group and expressed concern that a USAO was moving ahead with this given that we didn't reach consensus among the members of the working group.

Jim

## Tenpas, Ronald J (ODAG)

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Thursday, March 02, 2006 12:24 PM  
**To:** Lam, Carol (USACAS)  
**Subject:** RE: SDCA Fast Track programs

No problems. There were a couple of times where I headed your way and then got waylaid by one of your colleagues on something or another. Plus I didn't come in until Monday night. Long haul from California to visit a strange place.

Ron

-----Original Message-----  
**From:** Lam, Carol (USACAS)  
**Sent:** Thursday, March 02, 2006 11:20 AM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** RE: SDCA Fast Track programs

Thanks, Ron. I apologize that I didn't realize that was you sitting at Deb Yang's dinner table at Citywalk until I had re-joined my own group. Sorry we didn't have a chance to chat. Hope you are enjoying Orlando (although personally I think it's sort of a strange place.

Carol

-----Original Message-----  
**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Monday, February 27, 2006 7:44 AM  
**To:** Lam, Carol (USACAS)  
**Subject:** RE: SDCA Fast Track programs

Carol:

Thanks for this. Sorry I was out when it came in and when your call came on Friday. Simply wanted to confirm I received it -- haven't looked at it in substance. See you tomorrow -- I'm coming down tonight so hope to see you over the next couple of days.

Ron

-----Original Message-----  
**From:** Lam, Carol (USACAS)  
**Sent:** Friday, February 24, 2006 2:04 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** SDCA Fast Track programs

<<DAG\_Fasttrack\_Response\_Feb2006.wpd>> Ron -- First, my apologies for the delayed response to your questions. Events overtook me. I hope I'll see you at the USA conference next week. If you have any questions for me, please feel free to call or email me; you can always reach Shane as well.

Ron, I know you know how important these programs are to us, and I appreciate all the effort you have put into this analysis. If we don't receive re-authorization, it will have a devastating effect on our work. Just not sure how much more bad news my folks can take. Thanks.

Carol

The message is ready to be sent with the following file or link attachments:

DAG\_Fasttrack\_Response\_Feb2006.wpd

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.

**Tenpas, Ronald J (ODAG)**

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**From:** Mercer, Bill (ODAG)  
**Sent:** Tuesday, April 04, 2006 10:13 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Cc:** Otis, Lee L  
**Subject:** Fw: TPs on Issa's Catch-and-Release question

**Importance:** High

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

Will you do a quick read on this? I'm particularly interested in whether the description of their pros guidelines is consistent with what we know given their fast tracks.

I'm told that we need to wrap this up early tomorrow.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Seidel, Rebecca  
**To:** Parmiter, Robert B  
**CC:** Moschella, William; Mercer, Bill (ODAG); Otis, Lee L; Bounds, Ryan W (OLP)  
**Sent:** Tue Apr 04 20:33:04 2006  
**Subject:** FW: TPs on Issa's Catch-and-Release question

Bobby - put these in the prep papers for Member issues tentatively. Lee has asked Bill to OK first. Bill you can reply to this for Bobby letting him know if they are OK?

---

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

See attached.

Ryan W. Bounds



ISSA--

ch-and-Release (AG

Chief of Staff and Senior Counsel  
Office of Legal Policy, DOJ

W: 202/305-4870

M:

F: 202/514-1731

## REP. ISSA: CATCH-AND-RELEASE

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

### Talking Points:

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

### Background:

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

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

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

Drafter: Ryan Bounds, OLP, x54870

**Tenpas, Ronald J (ODAG)**

---

**From:** Otis, Lee L  
**Sent:** Tuesday, April 04, 2006 10:36 PM  
**To:** Mercer, Bill (ODAG); Tenpas, Ronald J (ODAG)  
**Subject:** Re: TPs on Issa's Catch-and-Release question

Fyi, the big thing I remember observing when I looked at their pros guidelines is that they basically aren't doing reentering aliens with substantial drug convictions (which is what one of the cases issa is complaining about is).

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Mercer, Bill (ODAG)  
**To:** Tenpas, Ronald J (ODAG)  
**CC:** Otis, Lee L  
**Sent:** Tue Apr 04 22:13:26 2006  
**Subject:** Fw: TPs on Issa's Catch-and-Release question

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Sent from my BlackBerry Wireless Handheld

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**To:** Parmiter, Robert B  
**CC:** Moschella, William; Mercer, Bill (ODAG); Otis, Lee L; Bounds, Ryan W (OLP)  
**Sent:** Tue Apr 04 20:33:04 2006  
**Subject:** FW: TPs on Issa's Catch-and-Release question

Bobby - put these in the prep papers for Member issues tentatively. Lee has asked Bill to OK first. Bill you can reply to this for Bobby letting him know if they are OK?

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**Sent:** Tuesday, April 04, 2006 8:13 PM  
**To:** Seidel, Rebecca; Otis, Lee L  
**Subject:** TPs on Issa's Catch-and-Release question  
**Importance:** High

See attached.

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

## Tenpas, Ronald J (ODAG)

---

From: Mercer, Bill (USAMT)  
Sent: Tuesday, April 04, 2006 11:03 PM  
To: Mercer, Bill (ODAG); Otis, Lee L  
Cc: Tenpas, Ronald J (ODAG); Elston, Michael (ODAG)  
Subject: Re: TPs on Issa's Catch-and-Release question

Two felonies in the district or two felonies anywhere?

"Strong record" is too strong. I wonder if we shouldn't go for an average of their sentencing over the past 5 years? It is a large number. The problems that I see are (1) the number of 05 cases charged is lower than what the USAO did in 2000 and (2) the number of illegal alien cases in SDCA is substantially lower than the numbers in other SW border districts.

If we had the AG read their pros guidelines as described herein, Issa might take issue with him given his view that recidivists are not being prosecuted in SDCA.

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Sent from my BlackBerry Wireless Handheld

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From: Otis, Lee L <Lee.L.Otis@usdoj.gov>  
To: Mercer, Bill (ODAG) <Bill.Mercer2@usdoj.gov>; Mercer, Bill (USAMT) <BMercer@usa.doj.gov>  
CC: Elston, Michael (ODAG) <Michael.Elston@usdoj.gov>  
Sent: Tue Apr 04 18:27:33 2006  
Subject: FW: TPs on Issa's Catch-and-Release question

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I saw on the matrix that you sent around that there are a number of references to potential communications with the US Atties on this general issue. Wasn't sure who was supposed to be in charge of those but whoever that is should perhaps also get a copy of these.

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See attached.

<<ISSA-- Catch-and-Release (AG Briefing 4-7).doc>>

Ryan W. Bounds  
Chief of Staff and Senior Counsel  
Office of Legal Policy, DOJ  
W: 202/305-4870

M:  
F: 202/514-1731

## Tenpas, Ronald J (ODAG)

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**From:** Otis, Lee L  
**Sent:** Wednesday, April 05, 2006 1:41 AM  
**To:** Mercer, Bill (USAMT); Mercer, Bill (ODAG)  
**Cc:** Tenpas, Ronald J (ODAG); Elston, Michael (ODAG)  
**Subject:** Re: TPs on Issa's Catch-and-Release question

The two felonies in the district business is from Issa's letter. I have no reason to believe it is an accurate description of the southern district's pros guidelines. That said that even if they are accurately described as I believe they are in the background portion of the tps you are right that Issa likely will not be satisfied with them because they have some holes in terms of who they don't pick up.

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Sent from my BlackBerry Wireless Handheld

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**From:** Mercer, Bill (USAMT)  
**To:** Mercer, Bill (ODAG); Otis, Lee L  
**CC:** Tenpas, Ronald J (ODAG); Elston, Michael (ODAG)  
**Sent:** Tue Apr 04 23:02:32 2006  
**Subject:** Re: TPs on Issa's Catch-and-Release question

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Sent from my BlackBerry Wireless Handheld

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**From:** Otis, Lee L <Lee.L.Otis@usdoj.gov>  
**To:** Mercer, Bill (ODAG) <Bill.Mercer2@usdoj.gov>; Mercer, Bill (USAMT) <BMercer@usa.doj.gov>  
**CC:** Elston, Michael (ODAG) <Michael.Elston@usdoj.gov>  
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I saw on the matrix that you sent around that there are a number of references to potential communications with the US Atties on this general issue. Wasn't sure who was supposed to be in charge of those but whoever that is should perhaps also get a copy of these.

I think these need to go to the AG tomorrow morning.

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Sent: Tuesday, April 04, 2006 8:13 PM  
To: Seidel, Rebecca; Otis, Lee L  
Subject: TPs on Issa's Catch-and-Release question  
Importance: High

See attached.

<<ISSA-- Catch-and-Release (AG Briefing 4-7).doc>>

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

## Tenpas, Ronald J (ODAG)

---

**From:** Otis, Lee L  
**Sent:** Wednesday, April 05, 2006 2:34 AM  
**To:** Bounds, Ryan W (OLP); Seidel, Rebecca  
**Cc:** Mercer, Bill (ODAG); Tenpas, Ronald J (ODAG); Elston, Michael (ODAG)  
**Subject:** Fw: Issa talking points

**Attachments:** tmp.htm; ISSA talking points.doc

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Lee\_Otis@msn.com  
**To:** Otis, Lee L  
**Sent:** Wed Apr 05 02:30:56 2006  
**Subject:** Issa talking points



ISSA talking  
points.doc (38 KB...)

Bill has some concerns about asserting that the SC Cal U.S. attorney's office has a strong record in this area, given that the number of cases they do is substantially lower than the numbers in other SW border districts and that the number of 05 cases is lower than what the USAO did there in 2000. Also as you will see from the revision of the background portion of the talking points he thought that Issa was likely to feel that there are some significant holds in the office's prosecution policies. I'm also a little hesitant to tout new laws too much as the solution since Issa could come back and say that we aren't making use of the ones we have, although some of the rewrites of the unlawful reentry and alien smuggling laws that are in H.R. 4437 should actually help by removing some of the obstacles to bringing these cases now.

I attempted a revision that I think addresses these points. Bill had one other suggestion about average sentencings over the past 5 years but I don't know what he was referring to on that and need to track it down in the morning.

## REP. ISSA: CATCH-AND-RELEASE

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

### Talking Points:

- I share your belief in the importance of securing the Southwest border. I applaud the House's passage of H.R. 4437 as an important legislative advance in this critical effort that will give us significant additional tools with which to tackle this problem, as will the comprehensive immigration reform proposals being discussed in the Senate.
- I understand that the Department is in the process of setting up a briefing with you on the particular issues you raise.
- While, for reasons I hope you will understand, it is not appropriate to discuss particular prosecution policies in this setting, I can tell you that I have made clear, and I believe all our U.S. Attorneys recognize, that prosecution of alien smugglers and aliens who reenter the country illegally after having been convicted of serious crimes is one of this Department's top immigration enforcement priorities.
- You should also know that while it faces a formidable challenge in this area, the U.S. Attorney's Office for the Southern District of California, along with the USAOs for just four other districts, prosecuted over two-thirds of the criminal immigration cases nationwide last year.
- More can and must be done, of course, and so the Department is constantly seeking new ways to enhance the effectiveness of our law-enforcement efforts. H.R. 4437 and the comprehensive immigration reform that is now being debated in the Senate should give us many tools to do just that.
- The Department looks forward to meeting with you to discuss this further.

### Background:

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

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

SDCA has prosecution guidelines that call for prosecuting four major categories of aliens with prior convictions who re-enter illegally: (1) violent/major felons (which includes aliens with

**Deleted:** to Congressman Issa of San Diego

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The prosecution guidelines are not public because publicizing what cases the Department does not ordinarily prosecute would be counterproductive to deterrence

Drafter: Ryan Bounds, OLP, x54870

**Tenpas, Ronald J (ODAG)**

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Wednesday, April 05, 2006 9:37 AM  
**To:** Otis, Lee L; Mercer, Bill (USAMT); Mercer, Bill (ODAG)  
**Cc:** Elston, Michael (ODAG)  
**Subject:** RE: TPs on Issa's Catch-and-Release question

Bill/Lee:

Generally I don't see anything in here that conflicts with their fasttrack proposal. Of course, that proposal describes who gets a deal once selected for prosecution; it doesn't really address who simply gets a non-prosecution pass because of falling below the guidelines. There are a couple of allusions in the FT proposal that are consistent though with the four part division noted in the last paragraph, e.g. they note in the FT that those with convictions for prior violent crimes are ineligible.

I agree that "strong" may be too strong. How about "sustained record"

Ron

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**Sent:** Wednesday, April 05, 2006 1:41 AM  
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**To:** Mercer, Bill (ODAG); Otis, Lee L  
**CC:** Tenpas, Ronald J (ODAG); Elston, Michael (ODAG)  
**Sent:** Tue Apr 04 23:02:32 2006  
**Subject:** Re: TPs on Issa's Catch-and-Release question

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**To:** Mercer, Bill (ODAG) <Bill.Mercer2@usdoj.gov>; Mercer, Bill (USAMT) <BMercer@usa.doj.gov>

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Importance: High

See attached.

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

**Tenpas, Ronald J (ODAG)**

---

**From:** Otis, Lee L  
**Sent:** Wednesday, April 05, 2006 9:42 AM  
**To:** Tenpas, Ronald J (ODAG); Mercer, Bill (USAMT); Mercer, Bill (ODAG)  
**Cc:** Elston, Michael (ODAG)  
**Subject:** Re: TPs on Issa's Catch-and-Release question

I revised these to delete the bullet among other things. Sent the revision around 2 am

-----  
Sent from my BlackBerry Wireless Handheld

-----Original Message-----  
**From:** Tenpas, Ronald J (ODAG)  
**To:** Otis, Lee L; Mercer, Bill (USAMT); Mercer, Bill (ODAG)  
**CC:** Elston, Michael (ODAG)  
**Sent:** Wed Apr 05 09:36:45 2006  
**Subject:** RE: TPs on Issa's Catch-and-Release question

Bill/Lee:

Generally I don't see anything in here that conflicts with their fasttrack proposal. Of course, that proposal describes who gets a deal once selected for prosecution; it doesn't really address who simply gets a non-prosecution pass because of falling below the guidelines. There are a couple of allusions in the FT proposal that are consistent though with the four part division noted in the last paragraph, e.g. they note in the FT that those with convictions for prior violent crimes are ineligible.

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Ryan W. Bounds  
Chief of Staff and Senior Counsel  
Office of Legal Policy, DOJ  
W: 202/305-4870  
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**Tenpas, Ronald J (ODAG)**

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**From:** Mercer, Bill (ODAG)  
**Sent:** Wednesday, April 05, 2006 11:44 AM  
**To:** Seidel, Rebecca; Otis, Lee L; Bounds, Ryan W (OLP)  
**Cc:** Tenpas, Ronald J (ODAG); Elston, Michael (ODAG)  
**Subject:** Re: Issa talking points

Let's go w/it.

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**To:** Otis, Lee L; Bounds, Ryan W (OLP)  
**CC:** Mercer, Bill (ODAG); Tenpas, Ronald J (ODAG); Elston, Michael (ODAG)  
**Sent:** Wed Apr 05 10:44:26 2006  
**Subject:** RE: Issa talking points

Not clear from the below as to whether these are final or not?

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**From:** Otis, Lee L  
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**To:** Bounds, Ryan W (OLP); Seidel, Rebecca  
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**Subject:** Fw: Issa talking points

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Sent from my BlackBerry Wireless Handheld

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

**From:** Lee\_Otis@msn.com  
**To:** Otis, Lee L  
**Sent:** Wed Apr 05 02:30:56 2006  
**Subject:** Issa talking points

Bill had some concerns about asserting that the SC Cal U.S. attorney's office has a strong record in this area, given that the number of cases they do is substantially lower than the numbers in other SW border districts and that the number of 05 cases is lower than what the USAO did there in 2000. Also as you will see from the revision of the background portion of the talking points he thought that Issa was likely to feel that there are some significant holds in the office's prosecution policies. I'm also a little hesitant to tout new laws too much as the solution since Issa could come back and say that we aren't making use of the ones we have, although some of the rewrites of the unlawful reentry and alien smuggling laws that are in H.R. 4437 should actually help by removing some of the obstacles to bringing these cases now.

I attempted a revision that I think addresses these points. Bill had one other suggestion about average sentencings over the past 5 years but I don't know what he was referring to on that and need to track it down in the morning.

## Tenpas, Ronald J (ODAG)

---

**From:** Mercer, Bill (ODAG)  
**Sent:** Wednesday, May 03, 2006 12:31 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Re: Pilot Project for Arizona

To streamline, why not circulate the Charlton proposal for comment to the working group and determine if a mtg should be convened based upon feedback.

-----  
Sent from my BlackBerry Wireless Handheld

-----Original Message-----  
**From:** Tenpas, Ronald J (ODAG)  
**To:** Mercer, Bill (ODAG)  
**CC:** Charlton, Paul (USAAZ)  
**Sent:** Wed May 03 12:25:45 2006  
**Subject:** RE: Pilot Project for Arizona

Working on it. Trying to reconvene the working group so that we can get some input on the proposal. Losing Rybicki set us back a bit on this one b/c he had the ODAG institutional knowledge, along with Trono.

Ron

-----Original Message-----  
**From:** Mercer, Bill (ODAG)  
**Sent:** Wednesday, May 03, 2006 10:50 AM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Fw: Pilot Project for Arizona

Any update on this?

-----  
Sent from my BlackBerry Wireless Handheld

-----Original Message-----  
**From:** Charlton, Paul (USAAZ)  
**To:** Mercer, Bill (ODAG); Mercer, Bill (USAMT)  
**Sent:** Wed May 03 09:45:09 2006  
**Subject:** Pilot Project for Arizona

Bill - Any news on our pilot project for taping confessions? Thanks my friend, Paul

**Tenpas, Ronald J (ODAG)**

---

**From:** Mercer, Bill (ODAG)  
**Sent:** Wednesday, May 03, 2006 12:35 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Re: Pilot Project for Arizona

It's FBI but I don't think that they should have a vet. here.

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Tenpas, Ronald J (ODAG)  
**To:** Mercer, Bill (ODAG)  
**Sent:** Wed May 03 12:33:20 2006  
**Subject:** Re: Pilot Project for Arizona

Ok as soon as rybicki tells me who the group is. I took it from what you relayed from dea or fbi. -- can't recall who that we were sure of some strong objection to doing anything in az. But I tke your point on how to keep it moving

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Sent from my BlackBerry Wireless Handheld

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

**From:** Mercer, Bill (ODAG) <Bill.Mercer@SMOJMD.USDOJ.gov>  
**To:** Tenpas, Ronald J (ODAG) <Ronald.J.Tenpas@SMOJMD.USDOJ.gov>  
**Sent:** Wed May 03 12:30:42 2006  
**Subject:** Re: Pilot Project for Arizona

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Sent from my BlackBerry Wireless Handheld

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**Subject:** Fw: Pilot Project for Arizona

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Subject: Pilot Project for Arizona

Bill - Any news on our pilot project for taping confessions? Thanks my friend, Paul

## Tenpas, Ronald J (ODAG)

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Wednesday, May 03, 2006 12:39 PM  
**To:** Mercer, Bill (ODAG)  
**Subject:** Re: Pilot Project for Arizona

Didn't mean to suggest they would. Simply that they get process which your approach insures.

By the way, you're much less trouble when you are here than when you are out at conferences. It gives you way too much free time

-----  
Sent from my BlackBerry WireYess Handheld

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

**From:** Mercer, Bill (ODAG) <Bill.Mercer@SMOJMD.USDOJ.gov>  
**To:** Tenpas, Ronald J (ODAG) <Ronald.J.Tenpas@SMOJMD.USDOJ.gov>  
**Sent:** Wed May 03 12:35:25 2006  
**Subject:** Re: Pilot Project for Arizona

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Sent from my BlackBerry Wireless Handheld

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**From:** Tenpas, Ronald J (ODAG)  
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**Sent:** Wed May 03 12:33:20 2006  
**Subject:** Re: Pilot Project for Arizona

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**Sent:** Wed May 03 12:30:42 2006  
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Subject: Pilot Project for Arizona

Bill - Any news on our pilot project for taping confessions? Thanks my friend, Paul



immigration stuff).

5.

Ron

---

Ronald J. Tenpas  
Associate Deputy Attorney General  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Room 4216  
Washington, D.C. 20530  
(202) 514-3286 / (202) 305-4343 (fax)

**Tenpas, Ronald J (ODAG)**

---

**From:** Elston, Michael (ODAG)  
**Sent:** Saturday, May 13, 2006 9:54 AM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Re: Fast track decisions

He leaves at noon on Thursday and will not be back for the rest of the week, so it may have to be shorter or earlier.

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

**From:** Tenpas, Ronald J (ODAG)  
**To:** Mercer, Bill (ODAG); Elston, Michael (ODAG)  
**Sent:** Sat May 13 09:42:40 2006  
**Subject:** Re: Fast track decisions

It can be done. I'd recommend we get 90 mins with DAG either thurs or friday. That way I can get you two something to look at b/4 we all sit down.

Ron

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Mercer, Bill (ODAG)  
**To:** Tenpas, Ronald J (ODAG); Elston, Michael (ODAG)  
**Sent:** Sat May 13 09:32:09 2006  
**Subject:** Fast track decisions

Ron: will you be ready to make fast track recommendations to the DAG during the upcoming week?

In terms of logistics, I'd like to get this done next week or the following Monday at the latest. I'm out 23-25 and we lose the DAG for two weeks beginning the 26th.

Mike: if the current enforcement push has an impact on your thinking, please tell Ron. While it colors my view a bit, I'd still terminate \_\_\_\_\_ and Western Washington.

Mike: unless Ron says this cannot be done next week, can you set aside 90 minutes for us with the DAG?

-----  
Sent from my BlackBerry Wireless Handheld

**Tenpas, Ronald J (ODAG)**

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Saturday, May 13, 2006 9:58 AM  
**To:** Elston, Michael (ODAG); Mercer, Bill (ODAG)  
**Subject:** Re: Fast track decisions

Ok. I think we can do it in an hour. Can we get time on wednesday?

Ron

-----  
Sent from my BlackBerry Wireless Handheld

-----Original Message-----  
**From:** Elston, Michael (ODAG)  
**To:** Tenpas, Ronald J (ODAG)  
**Sent:** Sat May 13 09:54:29 2006  
**Subject:** Re: Fast track decisions

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**From:** Tenpas, Ronald J (ODAG)  
**To:** Mercer, Bill (ODAG); Elston, Michael (ODAG)  
**Sent:** Sat May 13 09:42:40 2006  
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**To:** Tenpas, Ronald J (ODAG); Elston, Michael (ODAG)  
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Mike: unless Ron says this cannot be done next week, can you set aside 90 minutes for us with the DAG?

-----  
Sent from my BlackBerry Wireless Handheld

## Tenpas, Ronald J (ODAG)

---

From: Otis, Lee L  
Sent: Tuesday, May 23, 2006 8:10 PM  
To: Tenpas, Ronald J (ODAG); Mercer, Bill (ODAG); Elston, Michael (ODAG)  
Subject: FW: Border patrol report /Carol Lam

FYI re: Ron's note about Carol Lam

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

From: Otis, Lee L  
Sent: Tuesday, May 23, 2006 7:22 PM  
To: Fridman, Daniel (ODAG)  
Subject: Border patrol report

I have not seen the underlying report. This is about a statement that the US Attorney's office issued yesterday responding to Issa about this.

Also FYI, looking at the AOUSC data, the New Mexico smuggling prosecution numbers seem to be down a little from 04 to 05, as are the overall immig numbers, although not by very much at all in the case of the latter and the former seem to fluctuate a bit more.

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

From: Smith, Kimberly A  
Sent: Tuesday, May 23, 2006 4:12 PM  
To: Seidel, Rebecca; Roehrkasse, Brian  
Cc: Voris, Natalie (USAE0); Otis, Lee L; Bounds, Ryan W (OLP)  
Subject: RE: Urgent Report (Border Patrol Report-CNN Coverage);

Sounds good. I will tell their office they can send this out.

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

From: Seidel, Rebecca  
Sent: Tuesday, May 23, 2006 4:09 PM  
To: Smith, Kimberly A; Roehrkasse, Brian  
Cc: Voris, Natalie (USAE0); Otis, Lee L; Bounds, Ryan W (OLP)  
Subject: RE: Urgent Report (Border Patrol Report-CNN Coverage);

re attaching stmt USA Lam issued so Ryan and Lee can see.  
While we would have liked to have had heads up before she issued it, I don't see any problems with it.

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

From: Smith, Kimberly A  
Sent: Tuesday, May 23, 2006 3:55 PM  
To: Roehrkasse, Brian; Seidel, Rebecca  
Cc: Voris, Natalie (USAE0)  
Subject: RE: Urgent Report (Border Patrol Report-CNN Coverage);

Correct, the USAO gave it to CNN over the phone last night--it was not an official statement that was blasted out.

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

From: Roehrkasse, Brian  
Sent: Tuesday, May 23, 2006 3:52 PM  
To: Smith, Kimberly A; Seidel, Rebecca  
Cc: Voris, Natalie (USAE0)  
Subject: RE: Urgent Report (Border Patrol Report-CNN Coverage)

They already released it, right? I don't think we can not give them the statement we already released.

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

From: Smith, Kimberly A  
Sent: Tuesday, May 23, 2006 3:51 PM  
To: Seidel, Rebecca; Roehrkasse, Brian  
Cc: Voris, Natalie (USAEO)  
Subject: RE: Urgent Report (Border Patrol Report-CNN Coverage)

Rebecca-

The reporter is calling now wanting to know about the statement. If I don't hear back from OLA by 4:30pm, we are just going to go with the original statement from SBGA.

Thanks,  
Kim

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

From: Seidel, Rebecca  
Sent: Tuesday, May 23, 2006 11:30 AM  
To: Smith, Kimberly A; Roehrkasse, Brian  
Cc: Voris, Natalie (USAEO)  
Subject: Re: Urgent Report (Border Patrol Report-CNN Coverage)

Brian, we should loop in WH press too. I will loop in WH leg.  
I will be back in my office this afternoon, can we wait a little?

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

From: Smith, Kimberly A  
To: Seidel, Rebecca; Roehrkasse, Brian  
CC: Voris, Natalie (USAEO)  
Sent: Tue May 23 11:26:54 2006  
Subject: RE: Urgent Report (Border Patrol Report-CNN Coverage)

While we are on the subject, Federal Times just called a few minutes ago about this same Issa Report. If OLA wants to make revisions to the statement below, we can do that before responding to the FT.

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

From: Seidel, Rebecca  
Sent: Tuesday, May 23, 2006 11:24 AM  
To: Smith, Kimberly A; Roehrkasse, Brian  
Cc: Scolinos, Tasia; Taylor, Jeffrey (OAG); Voris, Natalie (USAEO)  
Subject: Re: Urgent Report (Border Patrol Report-CNN Coverage)

Maybe because they didn't tell u about stmt till after fact?

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

From: Smith, Kimberly A  
To: Seidel, Rebecca; Roehrkasse, Brian  
CC: Scolinos, Tasia; Taylor, Jeffrey (OAG); Voris, Natalie (USAEO)  
Sent: Tue May 23 11:22:50 2006  
Subject: RE: Urgent Report (Border Patrol Report-CNN Coverage)

They contacted OPA last night right after they had sent the statement. I've been working with them this morning to address it. As to why they sent an Urgent, I have no idea.

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

From: Seidel, Rebecca  
Sent: Tuesday, May 23, 2006 11:21 AM  
To: Roehrkasse, Brian; Smith, Kimberly A  
Cc: Scolinos, Tasia; Taylor, Jeffrey (OAG); Voris, Natalie (USAEO)  
Subject: Re: Urgent Report (Border Patrol Report-CNN Coverage)

No one in OLA

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

From: Roehrkasse, Brian  
To: Seidel, Rebecca; Smith, Kimberly A  
CC: Scolinos, Tasia; Taylor, Jeffrey (OAG)  
Sent: Tue May 23 11:17:35 2006  
Subject: FW: Urgent Report (Border Patrol Report-CNN Coverage)

Did you see this? Did SDCA run their statement by anyone here?

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

From: USAEO-Urgent  
Sent: Tuesday, May 23, 2006 11:07 AM  
To: Tenpas, Ronald J (ODAG); Taylor, Jeffrey (OAG); Sierra, Bryan (OFA); Scolinos, Tasia; Sampson, Kyle; Roehrkasse, Brian; Mercer, Bill (ODAG); Goodling, Monica; Elwood, Courtney; Elston, Michael (ODAG); Smith, Kimberly A; Battie, Michael (USAEO); Beeman, Judy (USAEO); Coughlin, Robert; Fisher, Alice; Friedrich, Matthew; Kelly, John (USAEO); Parent, Steve (USAEO); Sabin, Barry; Schools, Scott (USAEO); USAEO-Chron; Voris, Natalie (USAEO)  
Subject: Urgent Report (Border Patrol Report-CNN Coverage)

URGENT REPORT-06-05-0021

TO: THE ATTORNEY GENERAL  
THE DEPUTY ATTORNEY GENERAL

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

DATE: May 23, 2006

CLASSIFICATION: Limited Official Use

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

SYNOPSIS:Yesterday, Congressman Darryl Issa criticized on CNN's "Lou Dobbs Tonight" SDCA's "refusal" to prosecute 100% of all alien smugglers. The USAO-SDCA has learned that the "Border Patrol Report" on which Rep. Issa relies is an unauthorized, altered version of an old report. The USAO-SDCA has issued a written statement to CNN with that information.

DISCUSSION:On Thursday, May 18, 2006, the Associated Press ran a news story prompted by the release of a 2004 "Border Patrol Report" by Congressman Darryl Issa (R-CA). According to Congressman Issa, the report from the El Cajon substation of the Border Patrol (San Diego Sector) concluded that morale was low among Border Patrol agents at the El Cajon station due to the high number of declined prosecutions by our office. The story received national media attention.

On Friday, May 19, 2006, the Chief of the U.S. Border Patrol, San Diego Sector, informed us that the report released by Congressman Issa was actually an altered and unauthorized version of an actual internal intelligence report issued by the El Cajon substation. The original report was labeled "Prosecution of Smugglers" for Fiscal Year 2003; the altered report was labeled "Prosecution of Smugglers (1324) Fiscal Year

2004." The altered 2004 report contained editorial comments and conclusions that were never seen by or authorized by Border Patrol management.

On Monday, May 22, 2006, this office was contacted by CNN and informed that Congressman Issa would be appearing on "Lou Dobbs Tonight" to discuss the "Border Patrol Report." CNN asked our office for a written statement to be shared during the interview. After checking with Border Patrol, San Diego Sector, we submitted the following written statement:

"Representative Issa has been misled. The document he calls a "Border Patrol Report" is actually an old internal Border Patrol document, relating to a single substation, that has been substantially altered and passed off as an official report. Many of the comments in the document to which Representative Issa refers are editorial comments inserted by an unidentified individual, and they were not approved by or ever seen by Border Patrol management."

Many important issues are raised by the problem of illegal immigration. However, we believe that all dialogue and debate should be based on well-informed and accurate data."

We have also advised Representative Issa's office that we believe the Border Patrol report to be an unauthorized and altered version of an old internal report.

In light of previous media interest in this issue, there is a possibility that the disclosure that the report is not genuine could generate substantial media interest. Our statement was read to Representative Issa by Lou Dobbs during his interview which aired at 3:30 PST.

<<UR-06-06-0021SDCAwpd.wpd>>

## Tenpas, Ronald J (ODAG)

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Tuesday, May 23, 2006 8:13 PM  
**To:** Moschella, William; Mercer, Bill (ODAG); Elston, Michael (ODAG)  
**Subject:** RE: Congressman Issa

I don't know. That sounds like it would be in Elston's lane.

Ron

---

**From:** Moschella, William  
**Sent:** Tuesday, May 23, 2006 8:11 PM  
**To:** Tenpas, Ronald J (ODAG); Mercer, Bill (ODAG); Elston, Michael (ODAG)  
**Subject:** RE: Congressman Issa

Do we have the DAG scheduled to meet with the CA delegation?

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Tuesday, May 23, 2006 8:09 PM  
**To:** Moschella, William; Mercer, Bill (ODAG); Fridman, Daniel (ODAG); Otis, Lee L; Elston, Michael (ODAG); Scolinos, Tasia  
**Subject:** Congressman Issa

FYI. Carol Lam, USA Southern California, called me earlier today to discuss matters related to the criticism Congressman Issa has been directing at the District re its practices in prosecuting/not prosecuting alien smuggling. This seemed to be a call prompted, in part, by the stuff that occurred on Lou Dobbs last night. In any event, she wanted to communicate the following:

1. In her view, although the un rebutted criticism is making the Department look bad, she has been sitting quiet rather than attempting to respond publicly by explaining the resource limitations that she maintains affect the office's ability to do more smuggling cases;
2. She is willing to change course if folks think that would be beneficial;
3. She notes that she has never even met with Congressman Issa and would be happy to do so if that is thought useful; and
4. She will do anything else that the DAG would wish, including continuing to stand silent despite the personal criticism to which she thinks she is being subject through these comments.

She acknowledged understanding that it may be the judgment that continued silence is the best option of a set of limited options. I explained to her that, given the larger debate going on related to immigration, we would probably evaluate her observations and her offer in the context of wanting to contribute to the Administration's overall goals with respect to immigration reform.

One way or another, somebody such as myself or PADAG or CoS should probably follow-up with her to confirm our guidance lest any silence be construed as lack of guidance/indifference to her activity.

Ron

---

Ronald J. Tenpas  
Associate Deputy Attorney General  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Room 4216  
Washington, D.C. 20530  
(202) 514-3286 / (202) 305-4343 (fax)

## Tenpas, Ronald J (ODAG)

---

**From:** Elston, Michael (ODAG)  
**Sent:** Tuesday, May 23, 2006 8:45 PM  
**To:** Tenpas, Ronald J (ODAG); Moschella, William; Mercer, Bill (ODAG)  
**Subject:** RE: Congressman Issa

It is not presently on the calendar -- this has been on again. off again due to their inability to get all of their members together.

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Tuesday, May 23, 2006 8:13 PM  
**To:** Moschella, William; Mercer, Bill (ODAG); Elston, Michael (ODAG)  
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2. She is willing to change course if folks think that would be beneficial;
3. She notes that she has never even met with Congressman Issa and would be happy to do so if that is thought useful; and
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One way or another, somebody such as myself or PADAG or CoS should probably follow-up with her to confirm our guidance lest any silence be construed as lack of guidance/indifference to her activity.

Ron

---

Ronald J. Tenpas  
Associate Deputy Attorney General

Department of Justice  
950 Pennsylvania Avenue, N.W.  
Room 4216  
Washington, D.C. 20530  
(202) 514-3286 / (202) 305-4343 (fax)

Tenpas, Ronald J (ODAG)

---

From: Lam, Carol (USACAS)  
Sent: Wednesday, May 24, 2006 1:55 PM  
To: Tenpas, Ronald J (ODAG)  
Subject: Fw: REP. ISSA CRITICIZES U.S. ATTORNEY LAM FOR WITHOLDING INFORMATION ON ALIEN SMUGGLING PROSECUTIONS AND POLICIES

Attachments: tmp.htm; image001.gif; image002.jpg; 5.24.06 LamLetter.pdf



tmp.htm (8 KB)



image001.gif (336 B)



image002.jpg (3 KB)



5.24.06  
LamLetter.pdf (117 KB)

Ron,

For what it's worth, I have never met Congressman Issa.

Carol

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

From: Hartman, Debra (USACAS) <DHartman@usa.doj.gov>  
To: Lam, Carol (USACAS) <CLam@usa.doj.gov>  
CC: Porter, Brenda (USACAS) <BPorter1@usa.doj.gov>  
Sent: Wed May 24 10:25:26 2006  
Subject: FW: REP. ISSA CRITICIZES U.S. ATTORNEY LAM FOR WITHOLDING INFORMATION ON ALIEN SMUGGLING PROSECUTIONS AND POLICIES

<<5.24.06 LamLetter.pdf>> <<image001.gif>> <<image002.jpg>>

If you can't pull this up we can fax it to you. SPC suggests that Brenda send it to David Smith and I would send it to Public Affairs and OLA so that they are aware of it. I will also send it over to David Iglesias' press person so that he can send it to his USA. Brenda is waiting from a call from Judy Beeman regarding the letter from DOJ to Issa.

NEWS FROM:

CONGRESSMAN DARRELL ISSA

Serving California's 49th District

211 Cannon House Office Building, Washington, DC 20515

(202) 225-3906, (202) 225-3303 (fax)

[www.issa.house.gov](http://www.issa.house.gov/) <<http://www.issa.house.gov/>>

For Immediate Release

Contact: Frederick Hill

Wednesday, May 24, 2006  
[frederick.hill@mail.house.gov](mailto:frederick.hill@mail.house.gov)

Email:

REP. ISSA CRITICIZES U.S. ATTORNEY LAM FOR WITHHOLDING INFORMATION ON ALIEN SMUGGLING PROSECUTIONS AND POLICIES

Washington, DC - Rep. Darrell Issa (R-CA), today, sent the following letter to U.S. Attorney for the Southern District of California Carol Lam:

Ms. Carol C. Lam  
United States Attorney  
880 Front Street, Room 6293  
San Diego, California 92101

Dear Ms. Lam:

In response to your comments on the Border Patrol internal memo my office obtained and released, your statement misses the mark and exhibits a willful disregard to the documented 251 incidents in fiscal year 2004 where the Border Patrol at the El Cajon station apprehended smugglers but led to smuggling charges for roughly 6% of the cases. The memo I released contains a specific enforcement number for each of the 251 incidents that you or the Department of Homeland Security can confirm by simply typing the number into a computer database.

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Finally, as the representative of a Congressional district that is greatly impacted by border crimes and as a Member of Congress who sits on the Judiciary Committee, the Intelligence Committee, and the Government Reform Committee that collectively have oversight responsibilities for the Department of Justice and the Department of Homeland Security, your lack of cooperation is hindering the ability of Congress to provide proper oversight over your office and to make informed policy decisions. I am asked to craft and vote on legislative policies that determine your legal authority and the resources you receive and having full and correct information on an issue like the challenges of stopping alien smugglers is essential.

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Sincerely yours,

Darrell Issa

Member of Congress

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Many important issues are raised by the problem of illegal immigration. However, we believe that all dialogue and debate should be based on well-informed and accurate data.

-- 5/22/06 U.S. Attorney Carol Lam

###

Frederick R. Hill

Press Secretary

Rep. Darrell Issa (California 49th)

211 Cannon House Office Building

Washington, D.C. 20515

Phone: 202-225-3906

Fax: 202-225-3303

**DARRELL E. ISSA**  
49TH DISTRICT, CALIFORNIA

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FAX: (202) 225-3303

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FAX: (760) 599-1178  
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(951) 893-2447  
[www.issa.house.gov](http://www.issa.house.gov)



**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-0549

COMMITTEE ON GOVERNMENT REFORM  
SUBCOMMITTEES:  
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COMMITTEE ON  
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SUBCOMMITTEES:  
INT'L TERRORISM & NONPROLIFERATION—VICE-CHAIRMAN  
EUROPE & EMERGING THREATS  
MIDDLE EAST & CENTRAL ASIA

COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEES:  
COURTS, THE INTERNET & INTELLECTUAL PROPERTY  
IMMIGRATION, BORDER SECURITY & CLAIMS  
HOUSE POLICY COMMITTEE

May 24, 2006

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United States Attorney  
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San Diego, California 92101

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Sincerely yours,

A handwritten signature in black ink, appearing to read 'Darrell Issa', written in a cursive style.

Darrell Issa  
Member of Congress

**Tenpas, Ronald J (ODAG)**

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Wednesday, May 24, 2006 2:02 PM  
**To:** Moschella, William; Otis, Lee L; Mercer, Bill (ODAG); Scolinos, Tasia; Fridman, Daniel (ODAG); Elston, Michael (ODAG)  
**Subject:** FW: REP. ISSA CRITICIZES U.S. ATTORNEY LAM FOR WITHOLDING INFORMATION ON ALIEN SMUGGLING PROSECUTIONS AND POLICIES

**Attachments:** tmp.htm; image001.gif; image002.jpg; 5.24.06 LamLetter.pdf



tmp.htm (8 KB)



image001.gif (336 B)



image002.jpg (3 KB)



5.24.06  
LamLetter.pdf (117 KB)

want Carol to do.

Further to my e-mail last night on what we

Ron

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

**From:** Lam, Carol (USACAS)  
**Sent:** Wednesday, May 24, 2006 1:55 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Fw: REP. ISSA CRITICIZES U.S. ATTORNEY LAM FOR WITHOLDING INFORMATION ON ALIEN SMUGGLING PROSECUTIONS AND POLICIES

Ron,

For what it's worth, I have never met Congressman Issa.

Carol

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

**From:** Hartman, Debra (USACAS) <DHartman@usa.doj.gov>  
**To:** Lam, Carol (USACAS) <CLam@usa.doj.gov>  
**CC:** Porter, Brenda (USACAS) <BPorter1@usa.doj.gov>  
**Sent:** Wed May 24 10:25:26 2006  
**Subject:** FW: REP. ISSA CRITICIZES U.S. ATTORNEY LAM FOR WITHOLDING INFORMATION ON ALIEN SMUGGLING PROSECUTIONS AND POLICIES

<<5.24.06 LamLetter.pdf>> <<image001.gif>> <<image002.jpg>>

If you can't pull this up we can fax it to you. SPC suggests that Brenda send it to David Smith and I would send it to Public Affairs and OLA so that they are aware of it. I will also send it over to David Iglesias' press person so that he can send it to his USA. Brenda is waiting from a call from Judy Beeman regarding the letter from DOJ to Issa.

NEWS FROM:

CONGRESSMAN DARRELL ISSA

Serving California's 49th District

211 Cannon House Office Building, Washington, DC 20515

(202) 225-3906, (202) 225-3303 (fax)

www.issa.house.gov <<http://www.issa.house.gov/>>

For Immediate Release

Contact: Frederick Hill

Wednesday, May 24, 2006  
frederick.hill@mail.house.gov

Email:

REP. ISSA CRITICIZES U.S. ATTORNEY LAM FOR WITHHOLDING INFORMATION ON ALIEN SMUGGLING PROSECUTIONS AND POLICIES

Washington, DC - Rep. Darrell Issa (R-CA), today, sent the following letter to U.S. Attorney for the Southern District of California Carol Lam:

Ms. Carol C. Lam  
United States Attorney  
880 Front Street, Room 6293  
San Diego, California 92101

Dear Ms. Lam:

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Phone: 202-225-3906

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Darrell Issa  
Member of Congress

**Tenpas, Ronald J (ODAG)**

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**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Wednesday, May 24, 2006 2:04 PM  
**To:** Lam, Carol (USACAS)  
**Subject:** RE: REP. ISSA CRITICIZES U.S. ATTORNEY LAM FOR WITHOLDING INFORMATION ON ALIEN SMUGGLING PROSECUTIONS AND POLICIES

Carol:

I let folks know last night about your concerns and reiterated today. Folks are hopping a bit right now in relation to the Hill b/c of the search warrant done over the weekend. I'll try to keep folks focused on your inquiry.

Ron

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

**From:** Lam, Carol (USACAS)  
**Sent:** Wednesday, May 24, 2006 1:55 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Fw: REP. ISSA CRITICIZES U.S. ATTORNEY LAM FOR WITHOLDING INFORMATION ON ALIEN SMUGGLING PROSECUTIONS AND POLICIES

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Frederick R. Hill

Press Secretary

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211 Cannon House Office Building

Washington, D.C. 20515

Phone: 202-225-3906

Fax: 202-225-3303

## Tenpas, Ronald J (ODAG)

---

**From:** Charlton, Paul (USAAZ)  
**Sent:** Tuesday, May 30, 2006 1:21 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Arizona Pilot Project

**Attachments:** tmp.htm



tmp.htm (737 B)

Ron,

Bill tells me you will have something out today on this. Thank you very much for working on this. I know how busy you folks are. Would you please cc me on your e-mail? Thanks again,

Paul

## Tenpas, Ronald J (ODAG)

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Tuesday, May 30, 2006 4:48 PM  
**To:** Charlton, Paul (USAAZ)  
**Subject:** RE: Arizona Pilot Project

Will do. My secretary is trying to run down the e-mail list (Eybicka left us and so I've got names but no list) on this so it may be tomorrow. Do you happen to have any old e-mail circulations on this issue? Seems stupid to have to ask but this is one of the problems of ODAG turnover -- no insitutional memory.

Do you care if I circulate the exhibits that were attached to your letter -- the memos that documented problems you had in specific cases?

Ron

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

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**From:** Charlton, Paul (USAAZ)  
**Sent:** Tuesday, May 30, 2006 5:15 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** FW: Working group on recording post-arrest interview/interrogations: Article

**Attachments:** tmp.htm



tmp.htm (20 KB)

Ron - here is the mailing list as I had it from late last year. As for circulating the memo's here's my thought: It would best to circulate this proposal as a fiat accompli, that is, it is going to happen, here is your chance to give input on what the policy would be like for that period of time. It is a test - if it fails - the cynics win - if it succeeds, we demonstrate that the sky will not fall. Circulating my memo might only serve to generate debate again as to whether it is a good idea or not. It is my understanding that this is going to happen, only on a test basis.. Do you agree?

Thanks again,

Paul

>  
> 

---

> **From:** Bartlett, Mark  
> **Sent:** Friday, December 09, 2005 1:52 PM  
> **To:** Rybicki, James E; Hertling, Richard; Wainstein, Kenneth; Howard,  
> Joshua; Sutton, Johnny K.; Rowan, Patrick (ODAG); Wulf, David M.;  
> Finan, Robert (USMS); Harrigan, Thomas M.; Rowley, Raymond G.;  
> valerie.caproni@ic.fbi.gov; kevin.favreau@ic.fbi.gov; Charlton, Paul  
> (USAAZ); Hahn, Paul (USAE0); Kenrick, Brian C.; Jaworski, Thomas J.;  
> O'Keefe, Kevin C.; Earp, Mike (USMS)  
> **Cc:** Elston, Michael (ODAG)  
> **Subject:** RE: Working group on recording post-arrest  
> interview/interrogations: Article  
>  
> Jim  
>  
> Thanks for the Arizona Republic article. I hope that the DAG  
> recognizes this as an important issue and requests that the working  
> group continue with its work. I have had a chance to obtain updated  
> information on statistics I included in my November 15th email and  
> wanted to provide the update to all of you.  
> -- 5 states have passed legislation requiring that custodial  
> interrogations be recorded, at least in some instances. (Illinois,  
> Maine, District of Columbia, New Mexico and Texas)  
> -- 19 states had bills introduced in 2005 requiring the recording  
> of custodial interrogations, at least in some instances.  
> -- 5 states have state supreme court rulings requiring that  
> custodial interrogations be recorded, at least in some instances.  
> (Alaska, Minnesota, Massachusetts, New Jersey and Wisconsin). In  
> addition, 5 other state supreme courts are examining the issue.  
> -- Over 300 law enforcement agencies in 43 states (plus all  
> departments in Alaska and Minnesota) record custodial interrogations.  
>  
>  
> One of the unfortunate aspects of this debate is that it is often  
> times framed as liberals/defense attorneys trying to force their

> agenda on reluctant law enforcement agencies. The result is a gut  
> reaction that anything that group supports, we should oppose. In  
> truth, adopting a standard that encourages recording custodial  
> interrogations would help law enforcement in a number of critical  
> areas.  
> -- Officers would no longer be subjected to unwarranted allegations  
> about abusive interview tactics.  
> -- Officers would conduct more effective interview because they  
> would not have to worry about taking copious notes but instead could  
> focus all of their attention on the defendant, his/her demeanor and  
> the substance of the answers.  
> -- Interviews could be reviewed later in detail to explore new  
> leads and identify inconsistencies that might have been overlooked  
> initially.  
> -- Suppression motions and hearings would drop off dramatically  
> because the evidence as to what occurred would be indisputable, and  
> the few suppression motions that are still filed would be easily  
> resolved. In addition, a recorded confession almost guarantees a  
> guilty plea.  
> -- The public's confidence in law enforcement would increase as  
> courts and the public could hear/see for themselves that officers have  
> nothing to hide.

>  
> There have been a number of arguments raised against recording  
> custodial interrogations. First, it is not practical to record a  
> custodial statement in a fast breaking case where arrests are  
> happening in the field. No one is suggesting that a rule be adopted  
> that all custodial statements at all times under all circumstances  
> must be recorded. A probable cause arrest that leads to a decision to  
> immediately cooperate may not be recorded for a variety of reasons.  
> That, however, does not mean the rule should be we never record  
> custodial interrogations. Second, taping a statement can inhibit some  
> individuals from talking. Once again, there is no suggestion that the  
> rule be that all statements at all times under all circumstances must  
> be recorded. It should be noted, however, that the response from the  
> 300 plus law enforcement agencies that currently do record statements  
> and the results of a formal 1998 study by the International  
> Association of the Chiefs of Police have not found that recording  
> custodial interrogations impacts a suspect's willingness to talk.  
> Moreover, we can anticipate that to the extent recordation becomes the  
> norm, it will become more and more difficult to explain the absence of  
> recordings in particular cases.

>  
> It is beyond debate that an electronically recorded statement provides  
> the "best evidence" as to what a suspect said during a custodial  
> interrogation. Given that, it appears that DOJ should be leading the  
> way to acquire the "best evidence" for federal prosecutions.

>  
> Mark Bartlett  
> FAUSA, WD WA

>  
>  
>  
>  
> -----Original Message-----

> From: Rybicki, James E  
> Sent: Tuesday, December 06, 2005 10:34 AM  
> To: david.wulf@atf.gov; Finan, Robert (USMS); Hertling, Richard;  
> Wainstein, Kenneth; Harrigan, Thomas M.; Howard, Joshua;  
> raymond.rowley@atf.gov; valerie.caproni@ic.fbi.gov;  
> kevin.favreau@ic.fbi.gov; Sutton, Johnny K.; Charlton, Paul (USAAZ);  
> Bartlett, Mark; Rowan, Patrick (ODAG); Hahn, Paul (USAE0); Kenrick,  
> Brian C.; Jaworski, Thomas J.; O'Keefe, Kevin C.; Earp, Mike (USMS)  
> Cc: Elston, Michael (ODAG)  
> Subject: Working group on recording post-arrest  
> interview/interrogations: Article

> FYI...Article from the Arizona Republic.  
>  
>  
> FBI's policy drawing fire  
>  
> Interrogations not taped  
>  
> Dennis Wagner  
> The Arizona Republic  
> Dec. 6, 2005 12:00 AM  
>  
> In the pursuit of criminals, FBI agents across the nation routinely  
> use DNA tests, fingerprints, ballistics, psychological profiling and  
> the world's most advanced forensic methods.  
>  
> But a little-known policy at the Federal Bureau of Investigation keeps  
> investigators from using one of the simplest and most effective tools  
> in law enforcement: the tape recorder.  
>  
> That policy appears in Section 7 of the FBI's "Manual of Investigative  
> Operations and Guidelines": "Use of tape recorders for the purpose of  
> recording the statements of witnesses, suspects and subjects is  
> permissible on a limited, highly selective basis, and only when  
> authorized by the SAC (special agent in charge)."  
>  
> Standard FBI procedure calls for at least two agents to conduct  
> interrogations: one asking questions and the other taking notes. The  
> notes are used later to produce a typed summary known as Form 302.  
>  
> When agents testify months or years down the road, they rely on 302s,  
> and memory. As a result, jurors and judges hear recollections and  
> interpretations, not what was actually said. And the defense lawyer  
> often follows up with a cross-examination designed to impugn the  
> agent's memory, competence or integrity.  
>  
> Critics say the FBI practice leads to botched investigations, lost  
> evidence, unprofessional conduct and damaged credibility for America's  
> justice system.  
>  
> The policy emerged as a problem for defendants, judges and juries  
> during federal trials of Osama bin Laden, Oklahoma City bombing  
> defendant Terry Nichols, TV star Martha Stewart and lesser-known  
> figures.  
>  
> When terrorism suspects were rounded up after the Sept. 11 attacks,  
> their statements were not recorded.  
>  
> When agents conducted a marathon interrogation of Nichols, learning of  
> his involvement with Timothy McVeigh, not a word was retained on tape.  
>  
> Responding to questions about the policy, William David Carter, an FBI  
> spokesman in Washington, D.C., wrote in an e-mail that taping is  
> strictly limited because it "can inhibit full and frank discussion or  
> can end an interview entirely."  
>  
> Yet most other U.S. enforcement agencies leave taping to the  
> discretion of investigators - some even encourage officers to record  
> interrogations - without any problem.  
>  
> Phoenix Police Department policy, for example, instructs  
> violent-crimes detectives to "make every attempt to audio- or  
> video-tape suspect and critical witness interviews in felony  
> investigations."  
>  
> Officers in Tucson, Mesa, Glendale and Scottsdale routinely tape  
> interviews, as do detectives at the Maricopa County Sheriff's Office

> and at the Arizona Department of Public Safety.  
>  
> Carter refused to provide a copy of the entire policy, claiming it is  
> an "internal FBI document." He said he did not know when the rule was  
> instituted or by whom. He did not respond to other detailed questions  
> on the policy.  
>  
> Carter did say that recording interviews may be a "sound enforcement  
> policy" if the subject is comfortable with a tape machine. However, he  
> added, "The FBI believes that it would unduly burden ongoing criminal  
> investigations and impede immediate law-enforcement responses to  
> fast-breaking criminal events to require that all witness statements  
> be recorded."  
>  
>  
>  
> Motive unclear  
>  
>  
>  
> Thomas P. Sullivan, a former U.S. attorney from northern Illinois who  
> has studied the issue for several years, described the FBI practice as  
> "baffling" and "sorely out of date."  
>  
> "I don't get it," said Sullivan, now a defense lawyer. "They have the  
> most sophisticated electronic equipment you can think of in the  
> federal government, and yet they don't use the most simple equipment."  
>  
> In his research for Northwestern University School of Law, Sullivan  
> queried police agencies in 43 states and found that recorded  
> interrogations are a benefit to police and the justice system. He also  
> noticed a clear trend toward taping.  
>  
> "Sooner or later, the federal government will get on board," he said.  
> "I've talked to more than 400 police departments and sheriff's offices  
> where recordings are used. I can't remember anyone who didn't like it."  
>  
> A. Melvin McDonald Jr., a criminal-defense lawyer who once served as  
> the top federal prosecutor in Arizona, referred to the FBI policy as  
> "insane."  
>  
> "It blows my mind trying to think of a rational reason for it,"  
> McDonald said. "They are usually on the cutting edge, and to say,  
> 'We're not going to do this,' just makes no sense. . . . It's  
> Investigations 101. I don't ever question a criminal-defense witness  
> without taping it."  
>  
> Some defenders of the FBI policy suggest that taping and transcribing  
> interviews would become a logistical nightmare and a waste of money  
> for an organization with 11,000 agents.  
>  
> Sullivan said recorded interviews actually save money because they  
> result in more guilty pleas, fewer defense motions to suppress  
> confessions and fewer lawsuits over wrongful prosecution. Moreover, if  
> FBI agents used tape recorders they wouldn't have to double-team their  
> interviews, so staffing costs would be cut in half.  
>  
> Steve Drizen, legal director at Northwestern Law's Center for Wrongful  
> Convictions, offered another possible motive: "The main reason why the  
> FBI does not want to record is that they do not want to let the public  
> or juries see how brutal their psychological interrogation tactics can  
> be."  
>  
> Frederic Whitehurst, an FBI supervisor-turned-whistle-blower, said:  
> "By not having the real data, the evidence of what was actually said,  
> they can control the interpretation, the spin on it. . . . And you

> have no way to tell if they're making a mistake."  
>  
> For those who doubt that FBI agents would forget, leave things out or  
> twist the truth, Whitehurst points to the words of Danny O. Coulson, a  
> high-level administrator at the bureau. In his book, No Heroes: Inside  
> the FBI's Secret Counter-Terror Force, Coulson described how he became  
> the target of a criminal probe after a botched case and agreed to be  
> interviewed only if he could submit a sworn statement as part of the  
> case file.  
>  
> "I had seen too many criminal investigations in which FBI agents  
> conducted interviews and then paraphrased their subject inaccurately  
> because they were unfamiliar with the complicated subject matter or  
> had their own spin on the case already."  
>  
>  
>  
> Pros and cons  
>  
>  
>  
> Jana D. Monroe, special agent in charge for the FBI in Arizona, said  
> she authorizes taping on a case-by-case basis and considers it a  
> useful strategy in some circumstances.  
>  
> Monroe encourages agents to record interviews of juvenile defendants  
> and child-abuse victims in Indian country to document that no coercion  
> or prompting was used.  
>  
> That rationale does not apply to most cases. In sworn testimony, FBI  
> agents routinely find themselves defending the policy, as well as the  
> accuracy of their Form 302 notes and memories.  
>  
> Monroe noted that some U.S. attorneys have begun to press the FBI for  
> a rule change, adding, "I don't know what the future will bring."  
>  
> However, she worried that tape recordings could undermine prosecutions  
> in some cases by revealing lies and psychological ploys that agents  
> sometimes use during interrogations. "That might not look real good to  
> jurors."  
>  
> On the other hand, there is evidence that the FBI's no-taping practice  
> is a turnoff for those charged with rendering verdicts.  
>  
> Early this year, a federal jury in Philadelphia acquitted a banker  
> accused of lying to agents because the only evidence was the agent's  
> scribbled notes and testimony. "We wouldn't have been here if they had  
> a tape recorder," one juror told the Associated Press.  
>  
> The issue also proved troubling in Nichols' 1998 federal trial. Under  
> oath, agents acknowledged that Nichols refused to sign a Miranda form  
> but claimed he waived his rights to an attorney. Defense attorney  
> Ronald Woods challenged that account by Agent Scot Crabtree and  
> demanded to know why investigators failed to tape 9 1/2 hours of  
> questioning with a suspect in the Oklahoma City bombing.  
>  
>  
>  
> Jurors convicted Nichols of conspiracy but found him not guilty of  
> murder at the Alfred P. Murrah Building. Afterward, jury forewoman  
> Niki Deutchman told reporters the lack of recordings was a key  
> weakness in the government's case.  
>  
> Harvey Silverglate, a Boston defense attorney, said he despises the  
> FBI policy because it allows agents to twist statements made by  
> witnesses and suspects but also because it puts the nation at a

> greater risk of terrorism by undermining the bureau's  
> intelligence-gathering mission.  
>  
> "The system is not put together for efficiency or accuracy,"  
> Silverglate said. "It's put together for ease of prosecution. And in  
> an age of terrorism, it actually poses a threat to national security."  
>  
>  
>  
>  
> Taping required  
>  
>  
>  
> Illinois, Maine, New Mexico and Washington, D.C., have adopted  
> statutes that require taping. Supreme court justices in Alaska,  
> Massachusetts, Minnesota, New Jersey and New Hampshire have ordered  
> police to record suspect interrogations.  
>  
> Detectives in Mesa, Scottsdale, Chandler, Peoria and Gilbert record  
> interviews with felony suspects at least half the time.  
>  
> So do their counterparts in Los Angeles, San Diego, San Francisco,  
> Denver, Miami, Portland, Houston and hundreds of other communities.  
>  
> Sullivan, who has surveyed police agencies nationwide, said most have  
> no formal policy, so it's up to investigators. However, he said the  
> taping of interviews is a clear trend nationwide.  
>  
> Neil Nelson, a police commander and interrogations consultant in St.  
> Paul, Minn., said recording leads to better investigations, more  
> crimes solved, enhanced professionalism and less time spent in court.  
>  
> Nelson started using a recorder during the 1980s because he couldn't  
> keep track of suspect statements when his narcotics team busted crack  
> houses. Now, all police in Minnesota are required to tape suspect  
> interviews by court order.  
>  
> "It is the best tool ever forced down our throats," Nelson said.  
> Nelson, Sullivan and others dispute the argument that audio or video  
> recording interferes with investigations or makes defendants clam up.  
>  
> A 1998 study for the International Association of Chiefs of Police  
> reported "little conclusive evidence" that videotaping affected  
> suspects' willingness to talk. Instead, researchers found, "the  
> majority of agencies that videotape found that they were able to get  
> more incriminating information from suspects on tape than they were in  
> traditional interrogations."  
>  
>  
>  
> The law in many states, including Arizona, allows detectives to record  
> interviews without a suspect's permission or knowledge. Even when a  
> tape machine is visible, Nelson said, suspects usually blab away. And  
> in cases when a defendant gets uptight or refuses to speak, agents can  
> simply turn off the device and take notes.  
>  
> Ultimately, Nelson said, recorded interviews shield detectives from  
> allegations of misconduct.  
>  
> "Taping preserves the integrity of the officers and the interrogation  
> process. What you say on tape, you have to be careful. You can't be  
> like Sipowicz on NYPD Blue and expect to have a career in law  
> enforcement."  
>

## Tenpas, Ronald J (ODAG)

---

**From:** Charlton, Paul (USAAZ)  
**Sent:** Tuesday, May 30, 2006 5:41 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** RE: Arizona Pilot Project

Ron - I also understand that this is going to be a very quick turnaround for them (two weeks) - so it may be best to just get their comments on the policy. Thanks again,  
Paul

-----Original Message-----  
**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Tuesday, May 30, 2006 1:48 PM  
**To:** Charlton, Paul (USAAZ)  
**Subject:** RE: Arizona Pilot Project

Will do. My secretary is trying to run down the e-mail list (Rybicki left us and so I've got names but no list) on this so it may be tomorrow. Do you happen to have any old e-mail circulations on this issue? Seems stupid to have to ask but this is one of the problems of ODAG turnover -- no insitutional memory.

Do you care if I circulate the exhibits that were attached to your letter -- the memos that documented problems you had in specific cases?

Ron

-----Original Message-----  
**From:** Charlton, Paul (USAAZ)  
**Sent:** Tuesday, May 30, 2006 1:21 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Arizona Pilot Project

Ron,

Bill tells me you will have something out today on this. Thank you very much for working on this. I know how busy you folks are. Would you please cc me on your e-mail? Thanks again,

Paul

## Tenpas, Ronald J (ODAG)

---

From: Tenpas, Ronald J (ODAG)  
Sent: Tuesday, May 30, 2006 6:04 PM  
To: Charlton, Paul (USAAZ)  
Subject: RE: Arizona Pilot Project

I think that's right. I need to check with Bill to be sure I've got the right read on it.

ron

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

From: Charlton, Paul (USAAZ)  
Sent: Tuesday, May 30, 2006 5:41 PM  
To: Tenpas, Ronald J (ODAG)  
Subject: RE: Arizona Pilot Project

Ron - I also understand that this is going to be a very quick turnaround for them (two weeks) - so it may be best to just get their comments on the policy. Thanks again,  
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To: Tenpas, Ronald J (ODAG)  
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Bill tells me you will have something out today on this. Thank you very much for working on this. I know how busy you folks are. Would you please cc me on your e-mail? Thanks again,

Paul

Wroblewski -

Code Lam

Karen Evans

202 395 ~~3018~~ 3018

Eric Berhardt -

324 2474

Jim Olson -

Mike Garcia -

✓ Krotosky -

715 308 7879

2/30 Sullivan

617 745 3050

✓ Jarrett

4 3365

✓ Wroblewski

4 4730

✓ Siegal

282-9138

DAG000001904

**Tenpas, Ronald J (ODAG)**

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Friday, June 02, 2006 2:55 PM  
**To:** \_Group Listing; Caproni, Valerie; Charlton, Paul (USAAZ); Earp, Mike (USMS); Favreau, Kevin; Finan, Robert (USMS); Hahn, Paul (USAEO); Harrigan, Thomas M.; Hertling, Richard; Howard, Joshua (USANCW); Jaworski, Thomas J.; Kenrick, Brian C.; O'Keefe, Kevin C.; Rowan, Patrick (ODAG); Rowley, Raymond G.; Rybicki, James E; Sutton, Johnny K. (USATXW); Wainstein, Kenneth (USADC); Wulf, David M.  
**Subject:** Taping Confessions  
**Attachments:** Arizona proposal6.pdf; Arizona proposal1.pdf; arizona proposal2.pdf; Arizona proposal3.pdf; Arizona proposal4.pdf; Arizona proposal5.pdf

Colleagues:

I have taken over shepherding this issue in ODAG, along with Senior Counsel Mythili Raman, in the wake of the combined departures of Bob Trono and Jim Rybicki. Attached you will find a proposal from the District of Arizona submitted to the Deputy Attorney General, seeking permission to operate a pilot program in the District of Arizona in which taping of interviews of investigatory targets would become the presumptive norm, although with exceptions for certain circumstances. Please provide any comments you have regarding this proposal to me by close of business, Tuesday, June 13. If there are comments, I would appreciate it if component agencies could provide a single consolidated response per agency/component -- i.e. one for FBI, one for ATF, etc.

Ron



Arizona



Arizona



arizona



Arizona



Arizona



Arizona

proposal6.pdf (236 KB) proposal1.pdf (165 KB) proposal2.pdf (186 KB) proposal3.pdf (158 KB) proposal4.pdf (164 KB) proposal5.pdf (207 KB)

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Ronald J. Tenpas  
Associate Deputy Attorney General  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Room 4216  
Washington, D.C. 20530  
(202) 514-3286 / (202) 305-4343 (fax)

# Exhibit 1



U. S. Department of Justice

*United States Attorney  
District of Arizona*

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

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

February 9, 2006

Michael Nicley, Chief  
Bureau of Customs & Border Protection  
1970 West Ajo Way  
Tucson, AZ 85713

Dear Mr. Nicley:

Beginning March 1, 2006, the Arizona U.S. Attorney's Office will follow a new policy—the "Recording Policy." With limited exceptions this Recording Policy shall require the recording of an investigative target's statements, and will be in effect for all cases submitted to the Arizona U.S. Attorney's Office. In brief, the Recording Policy: (i) sets out a general rule for the recording of an investigative target's statement either overtly or covertly at the discretion of the interviewing agency, (ii) clarifies that the rule does not apply where taping would be unreasonable; and (iii) defines "investigative target". This policy will make all of us more effective in holding those who commit crimes accountable, and it is that belief that spawned this policy. The complete Recording Policy is appended to this letter.

Before turning to the details of the Recording Policy, I want to stress that every effort was made to craft the policy with utmost regard for legitimate concerns against recording custodial interrogations. First, it often is said that it is not practical to record a custodial statement in a fast-breaking case where arrests are happening in the field, or that there might be a variety of reasons for not recording where a probable cause arrest leads to a decision to immediately cooperate. Mindful of those concerns, the Recording Policy does not adopt a rule that all custodial statements at all times in all circumstances must be recorded, and does adopt an express exception precisely to cover situations where obtaining a taped statement would not be practical. Second, some believe that taping a statement can inhibit some individuals from talking. However, there is no hard and fast rule under the Recording Policy

DAG000001907

that all statements in every circumstance must be overtly recorded. Additionally, covert recordings are legal and acceptable.\*

While there might be reasonable concerns about any recording policy, no one can reasonably dispute that there are sound reasons in favor of a taping policy. Here then is a summary of the reasons that I considered in the implementation of the Recording Policy:

**1. Evidentiary Value.** A recorded statement is the best evidence as to what was said. As such, the Recording Policy eliminates the many baseless, but facially plausible, arguments we face from defense counsel that can be made only because there was no recording.

**2. Facilitation of Admissibility.** We spend countless hours in extensive hearings arguing with defense counsel over admissibility of a defendant's statement. The Recording Policy will reduce this time-consuming litigation. Without a tape recording to rebut accusations of improper conduct, defense counsel frequently argues that the defendant's mental health or intoxication at the time of the interview make his statement inadmissible. Defense counsel also allege that a defendant was unable to understand the *Miranda* warnings or the exact nature of the questions due to language barriers. The courts have consistently noted that these issues would rarely exist if the government taped the confession. I agree.

**3. Jury Impact.** A defendant's admission regarding his own criminal conduct is often the single most powerful piece of evidence in a case. We have received negative feedback from jurors regarding the failure of agents to tape confessions. Jurors today are inundated with technology. They get much of their information from television and the internet. They know that electronic devices can be tiny, effective and cheap. Much of the evidence they now see in court has been digitized and is presented to them on flat screen monitors in the jury box. As a result, they question why they are asked to take the word of an agent that a defendant admitted criminal responsibility, when a defendant's statement could have been recorded using a low tech tape recorder.

**4. Enhancing Law Enforcement.** While I have confidence in the credibility of agents who testify about what occurred during an unrecorded confession, we are not the judge who decides whether to admit the confession, nor are we the trial jury assessing whether to convict. We must take steps to enhance our ability to obtain convictions. The recording policy will help law enforcement in a number of critical areas. Agents would no longer be subjected to cross examinations about abusive interview tactics. Agents would

---

\* The possible dampening effect of overt recordings has been addressed by the 300-plus law enforcement agencies that do record statements. The results of a formal 1998 study by the International Association of the Chiefs of Police have not found that recording custodial interrogations impacts a suspect's willingness to talk.

conduct more effective interviews because they would not have to worry about taking copious notes. Instead, agents could focus all of their attention on the defendant, the defendant's demeanor and the substance of the answers. Agents would have an opportunity to review the statement interviews later in detail to explore new leads and to identify inconsistencies that might have been overlooked initially. The public's confidence in law enforcement would increase as courts and the public could hear and see for themselves that officers have nothing to hide.

The Recording Policy strives to take account of all these reasons and concerns. Indeed, having given due regard to the common concerns and reasons for tape recording, implementing the Recording Policy becomes all the more compelling.

We are grateful for the hard work and effort that you and your agents do to combat crime in the District of Arizona. By implementing this policy we will be better able to ensure that the U.S. Attorney's Office holds the individuals who commit those crimes accountable. Thank you for your cooperation in this effort.

Yours,



PAUL K. CHARLTON  
United States Attorney  
District of Arizona

## The Recording Policy

**Rule:** Cases submitted to the United States Attorney's Office for the District of Arizona for prosecution in which an investigative target's statement has been taken, shall include a recording, by either audio or audio and video, of that statement. The recording may take place either surreptitiously or overtly at the discretion of the interviewing agency. The recording shall cover the entirety of the interview to include the advice of Miranda warnings, and any subsequent questioning.

**Exception:** Where a taped statement cannot reasonably be obtained the Recording Policy shall not apply. The reasonableness of any unrecorded statement shall be determined by the AUSA reviewing the case with the written concurrence of his or her supervisor.

**Definition:** Investigative target shall mean any individual interviewed by a law enforcement officer who has reasonable suspicion to believe that the subject of the interview has committed a crime. A witness who is being prepared for testimony is not an investigative target.

# Exhibit 2



## Memorandum

---

**To:** Paul K. Charlton, United States Attorney  
**From:** Kurt M. Altman, AUSA  
**Subject:** United States v. Jesse Moore, et. al. CR03-00764-PHX-JAT  
**Date:** November 21, 2005

---

This memo is intended to provide background information on the above referenced case and trial results influenced by the lack of a tape recorded confession from John Yellowman.

### Indictment:

On July 22, 2003, Jesse Moore, Joseph Fuentes, Henri H. Markov, John Yellowman, Keith Thomas, Mark Case, Nicholas Pablo, and Stephanie Thomas, were indicted in a two count indictment for (1) First degree murder, and (2) Conspiracy to commit first degree murder.

### Facts:

On May 9, 2001, victim Jesus Lopez-Rocha was murdered near the handball courts and track on the FCI Phoenix yard. He was murdered by being stabbed one time in the chest with a prison made shank. The murder was orchestrated by Joseph Fuentes and his sidekick Henri Markov, both 9<sup>th</sup> Street gangsters from the Phoenix area. Both Fuentes and Markov were at FCI Phoenix as part of the disruption of the Fuentes Drug Organization. The victim, Lopez-Rocha, was also a minor player in the Fuentes organization and arrived at FCI Phoenix last. Sources (able to testify) indicate that Joseph Fuentes believed Lopez-Rocha was a snitch and was the reason he and his organization were in prison. According to sources, from the time he arrived at FCI Phoenix, Fuentes was obsessed with retaliating against Lopez-Rocha.

In order to complete the plan to hurt or kill the victim, Fuentes and Markov had to coordinate with the Native American prison population because Lopez-Rocha was Native American, otherwise a race war would ensue in the prison. Fuentes and Markov met numerous times with the Native Americans in order to ensure Lopez-Rocha would be killed. According to a source, initially the Native Americans were simply going to have Lopez-Rocha "rolled up" or check himself into the SHU for his protection. Fuentes then is reported to have offered heroin to the Native Americans for his murder.

The involvement of each defendant in the conspiracy that lead to Lopez-Rocha's murder is as follows:

1. **Joseph Fuentes:** Initiated the plan to kill the victim in retaliation for his perceived disloyalty. Arranged and attended meetings with the Native American "Shot Caller" to solicit Native American involvement in the murder.
2. **Henri Markov:** Attended meetings with Native Americans to arrange for the murder. Obtained, copied and distributed paperwork (believed to be PSI of victim) around the FCI Phoenix yard to

show the Native Americans that Lopez-Rocha was a "snitch" and deserved to be hit.

3. **John Yellowman:** Native American "Shot Caller" who made the final decision to have victim killed. Yellowman tells the FBI that it was his final decision to make, he picked who from the Natives would do the murder, he trained the actual killer on how to do it, and he made the shank that was used.
4. **Keith Thomas:** Leader of the Natives at FCI Phoenix from the Salt River Reservation. (A step down from Yellowman) He was integral in picking the participants and planning the murder. He was transferred out of FCI Phoenix prior to the murder but would write letters to his wife with instructions to inmates still at Phoenix, which she in turn would re-write or "piggyback" into FCI Phoenix as letters from her to defendant Nicholas Pablo.
5. **Stephanie Thomas:** Sent instructions from Keith Thomas from outside the prison to Nicholas Pablo inside the prison. She admit knowing the letters meant someone would get hurt but claims no knowledge of who or how badly.
6. **Nicholas Pablo:** Received instructions from Keith Thomas, through Stephanie, inside FCI Phoenix. Pablo is also purported to have knowledge of the place and time of attack. He is also purported to have been on the yard at the time of attack, with his own shank, to act as a back up in case the attack went bad. He was caught ripping up letters from Stephanie Thomas and trying to flush them immediately after the murder.
7. **Mark Case:** Source indicates he had knowledge of attack and was on the yard as another backup like Pablo. Other evidence linking him to murder is weak.
8. **Jesse Moore:** Moore is identified by a source as the actual murderer. This is confirmed by Yellowman's statement.

#### **Trial:**

Defendant's Fuentes, Moore, Yellowman and Pablo were eventually tried beginning November 30, 2005. Trial ended approximately the second week of February, 2005, with the convictions of Fuentes, Pablo, and Moore. Each was sentenced to life imprisonment and each is currently pending appeal. Yellowman was acquitted at trial. The primary evidence against Yellowman was a confession given to the FBI. This confession was not recorded electronically although it was conducted within the prison where recording devices were available. There was little to no other evidence against Yellowman. The FBI was attacked by the defense on their policy not to tape interviews. It was somewhat effectively attacked by using other FBI policies that are public and showing how they are not always followed. Although many of those policies used to attack the agent were policies not designed for criminal investigations, the defense effectively showed that FBI policy is not always followed in other areas and the answer "it's FBI policy not to tape record," is not sufficient when it comes to a first degree murder investigation where the death penalty is a possibility.

Memo to Paul K. Charlton  
March 3, 2006  
Page - 3

In a post trial conversation with the jury the attorneys were told by jurors that without any other evidence to connect Yellowman with the crime they were unwilling to convict based on a confession that was not recorded. Had it been recorded, the jury felt they would have been better able to assess the credibility of the confession by body language and demeanor of Yellowman had it be video taped; or at the very least listened to the actual words and reactions of the defendant had it only been audio recorded. In my professional opinion, I believe the verdict would have been different had the confession been audio and video recorded.

cc: Joseph Welty

DAG000001914

# Exhibit 3



## Memorandum

---

**To:** Paul Charlton  
**From:** Kimberly M. Hare  
**Subject:** USA v. Jimmie Neztosie, CR-05-934-PCT-FJM  
**Date:** March 3, 2006

---

### CHARGES:

On September 15, 2005, a federal grand jury returned a four count indictment charging the defendant with Kidnapping, Assault with Intent to Commit Murder, Assault with a Dangerous Weapon, and Assault Resulting in Serious Bodily Injury.

If convicted of all counts at trial, the probable guideline range would be 135-168 months.

### FACTS:

In the early morning hours of August 22, 2005, Ida Webster was found on the porch in front of a small travel trailer by Jimmie Neztosie's sister in law, Carol Neztosie. Webster was only wearing a bra and her pants and panties were down to her ankles. Carol observed Webster's face and neck were purple in color, an impression around her neck that appeared to come from a rope, a bump and scrape under her left eye, blood around her mouth, scrapes on her elbow and a lot of dried blood. Carol covered Webster with a blanket and took her inside the trailer. Navajo Police responded to the residence around 7:39 a.m. EMTs on the scene said Webster was breathing and had several bruises to her face.

Jimmie Neztosie, Webster's live-in boyfriend, was also at the home. He told police that he found Webster hanging from a metal pole in a shed near the residence at about 5:15am. He said that he brought her down and dragged her to the travel trailer. Neztosie did not answer when asked why he took so long to report the incident. Neztosie appeared intoxicated and was arrested on the tribal charge of Criminal Nuisance. He was booked into the Tuba City Detention Center.

Webster was taken to Flagstaff Medical Center where she was placed in the Intensive Care Unit and placed on a ventilator. She had injuries to her neck, a left temporal abrasion, numerous bruises to her arms and legs and a cut to the back of her right knee.

Webster was interviewed. She stated that the last thing she remembered was drinking with Jimmie Neztosie and her friends, Stanley Neztosie and Theresa Walker. She remembered Stanley and Theresa leaving and did not remember anything after that. Webster said she attempted suicide eight years ago by taking aspirin, but has not contemplated suicide since that time. Webster is living back with Neztosie's family and is uncooperative with the investigation. After she was released from the hospital, she refused to let SA Karceski take photos of her injuries and she did not want to speak with him.

Theresa Walker, one of the individuals Webster and Neztosie were drinking with that evening, told investigators Webster said "I want to hang myself."

Later that afternoon, Jimmie Neztosie was interviewed by the FBI Agent and Navajo Nation Criminal Investigators. He initially told them that he found Webster around 4:00am in the shack hanging from a rope. He said she was being supported by a rope around her neck which was secured to a ceiling beam in the shack. Neztosie claimed he took her down from the rope, wrapped her in a blanket and took her inside. When confronted with discrepancies in his story, Neztosie changed it. He told the Agent and Investigators that he and Webster got into an argument because he believed Webster had been cheating on him. The argument became heated and he punched Webster in the face with his fists about ten times. He then got on top of Webster and began to choke her with his right hand. He stated that she tried to free herself but eventually went limp and passed out. He said he then got off of her and kicked her in the rib area approximately 3 times. He told the officers that he wanted to make it look like a suicide so he dragged her to the shack, put a rope around her neck and hung her for approximately ten minutes. He then removed the rope and carried her into the trailer wrapped in a blanket. He did not call for help.

**PLEA OFFER:**

We are offering a plea to Assault with Intent to Commit Murder which will likely result in a guideline range of 63-78 months. The reason for the plea offer is because the case rests almost entirely on the unrecorded statement of the defendant.

The victim has attempted suicide in the past and a witness she was with the evening of the incident says the victim said "I want to hang myself." The evidence contradicting suicide is the prior incident of abuse, the victim's state of undress, the defendant's delay in calling the police and the defendant's statement.

At trial the defendant will likely say the victim's clothing came off when he was dragging her back to the trailer and that he did not call the police because he was intoxicated and did not want to get into trouble. Our best evidence is his statement.

The statement was not recorded. The interview lasted about two hours and was documented in a 1½ page 302. The agent did not take notes during the interview, but rather, had the CI take notes. The interview was conducted in English, but the investigators did not ask the defendant if he spoke English. He appeared to answer appropriately, but was halting in his responses. The defendant now claims to need a Navajo interpreter. I also recently learned that a Navajo speaking CI came in part way through the interview and spoke with the defendant in Navajo. The defendant apparently told that CI the same information he told the Agent, but the fact there was an exchange in Navajo is not documented in any report. The defendant was also not asked if he was under the influence of any substances.

These facts leave the Agent and Investigators vulnerable to cross-examination. An audio and/or video recording of the statement would allow the jury to hear from the defendant's own mouth what he did to Ida Webster. The jury would be able to hear and see that the agents did not put words in the defendant's mouth, that the defendant understood English and that he was not intoxicated. They would also know exactly what happened during that entire two hours of the interview, rather than being forced to rely on a 1 ½ page summary of that interview.

In addition, the interview was conducted at the Tuba City Detention Center. This facility could be

Memo to Paul Charlton  
March 3, 2006  
Page - 3

wired with audio and video equipment to allow surreptitious recording of the interviews.

Lastly, I discussed all of these issues with the Agent and CIs. They are all in favor of recording interviews, but are limited by FBI policy.

DAG000001918

# Exhibit 4



## Memorandum

---

To: Paul Charlton, Pat Schneider, Joe Welty  
From: Dyanne C. Greer  
Subject: Acquittal in U.S. v. Roger Harrison  
Date: March 6, 2006

---

As you know, I tried this case last week in Prescott and the defendant was acquitted after a 2 day trial and 4 1/2 hours of deliberation. The defendant was charged with Aggravated Sexual Abuse of a Minor (digital penetration of a five year old, although it was charged as touching of the vaginal area, not through the clothing, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of the defendant). There were several issues in the case, but I believe that had the defendant's statement (an admission, not a confession) been taped, we would have had a better shot at a conviction.

The defendant had gone to junior high with the victim's mother and in February of 2005 they met again at Basha's. They dated for a few weeks, and at the end of February, she had him come home with her for two days. The second day the mother and the defendant left in the evening to go to the laundromat. While they were gone, the 5 year old victim went upstairs, jumped on her 18 year old sister's bed and said "ouch". The sister asked her what was wrong, and the victim was reluctant to say, but eventually told her that Roger had put his finger inside of her. Angry, the sister sent her to bed and waited for Mom and the defendant to come home. When they did, around 11:30 p.m., she told her mother, got mad at the defendant and hit him; he denied the accusation, saying the victim was lying and left the house. Police were called, and the officer spoke to Mom and the 18 year old, but not the victim (which was good) The next day the child was taken to the doctor and the child disclosed fondling. The doctor found her to have a normal exam. During the exam, the doctor learned that the child had made a previous accusation that an uncle had poked her in the privates with a screwdriver (when she was 3). The doctor notified social services, who FAXed the report to the F.B.I. The case was apparently not assigned for a few weeks, and SA Sherry Rice made arrangements for a forensic examination at Safechild in Flagstaff once she was assigned the case. That interview took place on March 29, 2005. During that interview the child reluctantly disclosed digital penetration, saying the defendant put his finger up under her pants and underpants. He also said Don't tell. All of this had to be obtained with leading questions, as the child did not respond to open ended questions, and even then her responses were one and two words.

SA Rice attempted to locate the defendant, and finally went to his home to interview him on May 5, 2005. She was accompanied by a Navajo police officer. The interview took place at a picnic table outside and lasted about an hour. The defendant denied initially, and blamed this 18 year old, who he said bribed the victim to say what she said. SA Rice confronted him, asking if it could have been an accident. He then stated that the victim had been crawling over his shoulders and began to fall. He tried to catch her and his thumb accidentally went under her pants and underpants and penetrated her vagina. SA Rice considered that statement a confession (I don't) and didn't confront him further, ending the interview. Her notes became an issue in the case because the 302 contained quotes, while she failed to put quotes around the defendant's words in her notes when he made the admissions, although she had earlier used quotes around some of his statements.

Neither SA Rice nor the initial officer went to the scene (the initial officer remained outside), and the clothing worn by the victim were never collected. Additionally, the mother continued to have intimate relations with the defendant after the incident.

At trial during opening statement, we found out that the victim's grandfather and uncles had been at the home the evening Mom and defendant went to the laundromat, and that one of the uncles was a convicted sex offender. The doctor testified that the normal exam was consistent with the history of fondling and could be consistent with digital penetration. The victim was very reluctant to testify, and initially disclosed over the clothes fondling (despite intensive pretrial prep and review of her previous statement), which didn't help me. I was able to get her to disclose penetration but only by very leading questions and the use of a teddy bear, as she was unable to say what he did to her. She did identify Roger as the perpetrator. The victim's mother testified about her ongoing relationship and also testified that her older daughter had promised the victim Burger King if she told her what was wrong when the victim made the initial disclosure, although the 18 year old said this did not happen. This, of course, hurt because it matched what the defendant said. SA Rice testified about the investigation and was asked about not taping. She indicated it was FBI policy, but did agree that there is an exception if SAC approval is obtained, which she did not do. She told me that because the interview was outside the tape would not have worked, but I pointed out she could have done the interview in her vehicle (which many agents do if there is no other private place to conduct the interview). She disagreed with that, saying her vehicle is caged. I also pointed out that she didn't even attempt to get approval during the two months she was trying to reach the defendant. She also did not have the defendant write out a statement, but testified she thought about it but didn't do it. (In my opinion, a written statement is not as helpful as the tape: it is too easy to argue that the agent fed the words to the defendant).

The jury asked for transcripts of the victim and SA Rice, which tells me they were determining the credibility of the victim and the reliability of the defendant's untaped statement. Of course, they did not get these, being told to rely on their memory. The jury did not speak to me after the verdict (again, as is always the case in Prescott, at least in my cases).

I have been prosecuting sex abuse cases since 1987, and over the years I have taught law enforcement techniques to enhance the probability of conviction. As you know, I have also done forensic interviews of sexually abused children in my past career as a pediatric social worker and have testified at trials about such interviews. In my experience, one of the most important developments in winning these cases was law enforcement's taping of the defendant's statement. Defense attorneys will not attack a small child directly, especially if the case is the victim's statement vs. the defendant's. Instead, they will attack the law enforcement officer claiming that they put words in the defendant's mouth or skewed their report. The defense's ability to do so was severely hampered once statements were taped. They could no longer argue that the defendant was led into making the statement (and if he was, we knew it from the outset of the case and could judge if we could proceed). The defendant's words and phrasing often helped convict him, and juries could see the defendant's justifications and denials and judge his credibility. In this case, the admission (actually an excuse) negated the specific intent necessary for conviction, but if the jury had heard the defendant's words, they could conceivably have determined how ludicrous the excuse really was, which is more difficult when the agent is testifying to what she heard (especially when quotes were omitted). Of course, we do not know if that was the reason for the acquittal, or if the victim's initial testimony of over the clothes fondling, the presence of a convicted sex offender or Mom's continuing to have contact with the

Memo to Paul Charlton, Pat Schneider, Joe Welty  
March 7, 2006  
Page - 3

defendant played a role.

While I cannot say a taped statement would have guaranteed a conviction, I firmly believe it would have been a factor in our favor when the jury began deliberations. When you have a sex abuse case where credibility of the victim and the defendant is such a key element, especially when there is no physical evidence (most cases), the jury should hear admissions and confessions in the defendant's own words, rather than the agent's.

Please let me know if you need more information.

DAG000001922

# Exhibit 5



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## FBI policy against taping interviews key in acquittal

Federal jury in Philadelphia said lack of recordings was key to their decision

Sunday, February 06, 2005

By David B. Caruso, The Associated Press

PHILADELPHIA -- The FBI loves using bugs and wiretaps to listen in on crime suspects, but its skittishness about recording its own interrogations may have cost it a case.

A federal jury acquitted an investment banker this week of charges that he lied to FBI agents during an interview, in part, jurors said, because the only record of the bond trader's allegedly false statements were the scribbles of an agent with bad handwriting.

During the trial, the agent explained that the FBI, as a matter of policy, bars agents from taping their interviews with witnesses and suspects.

After the verdict, several jurors said they couldn't understand why.

"We wouldn't have been here if they had a tape recorder at that meeting," said jury foreman Harvey Grossman, an electrician.

"We didn't know with certainty exactly what was asked," said juror Patty Acri, a pharmacist. "My advice to the FBI would be to tape their interviews."

The lack of a recording seemed especially glaring because of the nature of the case.

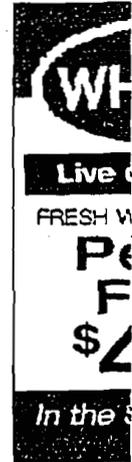
The defendant, Denis Carlson, was one of a number of Philadelphia businessmen questioned by the FBI after he was overheard speaking on a wiretapped phone with Ronald A. White, a lawyer and Democratic fund-raiser who allegedly was trying to buy influence with city officials.

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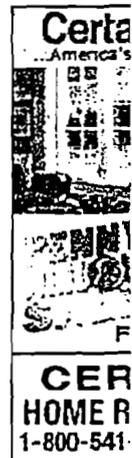
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As part of the probe, agents tapped City Hall telephones, bugged White's office and phones for nine months, and eventually installed a listening device in the office of Philadelphia Mayor John F. Street.

Carlson was charged on the grounds that he made statements to two FBI agents that seemed to contradict things he said on the phone to White and others.

The case against him was largely based on recordings of those secretly intercepted calls.

FBI spokeswoman Jerri Williams defended the bureau's decision not to tape interviews.

The bureau's theory, she said, is that subjects in criminal cases tend to clam up when they know their words are being recorded, either because of nervousness or because they are afraid of being caught in a lie. They also get reluctant to change their stories, which can be a problem if they started with a lie.

"We feel that it could be very chilling, very intimidating," Williams said. "Sometimes, it's a journey for people to get to the truth. We have to work our way in a very gentle, friendly way to get there."

The question -- to tape or not to tape -- has been an issue for a variety of law enforcement agencies.

In 1998, the forewoman of a federal jury called FBI agents "arrogant" for failing to use a tape recorder during a 9 1/2-hour interview with Oklahoma City bombing defendant Terry Nichols. The lack of a recording was one of the factors that left the jury undecided over whether Nichols should get a death sentence.

Civil rights groups have pressured police to videotape interviews routinely so that judges and juries can see interrogation tactics firsthand and don't have to rely on an officer's recollections.

Illinois recently enacted a law requiring officers to tape all interrogations of murder suspects in response to concerns that some had been coerced into confessing to crimes they did not commit.

Places that mandate taping generally require it only when someone is under arrest, not when officers are still in the field, as FBI agents were when they interviewed Carlson.

Williams said requiring thousands of agents to carry pocket recorders with them on assignments would be impractical.

For his part, Carlson said he was glad to be exonerated, and, after a week of listening to himself talk on wiretapped phone lines, wasn't anxious for



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another chance to hear his voice on tape.

"I don't think I ever want to hear a phone ring again," he said.

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U. S. Department of Justice

970765

*United States Attorney  
District of Arizona*

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

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

March 8, 2006

Honorable Paul J. McNulty  
Acting Deputy Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Dear Mr. McNulty:

I write to ask that you allow the District of Arizona to go forward with a pilot program that would, where reasonable, require agents to record confessions. I attach to this request my letter to all Special Agents in Charge in the District of Arizona which provides my reasoning for this policy. (Exhibit 1). That letter sets out the general rule for the recording of confessions, either overtly or covertly at the discretion of the interviewing agency, and clarifies that the rule does not apply where recording would be unreasonable.

For reasons outlined in my letter to the SACs, I feel strongly that we must have such a policy in place. In this letter, I wish to emphasize one additional reason in support of this policy. Furthermore, while my proposed policy is directed at all federal agencies, it is the FBI which has the only nationwide policy that I am aware of which discourages agents from taping confessions. I will, therefore, focus most of this letter on issues dealing with the FBI.

As you know, in this District, the U.S. Attorney has sole jurisdiction for prosecuting major crimes in Indian country. In Arizona we have 21 Indian reservations to whom we owe a trust obligation to provide a fair system of justice. The FBI is the lead agency on most of those reservations. FBI agents are bright, well trained individuals and we are, to a man and woman, grateful for their dedication and hard work. But, because of the FBI's failure to tape confessions, jurors acquit or we must plead down cases, that would otherwise be won, or result in more severe sentences had the FBI recorded the confessions.

DAG000001927

I provide the following cases for you as examples with the AUSAs' supporting memoranda attached as exhibits: In February 2005 a jury acquitted John Yellowman, who ordered the execution of a Jesus Lopez-Rocha, a Native American, at FCI Phoenix. Yellowman confessed to an FBI agent. Consistent with FBI policy, the agent did not record the interview. In a post trial conversation with the jury, jurors informed the prosecutor that they were unwilling to convict Yellowman based on a confession that was not recorded. (Exhibit 2).

On September 15, 2005, a grand jury indicted Jimmie Neztosie, a Navajo, with Kidnaping, Assault with Intent to Commit Murder, Assault with a Dangerous Weapon, and Assault Resulting in Serious Bodily Injury. The charges arose out of Neztosie's assault on his live-in girlfriend, Ida Webster, that sent Ms. Webster to the intensive care unit. In an interview that lasted approximately two hours, Neztosie confessed to severely beating and choking Ms. Webster. The guidelines, if convicted at trial, were 135 to 168 months. Ms. Webster, as often happens, subsequently refused to cooperate with law enforcement. That left the confession as our primary piece of evidence in support of the prosecution. Consistent with FBI policy, the confession was not taped, and the two hour confession was reduced to a one and a half page report written by the FBI agent. The AUSA was forced to plead the case to a reduced charge which lowered the guideline range to 63 to 78 months. (Exhibit 3).

On March 2, 2006, a jury acquitted Roger Harrison of Aggravated Sexual Abuse of a Minor (digital penetration). Harrison had been accused of molesting the five year old child of his girlfriend on the Navajo Reservation. The FBI agent who interviewed Harrison obtained a statement in which Harrison admitted that his thumb may have "accidentally" penetrated the child's vagina. Consistent with FBI policy, the admission was not taped. The AUSA prosecuting the case states that she has been prosecuting sex abuse cases since 1987 and that in her experience, "one of the most important developments in winning these cases was law enforcement's taping of the defendant's statements." Here the AUSA concluded that, "While I cannot say a taped statement would have guaranteed a conviction, I firmly believe it would have been a factor in our favor when the jury began deliberations. When you have a sex abuse case where the credibility of the victim and the defendant is such a key element, especially when there is no physical evidence (most cases), the jury should hear the admissions and confessions in the defendant's own words, rather than the agents." (Exhibit 4).

I note, as well, that we do not seem to be the only District challenged by the FBI's policy, and attach a news article reflecting an acquittal of an investment banker in a Philadelphia trial. The jurors there are reported to have said the acquittal was based, in part, on the FBI's failure to tape the defendant's statement. (Exhibit 5).

Finally, I ask that you consider one other aspect of the FBI policy that has created the appearance of a disparate system of justice in our state. Police agencies in the State of Arizona, from the smallest town to the largest city tape confessions. Thus, a murder or rape committed in Phoenix, and investigated by the Phoenix Police Department will include a video taped confession where the defendant has made a statement. On the other hand, a case involving a confessed murderer or rapist on Navajo, the nation's largest reservation, will only have a summarized report written by an FBI agent. This juxtaposition of policies can lead to the conclusion that both Native American defendants and victims are denied a quality of justice that those off of the reservation routinely receive.

I am grateful to you for your commitment to move on this issue expeditiously. For, as long as the current policy remains on place, we risk additional acquittals, or greatly reduced sentences.

Thank you again for your consideration of this request. Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Paul K. Charlton", with a large, sweeping flourish extending to the left.

PAUL K. CHARLTON  
United States Attorney  
District of Arizona

cc:

Bill Mercer  
Principle Associate Deputy Attorney General  
Office of the Deputy Attorney General

Michael Elston  
Chief of Staff to the Deputy Attorney General  
Office of the Attorney General

DAG000001929

**Tenpas, Ronald J (ODAG)**

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Tuesday, June 06, 2006 8:26 AM  
**To:** Mercer, Bill (ODAG)  
**Subject:** Re: Did our memo to the WG on recording statements of targets/witnesses go out this week?

Memo is out on witness recording. Responses due beginning of next week. Fbi says they already responded to you a couple of weeks ago and will retransmit same memo.

Alice told me last night she'll have reorg chart at today's odag-crim div mtng

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Mercer, Bill (ODAG)  
**To:** Tenpas, Ronald J (ODAG)  
**Sent:** Tue Jun 06 05:35:00 2006  
**Subject:** Re: Did our memo to the WG on recording statements of targets/witnesses go out this week?

What's the stayis of this and Crim Div reorg?

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Mercer, Bill (ODAG)  
**To:** Tenpas, Ronald J (ODAG)  
**Sent:** Wed May 31 23:09:09 2006  
**Subject:** Did our memo to the WG on recording statements of targets/witnesses go out this week?

-----  
Sent from my BlackBerry Wireless Handheld

## Tenpas, Ronald J (ODAG)

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Tuesday, June 06, 2006 9:05 AM  
**To:** Mercer, Bill (ODAG)  
**Subject:** Fw: Taping Confessions

?

-----  
Sent from my BlackBerry Wireless Handheld

-----Original Message-----  
From: Valerie.Caproni@ic.fbi.gov  
To: Tenpas, Ronald J (ODAG)  
CC: Elaine.Lammert@ic.fbi.gov  
Sent: Fri Jun 02 17:55:58 2006  
Subject: RE: Taping Confessions

We had sent a memo to Bill Mercer a few weeks ago responding to the letter from the District of Arizona. We will dust it off and make sure it fully responds to his proposal and then send it to you.

-----Original Message-----  
From: Ronald.Tenpas@usdoj.gov [mailto:Ronald.Tenpas@usdoj.gov]  
Sent: Friday, June 02, 2006 4:00 PM  
To: Caproni, Valerie E.  
Subject: FW: Taping Confessions

Val:

Looks like we had the wrong e-mail address the first time. This bounced back to me. Trying again.

Ron

---

From: Tenpas, Ronald J (ODAG)  
Sent: Friday, June 02, 2006 2:55 PM  
To: Group Listing; Caproni, Valerie; Charlton, Paul (USAAE); Earp, Mike (USMS); Favreau, Kevin; Finan, Robert (USMS); Hahn, Paul (USAE0); Harrigan, Thomas M.; Hertling, Richard; Howard, Joshua (USANCW); Jaworski, Thomas J.; Kenrick, Brian C.; O'Keefe, Kevin C.; Rowan, Patrick (ODAG); Rowley, Raymond G.; Rybicki, James E; Sutton, Johnny K. (USATXW); Wainstein, Kenneth (USADC); Wulf, David M.  
Subject: Taping Confessions

Colleagues:

I have taken over shepherding this issue in ODAG, along with Senior Counsel Mythili Raman, in the wake of the combined departures of Bob Trono and Jim Rybicki. Attached you will find a proposal from the District of Arizona submitted to the Deputy Attorney General, seeking permission to operate a pilot program in the District of Arizona in which taping of interviews of investigatory targets would become the presumptive norm, although with exceptions for certain circumstances. Please provide any comments you have regarding this proposal to me by close of business, Tuesday, June 13. If there are comments, I would appreciate it if component agencies could provide a single consolidated response per agency/component -- i.e. one for FBI, one for ATF, etc.

Ron

-----  
Ronald J. Tenpas  
Associate Deputy Attorney General  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Room 4216  
Washington, D.C. 20530  
(202) 514-3286 / (202) 305-4343 (fax)

**Tenpas, Ronald J (ODAG)**

---

**From:** Harrigan, Thomas M.  
**Sent:** Tuesday, June 13, 2006 9:22 AM  
**To:** Tenpas, Ronald J (ODAG)  
**Cc:** Ciminelli, Michael L.; Landrum, Timothy J; Wing, Timothy D.  
**Subject:** Taping Confessions/DEA's response

**Attachments:** tmp.htm; OE Memo1.doc



tmp.htm (691 B) OE Memo1.doc (62 KB)

Ron:

Please find attached DEA's response. If you have any additional questions, please do not hesitate to call. Thank you.

<<OE Memo1.doc>>



U. S. Department of Justice  
Drug Enforcement Administration

---

*www.dea.gov*

MEMORANDUM

TO: Ronald J. Tenpas  
Associate Deputy Attorney General  
Department of Justice

FROM: Thomas Harrigan  
Chief of Enforcement Operations

SUBJECT: Proposal by United States Attorney's Office, District of Arizona, for Mandatory  
Recording of Interviews

Thank you for the opportunity to comment on behalf of the Drug Enforcement Administration (DEA) on the proposal by the United States Attorney's Office (USAO), District of Arizona, to issue a District policy requiring Federal law enforcement agencies to record defendant interviews, entitled "The Recording Policy." While we understand and appreciate the USAO's concerns in this area we do not believe the proposed policy is necessary or practical.

First, there is no history or pattern of DEA defendant statements being suppressed, or DEA defendants be acquitted in the District of Arizona as a result of DEA's current policy which permits but does not require recording of defendant interviews. Thus, speaking for DEA, we do not believe the proposed policy is necessary.

Second, the proposed policy is overbroad by requiring recording of statements by "investigative targets." "Investigative targets" are defined in the policy as individuals for whom a law enforcement officer has "reasonable suspicion" has committed a crime. By its own terms, the policy is not limited to custodial interrogations, but to any interview of a subject when there is reasonable suspicion of a crime. Reasonable suspicion is the standard for investigative or "Terry" stops, so the policy as currently drafted would require recording of interviews in non-custodial investigative detention situations on the street. This requirement would be impractical if not impossible in the myriad of situations encountered by DEA Special Agents and Task Force Officers, especially in performing interdiction activities.

Third, although the policy contains an exception for cases "[w]here a taped statement cannot be reasonably obtained", there are no criteria or guidance provided on what is "reasonable." Rather, the decision is made on a case-by-case basis after the fact by individual AUSAs and their supervisors. It is inevitable that different AUSAs will interpret and apply the reasonableness

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requirement differently. This lack of a uniform standard will make it difficult if not impossible for Agents to comply with the policy. Also, this is likely to lead to disputes between the USAO and law enforcement agencies, and may also result in attempts to “AUSA-shop” in an effort to direct a given case to AUSAs or supervisors deemed more lenient in applying the exception to the recording requirement.

Fourth, the policy requires recordings of the statements given by investigative targets for all “[c]ases submitted to the United States Attorney’s Office for the District of Arizona for prosecution ....” Thus, the policy suggests that the USAO would not accept for prosecution any case in which the required recording(s) were not made. We do not believe it is proper for the USAO to reject a meritorious prosecution—especially one involving a serious or violent Federal crime—because recordings of investigative targets have not been made. Rather, the USAO should consider all the facts and circumstances in the case, and the available admissible evidence, in deciding whether to accept a case for Federal prosecution.

Fifth, DEA does many multi-district investigations. Adoption of this policy by the District of Arizona would make it very difficult to prosecute cases in the District of Arizona in which investigative activity has been by DEA divisions in other districts. Conversely, there would also be an adverse impact on multi-district cases prosecuted in other districts if defendant interviews are recorded in Arizona but not elsewhere.

Sixth, although this policy should not confer any rights, privileges, or benefits on any criminal defendant seeking to suppress his or her statement to law enforcement, *see United States v. Caceres*, 440 U.S. 741 (1979), it is likely that defendants will raise alleged violations of the USAO policy in seeking to suppress statements in pre-trial hearings, or in seeking acquittal at trial. At a minimum, this risks introducing the policy requirements into criminal trials.

Seventh, the existence of this policy presents civil liability concerns. As an initial matter, the failure to follow the policy, even if reasonable, will be admissible in civil litigation and will inject an issue that would not otherwise be present. This is exacerbated by the lack of any guidelines in the policy as to when exceptions to the recording requirement are reasonable, which is likely to lead to issues in civil cases over whether the failure to record an interview in a given case was “reasonable” under the USAO policy. More importantly, however, the existence of this policy may preclude the United States from benefiting from the discretionary function exception in cases brought pursuant to the Federal Tort Claims Act. At a minimum, however, in all civil cases, alleged violations of the USAO policy would be admissible against the United States and federal employees in civil cases.

In sum, rather than issuing the proposed policy, we believe that the USAO should continue to work cooperatively with management of the various Federal law enforcement agencies to address the issue of recording interviews. Please feel free to contact me if you wish additional input on this issue.

## Tenpas, Ronald J (ODAG)

---

**From:** Roque, Steve (USMS)  
**Sent:** Tuesday, June 13, 2006 12:54 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Cc:** Finan, Robert (USMS); Auerbach, Gerald (USMS)  
**Subject:** FW: Taping Confessions

Mr. Tempas,

The following is the United States Marshals Service's response to the U.S. Attorney's pilot project for taping confessions:

The United States Marshals Service (USMS) does not require mandatory taping of cell statements or "confessions" taken by its federal law enforcement agents. The USMS does not normally solicit confessions to accomplish its investigative mission of tracking and capturing fugitives. Interviews and questioning of sources and witnesses are the principal investigative techniques of the USMS, rather than interrogation seeking confessions. Because the USMS conducts most investigations in the field, rather than in a controlled static, environment, recording devices are generally impractical investigative tools in accomplishing the USMS mission. Occasionally, an individual in USMS custody may confess to some other crime, but that confession is usually spontaneous, and not in response to any question by a USMS officer. Since the confessions made to USMS personnel are usually made spontaneously in vehicles and other remote locations, recording devices are not available.

Please contact me if you have any questions or require additional information. Thank you.

Steve Roque  
United States Marshals Service  
Office of General Counsel  
(202) 307-9046

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

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Friday, June 02, 2006 2:55 PM  
**To:** Caproni, Valerie; Favreau, Kevin; Hertling, Richard; Rowan, Patrick (ODAG); Rybicki, James E; Wulf, David M.; Wainstein, Kenneth (USADC); Sutton, Johnny K. (USATXW); Rowley, Raymond G.; O'Keefe, Kevin C.; Kenrick, Brian C.; Jaworski, Thomas J.; Howard, Joshua (USANCW); Thomas.M.Harrigan@usdoj.gov; Hahn, Paul (USAEO); Finan, Robert (USMS); Earp, Mike (USMS); Charlton, Paul (USAA2); \_Group.Listing@usdoj.gov  
**Subject:** Taping Confessions

Colleagues:

I have taken over shepherding this issue in ODAG, along with Senior Counsel Mythili Raman, in the wake of the combined departures of Bob Trono and Jim Rybicki. Attached you will find a proposal from the District of Arizona submitted to the Deputy Attorney General, seeking permission to operate a pilot program in the District of Arizona in which taping of interviews of investigatory targets would become the presumptive norm, although with exceptions for certain circumstances. Please provide any comments you have regarding this proposal to me by close of business, Tuesday, June 13. If there are comments, I would appreciate it if component agencies could provide a single consolidated response per agency/component -- i.e. one for FBI, one for ATF, etc.

Ron

<<Arizona proposal6.pdf>> <<Arizona proposall.pdf>> <<arizona  
proposal2.pdf>> <<Arizona proposal3.pdf>> <<Arizona proposal4.pdf>>  
<<Arizona proposal5.pdf>>

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Ronald J. Tenpas  
Associate Deputy Attorney General  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Room 4216  
Washington, D.C. 20530  
(202) 514-3286 / (202) 305-4343 (fax)

**Tenpas, Ronald J (ODAG)**

---

**From:** Roque, Steve (USMS)  
**Sent:** Tuesday, June 13, 2006 2:05 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Taping Confessions - correction

**Attachments:** tmp.htm



tmp.htm (2 KB)

Mr. Tenpas,

My earlier e-mail contained a typo in the response. Here is the correct response:

The United States Marshals Service (USMS) does not require mandatory taping of all statements or "confessions" taken by its federal law enforcement agents. The USMS does not normally solicit confessions to accomplish its investigative mission of tracking and capturing fugitives. Interviews and questioning of sources and witnesses are the principal investigative techniques of the USMS, rather than interrogation seeking confessions. Because the USMS conducts most investigations in the field, rather than in a controlled static, environment, recording devices are generally impractical investigative tools in accomplishing the USMS mission. Occasionally, an individual in USMS custody may confess to some other crime, but that confession is usually spontaneous, and not in response to any question by a USMS officer. Since the confessions made to USMS personnel are usually made spontaneously in vehicles and other remote locations, recording devices are not available.

Sorry for the confusion.

Steve Roque  
United States Marshals Service  
Office of General Counsel  
(202) 307-9046

## Tenpas, Ronald J (ODAG)

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**From:** Murphy, Rich (USAIAN)  
**Sent:** Tuesday, June 13, 2006 6:22 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Cc:** Hahn, Paul (USAEO)  
**Subject:** RE: Taping Confessions

**Attachments:** tmp.htm



tmp.htm (6 KB)

Ron --

Paul forwarded your e-mail to me and I circulated it to the Criminal Chiefs Working Group for response.

The Criminal Chiefs that replied (about 6) were unanimously in favor of Arizona's proposal.

Our group has met with the FBI within the past year on this issue. I think it is safe to say that there is strong sentiment within the group, and among criminal chiefs nationally, that there should be much wider, if not regular, use of recording equipment to document confessions and certain witness interviews.

I received no specific substantive comments to the Arizona proposal.

Best regards ---

Rich Murphy

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**From:** Hahn, Paul (USAEO)  
**Sent:** Friday, June 02, 2006 1:59 PM  
**To:** Murphy, Rich (USAIAN)  
**Subject:** FW: Taping Confessions

FYI. Comments are due by COB, Tuesday June 13. Please send any comments by Monday, June 12, as Ron wants coordinated responses. Have a great weekend.

Paul

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**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Friday, June 02, 2006 2:55 PM  
**To:** Caproni, Valerie; Favreau, Kevin; Hertling, Richard; Rowan, Patrick (ODAG); Rybicki, James E; Wulf, David M.; Wainstein, Kenneth (USADC); Sutton, Johnny K. (USATXW); Rowley, Raymond G.; O'Keefe, Kevin C.; Kenrick, Brian C.; Jaworski, Thomas J.; Howard, Joshua (USANCW); Harrigan, Thomas M.; Hahn, Paul (USAEO); Finan, Robert (USMS); Earp, Mike (USMS); Charlton, Paul (USAAZ); \_Group Listing  
**Subject:** Taping Confessions

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Ron

<<Arizona proposal6.pdf>> <<Arizona proposal1.pdf>> <<Arizona proposal2.pdf>> <<Arizona proposal3.pdf>> <<Arizona proposal4.pdf>> <<Arizona proposal5.pdf>>

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Washington, D.C. 20530  
(202) 514-3286 / (202) 305-4343 (fax)

**Tenpas, Ronald J (ODAG)**

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**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Wednesday, June 14, 2006 6:51 PM  
**To:** Mercer, Bill (ODAG)  
**Subject:** RE: Taping Confessions

Fbi sent something over in hard copy. Marshals also. I think that's it at this point but need to double-check my e-mails.

Ron

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

**From:** Mercer, Bill (ODAG)  
**Sent:** Wednesday, June 14, 2006 6:36 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Re: Taping Confessions

Still haven't seen it.

Has the deadline for comments passed? If so, who have we heard from?

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Tenpas, Ronald J (ODAG)  
**To:** Mercer, Bill (ODAG)  
**Sent:** Tue Jun 06 09:05:02 2006  
**Subject:** Fw: Taping Confessions

?

-----  
Sent from my BlackBerry Wireless Handheld

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

**From:** Valerie.Caproni@ic.fbi.gov  
**To:** Tenpas, Ronald J (ODAG)  
**CC:** Elaine.Lammert@ic.fbi.gov  
**Sent:** Fri Jun 02 17:55:58 2006  
**Subject:** RE: Taping Confessions

We had sent a memo to Bill Mercer a few weeks ago responding to the letter from the District of Arizona. We will dust it off and make sure it fully responds to his proposal and then send it to you.

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

**From:** Ronald.Tenpas@usdoj.gov [mailto:Ronald.Tenpas@usdoj.gov]  
**Sent:** Friday, June 02, 2006 4:00 PM  
**To:** Caproni, Valerie E.  
**Subject:** FW: Taping Confessions

Val:

Looks like we had the wrong e-mail address the first time. This bounced back to me. Trying again.

Ron

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Friday, June 02, 2006 2:55 PM

To: Group Listing; Caproni, Valerie; Charlton, Paul (USAAE); Earg, Mike (USMS); Favreau, Kevin; Finan, Robert (USMS); Hahn, Paul (USAEO); Harrigan, Thomas M.; Hertling, Richard; Howard, Joshua (USANCW); Jaworski, Thomas J.; Kenrick, Brian C.; O'Keefe, Kevin C.; Rowan, Patrick (ODAG); Rowley, Raymond G.; Rybicki, James E; Sutton, Johnny K. (USATXW); Wainstein, Kenneth (USADC); Wulf, David M.  
Subject: Taping Confessions

Colleagues:

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Ron

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950 Pennsylvania Avenue, N.W.  
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Washington, D.C. 20530  
(202) 514-3286 / (202) 305-4343 (fax)

**Tenpas, Ronald J (ODAG)**

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Subject: Fw: Taping Confessions

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From: Valerie.Caproni@ic.fbi.gov  
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Subject: FW: Taping Confessions

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**Tenpas, Ronald J (ODAG)**

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Thursday, June 15, 2006 9:24 AM  
**To:** Mercer, Bill (ODAG)  
**Cc:** Raman, Mythili (ODAG)  
**Subject:** RE: Taping Confessions

Deadline has passed -- all components -- FBI, DEA, ATF, Marshals -- plus Trial Chiefs have weighed in. Mythili is summarizing responses for your and DAG review. She knows this is an expedite to try and close out before your departure.

Ron

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**Sent:** Wednesday, June 14, 2006 6:36 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Re: Taping Confessions

Still haven't seen it.

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Sent from my BlackBerry Wireless Handheld

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**From:** Tenpas, Ronald J (ODAG)  
**To:** Mercer, Bill (ODAG)  
**Sent:** Tue Jun 06 09:05:02 2006  
**Subject:** Fw: Taping Confessions

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Sent from my BlackBerry Wireless Handheld

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**From:** Valerie.Caproni@ic.fbi.gov  
**To:** Tenpas, Ronald J (ODAG)  
**CC:** Elaine.Lammert@ic.fbi.gov  
**Sent:** Fri Jun 02 17:55:58 2006  
**Subject:** RE: Taping Confessions

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**From:** Ronald.Tenpas@usdoj.gov [mailto:Ronald.Tenpas@usdoj.gov]  
**Sent:** Friday, June 02, 2006 4:00 PM  
**To:** Caproni, Valerie E.  
**Subject:** FW: Taping Confessions

Val:

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Ron

From: Tenpas, Ronald J (ODAG)  
Sent: Friday, June 02, 2006 2:55 PM  
To: Group Listing; Caproni, Valerie; Charlton, Paul (USAAE); Earp, Mike (USMS); Favreau, Kevin; Finan, Robert (USMS); Hahn, Paul (USAE0); Harrigan, Thomas M.; Hertling, Richard; Howard, Joshua (USANPW); Jaworski, Thomas J.; Kenrick, Brian C.; O'Keefe, Kevin J.; Pawan, Patrick (ODAG); Rowley, Raymond G.; Rybicki, James E; Suttan, Johnny F. (USATXW); Wainstein, Kenneth (USADC); Wolf, David M.  
Subject: Taping Confessions

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**Tenpas, Ronald J (ODAG)**

---

**From:** Mercer, Bill (ODAG)  
**Sent:** Thursday, June 15, 2006 9:33 AM  
**To:** Tenpas, Ronald J (ODAG)  
**Cc:** Raman, Mythili (ODAG)  
**Subject:** Re: Taping Confessions

Many thanks.

-----  
Sent from my BlackBerry Wireless Handheld

-----Original Message-----  
**From:** Tenpas, Ronald J (ODAG)  
**To:** Mercer, Bill (ODAG)  
**CC:** Raman, Mythili (ODAG)  
**Sent:** Thu Jun 15 09:23:48 2006  
**Subject:** RE: Taping Confessions

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**Sent:** Wednesday, June 14, 2006 6:36 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Re: Taping Confessions

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**From:** Tenpas, Ronald J (ODAG)  
**To:** Mercer, Bill (ODAG)  
**Sent:** Tue Jun 06 09:05:02 2006  
**Subject:** Fw: Taping Confessions

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Sent from my BlackBerry Wireless Handheld

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**From:** Valerie.Caproni@ic.fbi.gov  
**To:** Tenpas, Ronald J (ODAG)  
**CC:** Elaine.Lammert@ic.fbi.gov  
**Sent:** Fri Jun 02 17:55:58 2006  
**Subject:** RE: Taping Confessions

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

From: Ronald.Tenpas@usdoj.gov [mailto:Ronald.Tenpas@usdoj.gov]  
Sent: Friday, June 02, 2006 4:00 PM  
To: Caproni, Valerie E.  
Subject: FW: Taping Confessions

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Sent: Friday, June 02, 2006 2:55 PM  
To: Group Listing; Caproni, Valerie; Charlton, Paul (USAAC); Earp, Mike (USMS); Favreau, Kevin; Finan, Robert (USMS); Hahn, Paul (USAE0); Harrigan, Thomas M.; Hertling, Richard; Howard, Joshua (USANCW); Jaworski, Thomas J.; Kenrick, Brian C.; O'Keefe, Kevin C.; Rowan, Patrick (ODAG); Rowley, Raymond G.; Rybicki, James E; Sutton, Johnny K. (USATXW); Wainstein, Kenneth (USADC); Wulf, David M.  
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Washington, D.C. 20530  
(202) 514-3286 / (202) 305-4343 (fax)

**Tenpas, Ronald J (ODAG)**

---

**From:** Raman, Mythili (ODAG)  
**Sent:** Thursday, June 15, 2006 10:15 AM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** RE: Taping Confessions

When is Bill's departure?

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

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Thursday, June 15, 2006 9:24 AM  
**To:** Mercer, Bill (ODAG)  
**Cc:** Raman, Mythili (ODAG)  
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**CC:** Elaine.Lammert@ic.fbi.gov  
**Sent:** Fri Jun 02 17:55:58 2006  
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**Sent:** Friday, June 02, 2006 4:00 PM  
**To:** Caproni, Valerie E.  
**Subject:** FW: Taping Confessions

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To: Group Listing; Caproni, Valerie; Charlton, Paul (USAAC); Eax, Mike (USMS); Favreau, Kevin; Finan, Robert (USMS); Hahn, Paul (USAEC); Harrigan, Thomas M.; Hertling, Richard; Howard, Joshua (USANCW); Jaworski, Thomas J.; Kenrick, Brian C.; O'Keefe, Kevin D.; Rowan, Patrick (ODAG); Rowley, Raymond G.; Rybicki, James E; Sutton, Johnny K. (USATXW); Wainstein, Kenneth (USADC); Wulf, David M.  
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Washington, D.C. 20530  
(202) 514-3286 / (202) 305-4343 (fax)

## Tenpas, Ronald J (ODAG)

---

From: Charlton, Paul (USAAZ)  
Sent: Thursday, June 15, 2006 1:42 PM  
To: Tenpas, Ronald J (ODAG)  
Subject: RE: Taping Confessions

Attachments: tmp.htm



tmp.htm (3 KB)

Paul Ron - Any responses to date? Are we cleared to take the next step here?

---

From: Tenpas, Ronald J (ODAG)  
Sent: Friday, June 02, 2006 11:55 AM  
To: Caproni, Valerie; Favreau, Kevin; Hertling, Richard; Rowan, Patrick (ODAG); Rybicki, James E; Wulf, David M.; Wainstein, Kenneth (USADC); Sutton, Johnny K. (USATXW); Rowley, Raymond G.; O'Keefe, Kevin C.; Kenrick, Brian C.; Jaworski, Thomas J.; Howard, Joshua (USANCW); Harrigan, Thomas M.; Hahn, Paul (USAE0); Finan, Robert (USMS); Earp, Mike (USMS); Charlton, Paul (USAAZ); \_Group Listing  
Subject: Taping Confessions

Colleagues:

I have taken over shepherding this issue in ODAG, along with Senior Counsel Mythili Raman, in the wake of the combined departures of Bob Trono and Jim Rybicki. Attached you will find a proposal from the District of Arizona submitted to the Deputy Attorney General, seeking permission to operate a pilot program in the District of Arizona in which taping of interviews of investigatory targets would become the presumptive norm, although with exceptions for certain circumstances. Please provide any comments you have regarding this proposal to me by close of business, Tuesday, June 13. If there are comments, I would appreciate it if component agencies could provide a single consolidated response per agency/component -- i.e. one for FBI, one for ATF, etc.

Ron

<<Arizona proposal6.pdf>> <<Arizona proposal1.pdf>> <<Arizona proposal2.pdf>> <<Arizona proposal3.pdf>> <<Arizona proposal4.pdf>> <<Arizona proposal5.pdf>>

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Ronald J. Tenpas  
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Room 4216  
Washington, D.C. 20530  
(202) 514-3286 / (202) 305-4343 (fax)

## Tenpas, Ronald J (ODAG)

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**From:** Raman, Mythili (ODAG)  
**Sent:** Friday, June 16, 2006 4:22 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** RE: Recording Confessions memo

**Attachments:** summary memo.wpd

I've attached the draft for your review/edits. For the sake of full disclosure, my view on this issue really springs from my own experiences as a prosecutor -- i.e., although I have generally not liked recorded statements in my cases, I have had several cases in which the agents and I decided to record a post-arrest statement based on the unique circumstances. That's why I think it should be left to the discretion of each agent without the Dept weighing in on whether recording is presumptively good or presumptively bad. Welcome any edits/changes/thoughts and slashing of extra words.



summary  
memo.wpd (28 KB)

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**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Friday, June 16, 2006 3:38 PM  
**To:** Raman, Mythili (ODAG)  
**Subject:** RE: Recording Confessions memo

Yes, let me see it (not b/c you come out differently but b/c maybe I will have a useful thought or two).

Ron

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**From:** Raman, Mythili (ODAG)  
**Sent:** Friday, June 16, 2006 2:59 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Recording Confessions memo

Do you want to take a look before I send to Bill? I should be done with it soon. I wanted to flag this for you, bc I come out differently than you probably do on the recommendation re whether to institute the Arizona pilot program

On March 8, 2006, Paul Charlton, United States Attorney for the District of Arizona, requested the Department's permission to institute a pilot program that would require federal investigative agencies in the District of Arizona to record confessions except where a recording cannot be "reasonably obtained." As noted below, the investigative agencies that have been asked for their input on this proposal – FBI, DEA, ATF and USMS – are unanimously opposed to the implementation of a recording policy, while the Criminal Chiefs Working Group strongly favors the pilot program. Because the practicality and wisdom of recording confessions varies with every investigation, I recommend against instituting a pilot program that would create a presumption that confessions should be recorded.

## **I. The USAO's Proposal to Implement a Pilot Program**

### **A. The "Recording Policy"**

The recording policy proposed by the U.S. Attorney's Office for the District of Arizona provides as follows:

Cases submitted to the United States Attorney's Office for the District of Arizona for prosecution in which an investigative target's statement has been taken, *shall* include a recording, by either audio or audio and video, of that statement. The recording may take place either surreptitiously or overtly at the discretion of the interviewing agency. The recording *shall* cover the entirety of the interview to include the advice of Miranda warnings, and any subsequent questioning.... *Where a taped statement cannot reasonably be obtained the Recording Policy shall not apply.* The reasonableness of any unrecorded statement shall be determined by the AUSA reviewing the case with the written concurrence of his or her supervisor.

(emphasis added). An "investigative target" is defined by the USAO as "any individual interviewed by a law enforcement officer who has reasonable suspicion to believe that the subject of the interview has committed a crime."

Despite the mandatory language of the policy, Paul Charlton, in a letter to the investigative agencies in Arizona, emphasized that the policy "does not adopt a rule that all custodial statements at all times in all circumstances must be recorded, and does adopt an express exception precisely to cover situations where obtaining a taped statement would not be practical." Furthermore, he emphasized that "there is no hard and fast rule under the Recording Policy that all statements in every circumstance must be overtly recorded." He did not, however, identify any specific examples of what he viewed to be exceptions to the policy.

### **B. The USAO's Stated Reasons for Implementing the Pilot Program**

In requesting that the pilot program be permitted to go forward in the District of Arizona, USA Charlton has thoughtfully articulated a number of factors favoring such a policy, including that (1) a recorded statement is the best evidence of what was said; (2) recordings would facilitate the

admission of any statements and would save the government time-consuming pretrial litigation; (3) recorded statements have a powerful impact on juries and are particularly important given that jurors are well aware that electronic devices can be tiny, effective and cheap; and (4) recording confessions would enhance the government's ability to obtain convictions, would ensure that agents not be subject to unfair attack, would relieve agents of the need to take notes, thereby allowing them to conduct more effective interviews, would allow agents to review the taped statements to look for additional clues and leads, and would raise the public's confidence in law enforcement. He additionally noted that the U.S. Attorney has sole jurisdiction for prosecuting major crimes in Indian country, and because local police agencies in Arizona routinely tape confessions, the failure of the FBI to record confessions – which, in his view, resulted in acquittals or less than desirable pleas in at least three different cases prosecuted by his office – have created an unfair disparity between the way that crime is treated in the Native American community and all other communities in Arizona.

## **II. Opposition to Proposed Recording Policy by Investigative Agencies**

With the exception of the Criminal Chiefs Working Group, which expressed a strong sentiment that there should be wider, if not regular, use of recording equipment to document confessions and certain witness interviews, all other agencies whose input was sought uniformly oppose the proposed recording policy. (The Criminal Chiefs Working Group did not articulate any reasons for its position beyond the reasons stated by Paul Charlton and did not suggest any substantive changes to the Arizona policy.) Although some of the investigative agencies' criticisms and concerns are focused on Arizona's particular proposal, most of the criticisms concern the implementation of *any* one-size-fits-all recording policy.

### **A. FBI**

Under the FBI's current policy, agents may not electronically record confessions or interviews, openly or surreptitiously, unless authorized by the Special Agent in Charge ("SAC"). In reaffirming that policy in a memorandum issued to all field offices on March 23, 2003, the FBI noted that (1) the presence of recording equipment might interfere with and undermine a successful "rapport-building interviewing technique"; (2) FBI agents have only faced occasional, and rarely successful, challenges to their testimony; (3) "perfectly lawful and acceptable interviewing techniques do not always come across in recorded fashion to law persons as a proper means of obtaining information from defendants"; (4) the need for logistical and transcription support would be overwhelming if all FBI offices were required to record most confessions and statements; and (5) a mandatory recording policy would create obstacles to the admissibility of lawfully obtained statements which, through inadvertence or circumstances beyond the control of the interviewing agents, could not be recorded. Despite the presumption in the FBI policy that most confessions are not to be recorded, the policy also expressly anticipates that recording would be prudent in some situations, and accordingly gives each SAC the authority and flexibility to permit recording if she or he deems it advisable.

The FBI opposes Arizona's proposed recording policy primarily because the existing FBI policy, in its view, already gives SACs flexibility to authorize the recording of statements, as evidenced by the FBI Phoenix Division's internal policy of recording interviews of child sex victims and by its decision in many cases (including in Indian country cases), to record statements of targets

or defendants. The FBI, in opposing the recording policy, also takes issue with Paul Charlton's description of three failed prosecutions that the USAO attributed to the FBI's failure to record a confession; in each of those three instances, the FBI points out several other factors that contributed to the less than desirable results. More significantly, the FBI contends that the vast majority of Indian country cases result in convictions.

## **B. DEA**

The DEA's current policy is to permit, but not require, the recording of defendant interviews. In voicing its strong opposition to the proposed pilot program, the DEA describes that the proposal is neither necessary nor practical. Among other things, the DEA notes that there is no history or pattern of the DEA's recording policy resulting in the suppression of defendants' statements or acquittals. Additionally, the DEA notes that given the number of multi-district investigations that it and other agencies conduct, the adoption of a recording policy by one district would make it extremely difficult for agents operating in other divisions to conduct multi-district investigations that involve the district that requires recording. Moreover, the DEA, like the FBI, notes the likelihood that a violation of the USAO recording policy could lead to suppression or acquittals in cases in which a confession was not recorded, even where the confession was otherwise obtained lawfully. The DEA additionally notes that, at the very least, the failure of an agent to follow the recording policy would be admissible in civil litigation and could adversely affect the agencies' ability to invoke the discretionary function exception in cases brought under the Federal Tort Claims Act.

Additionally, the DEA expressed specific concerns about the particular policy proposed by the USAO in Arizona. First, the DEA notes that the recording policy, which anticipates the recording of statements of all "investigative targets," is overbroad, as the recording requirement would be triggered during even routine interdiction or other *Terry* stops. Additionally, the DEA notes that because the USAO's policy provides no guidance as to what constitutes a "reasonable" reason for not recording a statement, AUSAs and their supervisors might engage in after-the-fact second-guessing of decisions made by the agents, which may result in disputes between the agencies and USAO and "AUSA shopping." Additionally, the DEA notes that the proposed Arizona policy would allow the USAO to decline to prosecute an otherwise meritorious case just because recordings were not made, rather than considering all the facts and circumstances in the case (including *all* admissible evidence), in deciding whether to accept a case for prosecution.

## **C. ATF**

The current policy of the ATF is not to require electronic recording, but instead to leave the decision about whether to record to the discretion of the individual case agent. In making that decision, the case agent may confer with supervisors and the USAO.

In voicing its opposition to Arizona's proposed pilot program, the ATF states that the Department should not promulgate a one-size-fits-all approach to interrogation. Among other things, the ATF expressed concern that (1) a suspect may "play" to the camera or be less candid; (2) utilizing "covert" recordings would not eliminate the problem of "playing" to the camera or withholding information, because the fact that an agency is covertly recording confessions would become public after the first trial at which such a recording is played; (3) juries may find otherwise

proper interrogation techniques unsettling; (4) suspects may confess while being transported to a place where an interrogation is to take place; (5) mandatory recording raises a host of logistical questions, including questions about retention/storage of recordings and what to do in the event of an equipment malfunction; (6) the costs of supporting such a pilot program, including purchasing recording equipment and securing transcription services, would be enormous; (7) the mandatory language of the Arizona proposal leaves no discretion to agents on the field; (8) any benefits that may result from recording confessions would come at the expense of limiting the flexibility of agents to make the determination of the proper course of conduct depending on the particular situation; and (9) the recording policy would hamper task force investigations where federal charges are brought in jurisdictions in which local law enforcement officers do not electronically record confessions.

#### **D. USMS**

The USMS does not currently require taping of confessions and, indeed, the USMS notes that it does not normally solicit confessions to accomplish its mission of tracking and capturing fugitives. The USMS's opposition to a recording policy is based primarily on the impracticality of taping in carrying out its mission. Among other things, the USMS notes that because it conducts most of its interviews in the field, rather than in a controlled environment, recording is generally impractical. Additionally, the USMS notes that even when a defendant does confess to a crime while in USMS custody, that confession is usually spontaneous and not in response to any question posed by a USMS officer, and is usually made in vehicles or other remote locations where recording is not available.

### **III. Recommendation**

I recommend that the Department not authorize a mandatory recording policy, even one which, like the one proposed by the USAO in Arizona, anticipates exceptions for situations in which recording may not be reasonable. I would also recommend against instituting a pilot program to test such a recording policy, as such a program would not provide the Department with any useful measures of success that could be extrapolated to other districts.

As an initial matter, it is abundantly clear that reasonable people – including very experienced investigators – can and do differ in their views about the use and efficacy of recording in any particular circumstance. The Department should acknowledge that different investigations and circumstances warrant different approaches to tape recording, and accordingly leave that decision to the discretion of the agents in the field, who should be encouraged to consult with their immediate supervisors and USAOs. The FBI policy, which allows only the SAC to institute “exceptions” to the no-recording policy, creates, in my view, the improper presumption that tape recording ordinarily should not be used. Conversely, the Arizona rule creates the improper presumption that recording ordinarily should be used. There is no reason, from a law enforcement perspective, for the Department to make an across-the-board determination about such a fact-specific decision or formalize a view that recording is presumptively sound or presumptively unsound.

The problems identified by the USAO in Arizona in formulating its recording proposal – such as the inadequacy of agents' reports documenting confessions – are not reported to be

widespread, and isolated acquittals in the District of Arizona should not, in my view, lead the Department to institute a policy that could hamper multi-district investigations and task force investigations. Absent evidence that many or most cases involving unrecorded confessions result in acquittals, there is simply an insufficient basis to impose any particular practice on all investigative agents around the country.<sup>1</sup>

Although one could reasonably argue that a pilot program could be instituted to study *whether* recording “works,” a pilot program in one district will not give the Department any useful measures of success. Measuring the success of such a program by, for example, evaluating the number of acquittals, convictions, guilty pleas or lengths of sentences, would not be helpful because, as seen by the competing views of the FBI and USAO in the District of Arizona, reasonable people can disagree as to the factors that lead to an acquittal or other unfavorable result. Additionally, the problem of usefully extrapolating the experience of one district to another district is amplified by the fact, as noted by the FBI, that there are numerous variables involved in how and where to institute such a pilot program. For example, should the district be one in which the local and state agencies record interrogations? Should the district be large or small? Should there be two offices selected so that one can operate as a “control”? Should the selected district be one in which there are many prosecutions under the Assimilated Crimes Act? Should all target interviews be recorded or only those involving certain serious felonies? Should the recordings be surreptitious or overt? Given these variables and the resulting unlikelihood that the experience of one district could be usefully extrapolated to others, the disruption to multi-district and task force investigations that could result from the implementation of a pilot program – not to mention the expense of instituting such a program – is not, in my view, worth the potential benefit.

#### IV. Summary

Given the numerous, legitimate reasons for either recording or not recording a particular target’s statements in any particular case, the Department should refrain from instituting a policy that either creates the presumption that recording is necessary and warranted (like the Arizona policy) or creates the presumption that recording is unnecessary or dangerous (like the FBI policy). I therefore recommend that the Department not authorize the USAO’s request to initiate a pilot program. I would also recommend that the Department encourage its investigative components to leave the case-specific decision about whether to record a statement in any particular circumstance to the discretion of each agent, in consultation with his or her supervisor and assigned prosecutor.

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<sup>1</sup> The USAO’s proposed policy does not appear to be limited to the Department and would presumably apply to investigative agencies such as ICE and USPIS.

6/15 Santangelo 45501

6/19

✓ Charlton

202 514 7590

✓ Blackwood

✓ Susan Song

202 324 3359

✓ Blackwood -

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Washington, DC 20530

June 20, 2006

**MEMORANDUM**

TO: William Mercer  
Principal Associate Deputy Attorney General  
Office of the Deputy Attorney General

FROM: Mythili Raman *mok/mr*  
Senior Counsel to the Deputy Attorney General  
Office of the Deputy Attorney General

SUBJECT: District of Arizona request to implement recording of confessions.

On March 8, 2006, Paul Charlton, United States Attorney for the District of Arizona, requested the Department's permission to institute a pilot program that would require federal investigative agencies in the District of Arizona to record confessions except in instances where a recording cannot be "reasonably obtained." As noted below, the investigative agencies that have been asked for their input on this proposal – FBI, DEA, ATF and USMS – are unanimously opposed to the implementation of a recording policy, while the Criminal Chiefs Working Group strongly favors the pilot program. For the reasons stated below, I recommend that the Department disapprove the request for the pilot program.

**I. The USAO's Proposal to Implement a Pilot Program****A. The "Recording Policy"**

The recording policy proposed by the U.S. Attorney's Office for the District of Arizona provides as follows:

Cases submitted to the United States Attorney's Office for the District of Arizona for prosecution in which an investigative target's statement has been taken, *shall* include a recording, by either audio or audio and video, of that statement. The recording may take place either surreptitiously or overtly at the discretion of the interviewing agency. The recording *shall* cover the entirety of the interview to include the advice of Miranda warnings, and any subsequent questioning.... *Where a taped statement cannot reasonably be obtained the Recording Policy shall not apply.* The reasonableness of any unrecorded statement shall be determined by

the AUSA reviewing the case with the written concurrence of his or her supervisor.

(emphasis added). An “investigative target” is defined by the USAO as “any individual interviewed by a law enforcement officer who has reasonable suspicion to believe that the subject of the interview has committed a crime.”

Despite the mandatory language of the policy, Paul Charlton, in a letter to the investigative agencies in Arizona, emphasized that the policy “does not adopt a rule that all custodial statements at all times in all circumstances must be recorded, and does adopt an express exception precisely to cover situations where obtaining a taped statement would not be practical.” Furthermore, he emphasized that “there is no hard and fast rule under the Recording Policy that all statements in every circumstance must be overtly recorded.” He did not, however, identify any specific examples of what he viewed to be acceptable exceptions to the policy.

### **B. The USAO’s Stated Reasons for Implementing the Pilot Program**

In requesting that the Department permit the pilot program to go forward in the District of Arizona, USA Charlton has thoughtfully articulated a number of factors favoring such a policy. Among other things, he argues that (1) a recorded statement is the best evidence of what was said; (2) recordings would facilitate the admission of any statements and would save the government time-consuming pretrial litigation; (3) recorded statements have a powerful impact on juries and are particularly important given that jurors are well aware that electronic devices can be small, effective and cheap; (4) recording confessions would enhance the government’s ability to obtain convictions and would ensure that agents not be subject to unfair attack; (5) recording confessions would relieve agents of the need to take notes, thereby allowing them to conduct more effective interviews; (6) recording statements would allow agents to review the taped statements to look for additional clues and leads, and (7) recording would raise the public’s confidence in law enforcement. He additionally notes that the U.S. Attorney has sole jurisdiction for prosecuting major crimes in Indian country, and because local police agencies in Arizona routinely tape confessions, the failure of the FBI to record confessions – which, in his view, resulted in acquittals or less than desirable pleas in at least three different cases prosecuted by his office – has created an unfair disparity between the way that crime is treated in the Native American community and all other communities in Arizona.

## **II. Opposition to Proposed Recording Policy by Investigative Agencies**

With the exception of the Criminal Chiefs Working Group, which expressed a strong sentiment that there should be wider, if not regular, use of recording equipment to document confessions and certain witness interviews, all other agencies whose input was sought uniformly oppose the proposed recording policy. (The Criminal Chiefs Working Group did not articulate any reasons for its position beyond those stated by Paul Charlton and did not suggest any substantive changes to the Arizona policy.) Although some of the investigative agencies’

criticisms are focused on Arizona's particular proposal, most of the criticisms concern the implementation of *any* one-size-fits-all recording policy.

#### **A. FBI**

Under the FBI's current policy, agents may not electronically record confessions or interviews, openly or surreptitiously, unless authorized by the Special Agent in Charge ("SAC"). In reaffirming that policy in a memorandum issued to all field offices on March 23, 2006, the FBI argued that (1) the presence of recording equipment might interfere with and undermine a successful "rapport-building interviewing technique"; (2) FBI agents have faced only occasional, and rarely successful, challenges to their testimony; (3) "perfectly lawful and acceptable interviewing techniques do not always come across in recorded fashion to lay persons as a proper means of obtaining information from defendants"; (4) the need for logistical and transcription support would be overwhelming if all FBI offices were required to record most confessions and statements; and (5) a mandatory recording policy would create obstacles to the admissibility of lawfully obtained statements which, through inadvertence or circumstances beyond the control of the interviewing agents, could not be recorded. Despite the presumption in the FBI policy that most confessions are not to be recorded, the policy also expressly anticipates that recording can be useful in some situations, and accordingly gives each SAC the authority to permit recording if she or he deems it advisable.

The FBI opposes Arizona's proposed recording policy, primarily because the existing FBI policy, in its view, already gives SACs flexibility to authorize the recording of statements, as evidenced by the FBI Phoenix Division's internal policy of recording interviews of child sex victims and by its decision in many cases (including in Indian country cases), to record statements of targets or defendants. The FBI, in opposing the recording policy, also takes issue with Paul Charlton's description of three failed prosecutions that the USAO attributes to the FBI's failure to record a confession; in each of those three instances, the FBI points out several other factors that, in its view, contributed to the unfavorable results. More significantly, the FBI contends that the vast majority of Indian country cases, even those in which confessions were not recorded, have resulted in convictions.

#### **B. DEA**

The DEA's current policy permits, but does not require, the recording of defendant interviews. In voicing its strong opposition to the proposed pilot program, the DEA describes that the proposal is neither necessary nor practical. Among other things, the DEA notes that there is no history or pattern of the DEA's recording policy resulting in acquittals or the suppression of defendants' statements. Additionally, the DEA notes that given the number of multi-district investigations that it and other agencies conduct, the adoption of a mandatory recording policy by one district would make it extremely difficult for agents operating in other divisions to conduct multi-district investigations that involve that district. Moreover, the DEA, like the FBI, avers that a violation of the USAO recording policy could very well lead to suppression or acquittals in

cases in which a confession was not recorded, even where the confession was otherwise obtained lawfully. The DEA additionally notes that, at the very least, the failure of an agent to follow the recording policy would be admissible in civil litigation and could adversely affect agencies' ability to invoke the discretionary function exception in cases brought under the Federal Tort Claims Act.

Additionally, the DEA has expressed specific concerns about the particular policy proposed by the USAO in Arizona. First, the DEA notes that the recording policy, which anticipates the recording of statements of all "investigative targets," is overbroad, as the recording requirement would be triggered during even routine interdiction or other *Terry* stops. Additionally, the DEA notes that because the USAO's policy provides no guidance as to what constitutes a "reasonable" reason for not recording a statement, AUSAs and their supervisors might engage in after-the-fact second-guessing of decisions made by the agents, which may result in disputes between the agencies and USAO and "AUSA shopping." Additionally, the DEA avers that the proposed Arizona policy would allow the USAO to decline to prosecute an otherwise meritorious case simply because a recording was not made, rather than considering all the facts and circumstances in the case (including *all* admissible evidence), in deciding whether to accept a case for prosecution.

### C. ATF

The ATF's current policy does not require electronic recording, but instead leaves the decision about whether to record to the discretion of the individual case agent. In making that decision, the case agent may confer with supervisors and the relevant USAO.

In voicing its opposition to Arizona's proposed pilot program, the ATF states that the Department should not promulgate a one-size-fits all approach to interrogation. Among other things, the ATF has expressed concern that (1) a suspect may "play" to the camera or be less candid; (2) utilizing "covert" recordings would not eliminate the problem of a suspect "playing" to the camera or withholding information, because the fact that an agency is covertly recording confessions would become public after the first trial at which such a recording is played; (3) juries may find otherwise proper interrogation techniques unsettling; (4) suspects may confess while being transported to a place where an interrogation is to take place; (5) mandatory recording raises a host of logistical questions, including questions about retention/storage of recordings and what to do in the event of an equipment malfunction; (6) the costs of supporting such a pilot program, including purchasing recording equipment and securing transcription services, would be enormous; (7) the mandatory language of the Arizona proposal leaves no discretion to agents on the field; and (8) the recording policy would hamper task force investigations where federal charges are brought in jurisdictions in which local law enforcement officers do not electronically record confessions. In sum, ATF argues that any benefits that may result from recording confessions would come at the expense of limiting the flexibility of agents to make the decision about whether to record a confession in any particular situation.

#### D. USMS

The USMS does not currently require taping of confessions and, indeed, the USMS notes that it does not normally solicit confessions to accomplish its mission of tracking and capturing fugitives. The USMS's opposition to a recording policy is based primarily on the impracticality of taping in carrying out its mission. Among other things, the USMS notes that because it conducts most of its interviews in the field, rather than in a controlled environment, recording is generally impractical. Additionally, the USMS notes that even when a defendant does confess to a crime while in USMS custody, that confession is usually spontaneous and not in response to any question posed by a USMS officer, and is usually made in vehicles or other remote locations where recording is not available.

#### III. Recommendation

I have set forth below factors that weigh in favor of and against instituting the specific pilot program proposed by the USAO in Arizona. On balance, I recommend against implementing the pilot program, as I believe that the potential costs, as outlined below, outweigh the potential benefits. For purposes of this analysis, I have not assumed that recording confessions necessarily is a presumptively wise or presumptively unwise law enforcement technique, given that experienced investigators and prosecutors have widely divergent views on that issue.

The following factors weigh in favor of permitting the USAO to institute a pilot program that would require the recording of confessions:

- 1) As noted in more detail by Paul Charlton, it is possible that at least some classes of prosecutions will be benefitted as a result of a mandatory recording policy, for example, child molestation cases in which the victim is often not cooperative or too afraid to testify. Accordingly, a pilot program, like the one proposed by the USAO, would allow the district to make immediate changes that could instantly strengthen at least some of its prosecutions. Additionally, and related, for the numerous reasons set forth in the USAO's submission to the Department, law enforcement as a whole could very well benefit from a policy that mandates recording of confessions.
- 2) The FBI's current policy creates a presumption that recording confessions is an unwise law enforcement technique. The FBI's decision to vest the discretion in the SAC to create "exceptions" to its policy, moreover, makes it difficult for any agent (or even the agent's immediate supervisor) to exercise his or her discretion to record a confession in any particular case or circumstance in which a recording may be warranted. Accordingly, although the FBI argues that it allows its agents the flexibility to record confessions, the practical effect of allowing only the SAC to grant an exception to its policy is the creation of a heavy presumption against taping.

- 3) Unless a pilot program is initiated, the District of Arizona will not be able to develop any real experience with the possible benefits of recording confessions, particularly given the presumption in the FBI's current policy that confessions should not be recorded.

The following factors weigh against permitting the USAO in the District of Arizona to institute its proposed pilot program. In my view, these factors far outweigh those favoring the pilot policy:

- 1) The problems identified by Paul Charlton in formulating his recording policy – such as the inadequacy of agents' reports documenting confessions – do not appear to be widespread, and isolated acquittals in the District of Arizona should not lead the Department to institute a pilot program that could hamper multi-district investigations and task force investigations. Absent evidence that many or most cases involving unrecorded confessions result in acquittals, there is simply an insufficient basis to impose any particular practice on investigative agents in any particular district.<sup>1</sup>
- 2) As noted by many of the investigative agencies, mandating the recording of confessions could have a harmful effect on law enforcement, such as causing some defendants who may have been inclined to confess if they were not recorded, to decide not to confess once confronted with a recording device.
- 3) No federal agency currently prohibits agents from recording a statement, despite variances in their approaches to how and by whom the decision to record a confession can be made. Accordingly, the need for the USAO's proposed policy is unclear.
- 4) As noted by some of the agencies, the implementation of a pilot program would likely disrupt multi-district investigations that involve the district that is selected to implement the program. Additionally, if the local law enforcement authorities in that district do not mandate recording of confessions, task force investigations, too, could be disrupted.
- 5) A new USAO policy that mandates recording of confessions could *de facto* become a new basis on which judges suppress statements – a high cost given the uncertainty of the potential benefits.
- 6) The USAO has not indicated what measures of success it will use in evaluating the pilot program. In my view, measuring the success of such a program by, for

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<sup>1</sup> The USAO's proposed policy does not appear to be limited to the Department and would presumably apply to investigative agencies such as ICE and USPIS.

example, evaluating the number of acquittals, convictions, guilty pleas or lengths of sentences, would not be helpful because, as seen by the competing views of the FBI and USAO in the District of Arizona, reasonable people can disagree as to the factors that lead to any particular result in a case. Similarly, it would be difficult, if not impossible, to definitively track some of the potential costs of imposing the recording policy, such as whether a particular defendant declined to give a confession *because* the agents used recording equipment. Additionally, the problem of usefully extrapolating the experience of one district to another district is amplified by the fact that, as noted by the FBI, there are numerous variables involved in how and where to institute such a pilot program, including whether the district selected for the program should be one in which the local and state agencies record interrogations; whether the district selected for the program should be large or small; whether two offices should be selected so that one can operate as a "control"; whether the selected district should be one in which there are many prosecutions under the Assimilated Crimes Act; whether all target interviews should be recorded or only those involving certain serious felonies; and whether the recordings should be surreptitious or overt.

#### IV. Summary

For the reasons discussed in my description of the factors weighing against the pilot program, I recommend that the Department not approve the USAO's request to initiate a pilot program, as I believe that the potential costs far outweigh the potential benefits. If the Department, after further evaluating the USAO's proposal, is inclined to authorize the pilot program, I would recommend that the Department, at the very least, require the USAO in Arizona to provide the Department with a proposal of the measures by which the success of the pilot program will be assessed.

cc: Michael Elston  
Ronald Tenpas

**Tenpas, Ronald J (ODAG)**

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**From:** Mercer, Bill (ODAG)  
**Sent:** Thursday, June 22, 2006 12:34 PM  
**To:** Raman, Mythili (ODAG); Tenpas, Ronald J (ODAG)  
**Subject:** FW: Arizona Pilot Program

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

**From:** Charlton, Paul (USAAZ)  
**Sent:** Thursday, June 22, 2006 11:59 AM  
**To:** Mercer, Bill (ODAG)  
**Subject:** Re: Arizona Pilot Program

Will do! Thanks. Paul

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

**From:** Mercer, Bill (ODAG)  
**Sent:** Thursday, June 22, 2006 11:32 AM Eastern Standard Time  
**To:** Charlton, Paul (USAAZ)  
**Subject:** Re: Arizona Pilot Program

One argument made in opposition is that there isn't any evaluation plan. Argument goes along the lines of "pilots are designed as a way to learn whether something works, should be exported, what the plusses and minuses were, etc.". Can you get a supplemental piece on how you'd go about evaluating the lessons learned, including getting the input of all key stakeholders at the end of the project period?

-----

Sent from my BlackBerry Wireless Handheld

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

**From:** Charlton, Paul (USAAZ)  
**To:** Mercer, Bill (ODAG); Mercer, Bill (USAMT)  
**Sent:** Mon Jun 19 12:30:50 2006  
**Subject:** Arizona Pilot Program

Bill,

I understand that you are going back home in two weeks. I'm guessing that you're looking forward to that. Ron tells me that all the responses are in on the Pilot Program request and they have argued against the project. Bill, I hope that I can count on your support for this project. As I've said before, this is a good thing and one we can be proud of having tried to accomplish. Let me know if you'd like to talk about this anytime,

Paul

Elston

Nancy Bell

616 0351

Jim Finch

Drew Oriskany Patzold Mike 701 297 7475

6/29 Judge Hamilton

317 229 3640

7/12 Call Kentucky USA Amul Thapar

859 233 2661

x101

Call Charlton

7/14

Linda Thompson

202 551-4894

## Tenpas, Ronald J (ODAG)

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Monday, July 17, 2006 9:26 AM  
**To:** Raman, Mythili (ODAG); Elston, Michael (ODAG)  
**Subject:** FW: FBI to tape more interrogations

Re interview taping proposal. FYI, Charlton called me Friday looking for a status report. I advised that Bill had asked for some supplemental briefing before he left but that I generally thought the matter was either before the DAG or shortly would be for a resolution.

Ron

---

**From:** Hertling, Richard  
**Sent:** Monday, July 17, 2006 9:19 AM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** FBI to tape more interrogations

<http://www.suntimes.com/output/news/cst-nws-corrupt17.html>

## Tenpas, Ronald J (ODAG)

---

**From:** Elston, Michael (ODAG)  
**Sent:** Monday, July 17, 2006 10:11 AM  
**To:** Raman, Mythili (ODAG); Tenpas, Ronald J (ODAG)  
**Subject:** RE: FBI to tape more interrogations

How about 10:45?

---

**From:** Raman, Mythili (ODAG)  
**Sent:** Monday, July 17, 2006 9:35 AM  
**To:** Tenpas, Ronald J (ODAG); Elston, Michael (ODAG)  
**Subject:** RE: FBI to tape more interrogations

Mike,

Would you have a couple minutes today so that we can discuss next steps?

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Monday, July 17, 2006 9:26 AM  
**To:** Raman, Mythili (ODAG); Elston, Michael (ODAG)  
**Subject:** FW: FBI to tape more interrogations

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Ron

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**Sent:** Monday, July 17, 2006 9:19 AM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** FBI to tape more interrogations

<http://www.suntimes.com/output/news/cst-nws-corrupt17.html>

## Tenpas, Ronald J (ODAG)

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**From:** Raman, Mythili (ODAG)  
**Sent:** Monday, July 17, 2006 10:11 AM  
**To:** Elston, Michael (ODAG); Tenpas, Ronald J (ODAG)  
**Subject:** RE: FBI to tape more interrogations

Sure. Will come down to your office then.

---

**From:** Elston, Michael (ODAG)  
**Sent:** Monday, July 17, 2006 10:11 AM  
**To:** Raman, Mythili (ODAG); Tenpas, Ronald J (ODAG)  
**Subject:** RE: FBI to tape more interrogations

How about 10:45?

---

**From:** Raman, Mythili (ODAG)  
**Sent:** Monday, July 17, 2006 9:35 AM  
**To:** Tenpas, Ronald J (ODAG); Elston, Michael (ODAG)  
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**Subject:** FW: FBI to tape more interrogations

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Ron

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**Sent:** Monday, July 17, 2006 9:19 AM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** FBI to tape more interrogations

<http://www.suntimes.com/output/news/cst-nws-corrupt17.html>

7/18/06

Chief:

The attached memo went to PADAG at the beginning of June. The decision reflected in it (approval of all Fasttrack proposals - renewals and new applications) was a function of a conversation that the PADAG and DAG had pre-Ireland. According to PADAG, DAG wanted to approve them all.

It appears that the approval memo got lost somewhere. Our tracking shows it as it being in the PADAG's hand from early June through the present. I e-mailed Montana for a status update after Bill's departure but haven't heard anything back. Thus, I am creating a new package for the DAG to sign on the assumption that DAG's original judgment to PADAG still holds and the paperwork is simply lost in space somewhere.

We need to get something on the books on this. USAOs occasionally call re status; plus the last written authorization was only good through the end of March. We've had a couple of places where the problem has come up in litigation.

Ron

DAG000001971

Crim Div'n 8/1/00

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1.

2.

3.

4.

5.

6.

7. <sup>LA</sup> California & Arizona - need to get USAs to support  
Obstenity Cases

8.

**Tenpas, Ronald J (ODAG)**

---

**From:** Elston, Michael (ODAG)  
**Sent:** Wednesday, August 02, 2006 8:30 AM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** AZ Pilot Program

Ron:

Have you run this by Lisa Monaco or someone at FBI so it is not a shocker?

Mike

## Tenpas, Ronald J (ODAG)

---

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Wednesday, August 02, 2006 9:45 AM  
**To:** Elston, Michael (ODAG)  
**Subject:** RE: AZ Pilot Program

Yes and no. Rybicki/Trono had a working group that included FBI and other investigative agencies that met a couple of times (Val Caproni was the FBI "rep") in fall '05/spring '06. That came to a kind of inconclusive end when Trono left and then Charlton tried to unilaterally impose his program. Once we got the Charlton "pilot program" proposal, we then circulated the proposal to all the units again. So they know there is a proposal for a pilot program. Caproni was the one I sent it to at FBI -- don't know who she circulated to. The comments in MR's memo are summaries of the comments we got back. So they definitely know we have a proposal we are considering. On the other hand, I have given not signals about the expected outcome. While I knew that Bill Mercer favored the pilot pretty strongly, I was not sure of DAG's response. So I have not wanted to create a "response" for something Paul may not want to do. For what it is worth, while I recommended going forward, I think it is a very close question and I don't feel strongly that authorizing the pilot is the right way to go. I can readily see the competing arguments prevailing.

Ron

---

**From:** Elston, Michael (ODAG)  
**Sent:** Wednesday, August 02, 2006 8:30 AM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** AZ Pilot Program

Ron:

Have you run this by Lisa Monaco or someone at FBI so it is not a shocker?

Mike

Department Of Justice  
Deputy Attorney General  
Control Sheet

Date Of Document: 05/31/06  
Date Received: 06/01/06  
Due Date: NONE

Control No.: 060601-6185  
ID No.: 432800

From: RONALD J. TENPAS, ADAG  
To: DAG

Subject:  
REAUTHORIZATION OF EARLY DISPOSITION PROGRAM

Executive Reviewer; Mercer, Bill

Due:

Instructions:

Action/Information: Signature Level: PAUL J. McNULTY, DAG

---

From: Tenpas, Ronald Assign: 07/18/06 Due: NON To: Elston, Michael

See attached note re history of this.

---

From: Elston, Michael Assign: 07/19/06 Due: NON To: McNulty, Paul

Is reauthorization/authorization of all fast-tracks your decision? If so, please initial the attached memo.

---

File Comments: 08/03/06: DAG McNULTY INITIALED MEMO AND ORIGINAL RETURNED TO RON TENPAS FOR APPROPRIATE HANDLING.

DAG000001976



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 3, 2006

MEMORANDUM FOR THE UNITED STATES ATTORNEYS FOR THE  
DISTRICT OF ARIZONA  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DISTRICT OF CALIFORNIA  
NORTHERN DISTRICT OF CALIFORNIA  
SOUTHERN DISTRICT OF CALIFORNIA  
MIDDLE DISTRICT OF FLORIDA  
SOUTHERN DISTRICT OF FLORIDA  
NORTHERN DISTRICT OF GEORGIA  
DISTRICT OF IDAHO  
DISTRICT OF KANSAS  
DISTRICT OF NEBRASKA  
DISTRICT OF NEW MEXICO  
EASTERN DISTRICT OF NEW YORK  
DISTRICT OF NORTH DAKOTA  
DISTRICT OF OREGON  
SOUTHERN DISTRICT OF TEXAS  
WESTERN DISTRICT OF TEXAS  
DISTRICT OF UTAH  
EASTERN DISTRICT OF WASHINGTON  
WESTERN DISTRICT OF WASHINGTON

FROM: Paul J. McNulty *PJM*  
Deputy Attorney General

SUBJECT: Reauthorization of Early Disposition Program

Section 401(m)(2)(B) of the 2003 Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act ("PROTECT Act") instructed the Sentencing Commission to promulgate, by October 27, 2003, a policy statement authorizing a downward departure of not more than 4 levels "pursuant to an early disposition program authorized by the Attorney General and the United States Attorney." Pub. L. No. 108-21, § 401(m)(2)(B), 117 Stat. 650, 675 (2003). To that end, the United States Sentencing Commission promulgated a policy statement virtually tracking the language of the PROTECT Act. Although the PROTECT Act requirement of Attorney General authorization only applies by its terms to early disposition programs that rely

DAG000001977

on downward departures, the Attorney General issued his memo entitled "Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing" on September 22, 2003, that likewise requires Attorney General approval (approval that may be accomplished by obtaining the approval of the Deputy Attorney General<sup>1</sup>) for any early disposition program that relies upon "charge bargaining" — *i.e.*, a program whereby the Government agrees to charge less than the most serious, readily provable offense.

On October 29, 2004, Deputy Attorney General James B. Comey authorized the following United States Attorney's Offices (USAOs) to implement early disposition programs as such programs relate to the following classes of cases:

- (1) District of Arizona — illegal reentry after deportation cases
- (2) District of Arizona — transportation or harboring of aliens cases
- (3) District of Arizona — alien baby/child smuggling and "bringing in" (*i.e.*, cases involving defendants who are caught guiding defendants across the border) cases
- (4) District of Arizona — drug cases arising along the border
- (5) District of Arizona — first time marijuana offenses along the border involving less than 20 kilograms of marijuana and first time drug backpacking offenses (regardless of the amount of marijuana carried)
- (6) Central District of California — illegal reentry after deportation cases
- (7) Eastern District of California — illegal reentry after deportation cases
- (8) Northern District of California — illegal reentry after deportation cases
- (9) Southern District of California — illegal reentry after deportation cases
- (10) Southern District of California — transportation or harboring of alien cases
- (11) Southern District of California — drug cases arising along the border
- (12) Northern District of Georgia — illegal reentry after deportation cases
- (13) District of Idaho — illegal reentry after deportation cases
- (14) District of Nebraska — illegal reentry after deportation cases
- (15) District of New Mexico — illegal reentry after deportation cases
- (16) District of New Mexico — transportation or harboring of alien cases
- (17) District of New Mexico — drug backpacking cases
- (18) Eastern District of New York — drug courier cases arising out of John F. Kennedy International Airport
- (19) District of North Dakota — illegal reentry after deportation cases
- (20) District of Oregon — illegal reentry after deportation cases

---

<sup>1</sup>The requirement that a fast-track program be approved by the "Attorney General" under the PROTECT Act or under the Sentencing Guidelines may also be satisfied by obtaining the approval of the Deputy Attorney General. See 28 U.S.C. § 510; 28 C.F.R. § 0.15(a).

- (21) Southern District of Texas — Laredo Division drug cases arising along the border
- (22) Southern District of Texas — illegal reentry after deportation cases
- (23) Southern District of Texas — transportation or harboring of alien cases
- (24) Western District of Texas — illegal reentry after deportation cases
- (25) Western District of Texas — transportation or harboring of alien cases
- (26) Western District of Washington — illegal reentry after deportation cases
- (27) Southern District of Florida — cases involving aliens using false fraudulent immigration documents
- (28) Western District of Texas — drug cases arising at border ports of entry.

All of the early disposition programs identified above were authorized through September 30, 2005. To continue a program thereafter, USAOs were required to submit a request for reauthorization to the Executive Office for United States Attorneys. The Office of the Deputy Attorney General received these requests for reauthorization and has reviewed the same. In order to facilitate this review, on September 23, 2005, Acting Deputy Attorney General Robert D. McCallum, Jr., authorized those early disposition programs identified above to continue through October 31, 2005 and, on October 28, 2005, he further extended this authorization through December 31, 2005. Because additional time was needed to complete the review, on December 28, 2005, I authorized these programs to continue through January 31, 2006. On January 31, 2006, I further extended this authorization through March 3, 2006. By this memorandum, I am approving all of the above programs for the period March 3, 2006 through December 31, 2006.

In addition, the following United States Attorney's Offices (USAOs) are authorized through December 31, 2006 to implement or expand early disposition programs as such programs relate to the following classes of cases:

- (29) Southern District of California — illegal reentry after deportation cases (expansion)
- (30) Middle District of Florida — illegal reentry after deportation cases
- (31) District of Utah — illegal reentry after deportation cases
- (32) Eastern District of Washington — illegal reentry after deportation cases
- (33) Southern District of Texas — alien smuggling
- (34) District of Kansas — fraudulent document use to gain employment

All Districts should be aware that continuing re-approval of such programs will depend on demonstrable results establishing that the authorized fast track program is permitting the prosecution of a significantly larger number of defendants than occurred in the absence of the fast track program or than would occur if the program were discontinued. Districts are also reminded to review carefully the directives included in Attorney General Ashcroft's authorizing memorandum of September 22, 2003, setting minimum terms which any fast track agreement must incorporate, and which memorandum also requires, inter alia, that all fast-track dispositions be identified in the District's Case Management System.

Memorandum from the Deputy Attorney General  
Subject: Reauthorization of Early Disposition Program

Page 4

cc: The Attorney General  
The Associate Attorney General  
The Solicitor General  
The Assistant Attorney General, Criminal Division  
The Director, Executive Office for United States Attorneys  
The Chair, Attorney General's Advisory Committee  
The Chair, Sentencing Guidelines Subcommittee of the Attorney General's Advisory  
Committee  
The Assistant Director, Evaluation and Review Staff, Executive Office for U.S. Attorneys  
The Director, Office of Policy and Legislation, Criminal Division

DAG000001980

**Tenpas, Ronald J (ODAG)**

---

**From:** Elston, Michael (ODAG)  
**Sent:** Tuesday, August 08, 2006 3:01 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Re: Have you heard back from Rizzo re SDCA case and WHC?

No

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

**From:** Tenpas, Ronald J (ODAG)  
**To:** Elston, Michael (ODAG)  
**Sent:** Tue Aug 08 14:45:50 2006  
**Subject:** Have you heard back from Rizzo re SDCA case and WHC?

---

Ronald J. Tenpas  
Associate Deputy Attorney General  
Department of Justice  
950 Pennsylvania Avenue, N.W.  
Room 4216  
Washington, D.C. 20530  
(202) 514-3286 / (202) 305-4343 (fax)

## Tenpas, Ronald J (ODAG)

---

**From:** Dunn, Clara  
**Sent:** Monday, August 28, 2006 6:47 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Cc:** Hahn, Paul (USAE0); Hahn, Paul (USAE0); Samuels, Julie  
**Subject:** Fast-Track Reauthorizations

**Attachments:** tmp.htm



tmp.htm (5 KB)

Ron and Paul:

In preparation to the next reauthorization cycle, Iâ??ll like to update the spreadsheet we maintain on authorized FT programs. Since there appear to have been several changes to some of the existing programs this year, could you forward the final version of the FT programs that were amended prior to their reauthorization?

In particular, I donâ??t have the final version for the following programs (if there is one):

(9) SDCA illegal reentry, (10) SDCA alien smuggling, (2) AZ alien smuggling, and (20) illegal reentry,

You forwarded and I have the final version of these programs:

NDCA illegal reentry, . Illegal reentry, alien smuggling, and

Thank you,

Clara N. Dunn

4-3975

**Tenpas, Ronald J (ODAG)**

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Wednesday, October 11, 2006 5:17 PM  
**To:** Lewis, Matthew  
**Subject:** RE: Call to Arizona re Obscenity Case

Let me see what I can find out. Haven't heard him mention it. I assume this means that there hasn't been any improvement in the situation?

Ron

**From:** Lewis, Matthew  
**Sent:** Wednesday, October 11, 2006 1:34 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Call to Arizona re Obscenity Case

Ron, do you know whether Paul ever called Norm Charlton about the obscenity case where we were seeking the assistance of the district? I am just trying to find out the status of things.

Regards,

Matthew Lewis  
U.S. Department of Justice  
Senior Counsel to Asst. Attorney General Alice Fisher,  
Criminal Division  
Tel: (202) 353-1754  
Fax: (202) 514-0108

**Tenpas, Ronald J (ODAG)**

**From:** Lewis, Matthew  
**Sent:** Wednesday, October 11, 2006 5:17 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** RE: Call to Arizona re Obscenity Case

Correct.

**From:** Ronald.Tenpas@usdoj.gov [mailto:Ronald.Tenpas@usdoj.gov]  
**Sent:** Wednesday, October 11, 2006 5:17 PM  
**To:** Lewis, Matthew  
**Subject:** RE: Call to Arizona re Obscenity Case

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Senior Counsel to Asst. Attorney General Alice Fisher,  
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Tel: (202) 353-1754  
Fax: (202) 514-0108

**Tenpas, Ronald J (ODAG)**

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Wednesday, October 11, 2006 5:19 PM  
**To:** Elston, Michael (ODAG)  
**Cc:** Moschella, William  
**Subject:** FW: Call to Arizona re Obscenity Case

Mike:

Do you know if the DAG has made this call yet to get Charlton in line on supporting the obscenity case out there?

Ron

**From:** Lewis, Matthew  
**Sent:** Wednesday, October 11, 2006 1:34 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** Call to Arizona re Obscenity Case

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Criminal Division  
Tel: (202) 353-1754  
Fax: (202) 514-0108

**Tenpas, Ronald J (ODAG)**

**From:** Elston, Michael (ODAG)  
**Sent:** Wednesday, October 11, 2006 11:30 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Cc:** Elston, Michael (ODAG)  
**Subject:** RE: Call to Arizona re Obscenity Case

I do not believe he has.

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Wednesday, October 11, 2006 5:19 PM  
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**Cc:** Moschella, William  
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Criminal Division  
Tel: (202) 353-1754  
Fax: (202) 514-0108

**Tenpas, Ronald J (ODAG)**

**From:** Lewis, Matthew  
**Sent:** Tuesday, October 17, 2006 2:15 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** RE: Call to Arizona re Obscenity Case

Any update on this front?

**From:** Ronald.Tenpas@usdoj.gov [mailto:Ronald.Tenpas@usdoj.gov]  
**Sent:** Wednesday, October 11, 2006 5:17 PM  
**To:** Lewis, Matthew  
**Subject:** RE: Call to Arizona re Obscenity Case

Let me see what I can find out. Haven't heard him mention it. I assume this means that their hasn't been any improvement in the situation?

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Criminal Division  
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Fax: (202) 514-0108

**Tenpas, Ronald J (ODAG)**

**From:** Tenpas, Ronald J (ODAG)  
**Sent:** Tuesday, October 17, 2006 2:38 PM  
**To:** Lewis, Matthew  
**Subject:** RE: Call to Arizona re Obscenity Case

Call hasn't been made. I'm trying to get it on the DAG's execution list, but, as you might guess, he's got a lot on his plate. Can you give me a little more detailed summary of the problems you are facing right now that make AZ participation critical. That might help me move the ball.

Ron

**From:** Lewis, Matthew  
**Sent:** Tuesday, October 17, 2006 2:15 PM  
**To:** Tenpas, Ronald J (ODAG)  
**Subject:** RE: Call to Arizona re Obscenity Case

Any update on this front?

**From:** Ronald.Tenpas@usdoj.gov [mailto:Ronald.Tenpas@usdoj.gov]  
**Sent:** Wednesday, October 11, 2006 5:17 PM  
**To:** Lewis, Matthew  
**Subject:** RE: Call to Arizona re Obscenity Case

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Matthew Lewis  
U.S. Department of Justice  
Senior Counsel to Asst. Attorney General Alice Fisher,  
Criminal Division  
Tel: (202) 353-1754  
Fax: (202) 514-0108

### Recording Post-arrest Interview/interrogations: Article Email List

Caproni, Valerie	<a href="mailto:valerie.caproni@fbi.gov">valerie.caproni@fbi.gov</a>
Charlton, Paul	<a href="mailto:paul.charlton@usdoj.gov">paul.charlton@usdoj.gov</a>
Earp, Mike	<a href="mailto:mike.earp@usdoj.gov">mike.earp@usdoj.gov</a>
Favreau, Kevin	<a href="mailto:kevin.favreau@ic.fbi.gov">kevin.favreau@ic.fbi.gov</a>
Finan, Robert	<a href="mailto:robert.finan@usdoj.gov">robert.finan@usdoj.gov</a>
Hahn, Paul	<a href="mailto:paul.hahn2@usdoj.gov">paul.hahn2@usdoj.gov</a>
Harrigan, Thomas M.	<a href="mailto:Thomas.H.Harrigan@usdoj.gov">Thomas.H.Harrigan@usdoj.gov</a>
Hertling, Richard	<a href="mailto:richard.hertling@usdoj.gov">richard.hertling@usdoj.gov</a>
Howard, Joshua	<a href="mailto:joshua.howard@usdoj.gov">joshua.howard@usdoj.gov</a>
Jaworski, Thomas J.	<a href="mailto:Thomas.J.Jaworski@usdoj.gov">Thomas.J.Jaworski@usdoj.gov</a>
Kenrick, Brian C.	<a href="mailto:Brian.C.Kenrick@usdoj.gov">Brian.C.Kenrick@usdoj.gov</a>
O'Keefe, Kevin C.	<a href="mailto:Kevin.C.O'Keefe@usdoj.gov">Kevin.C.O'Keefe@usdoj.gov</a>
Rowan, Patrick	<a href="mailto:patrick.rowan@usdoj.gov">patrick.rowan@usdoj.gov</a>
Rowley, Raymond	<a href="mailto:Raymond.G.Rowley@usdoj.gov">Raymond.G.Rowley@usdoj.gov</a>
Rybicki, James	<a href="mailto:james.rybicki@usdoj.gov">james.rybicki@usdoj.gov</a>
Sutton, Johnny	<a href="mailto:Johnny.K.Sutton@usdoj.gov">Johnny.K.Sutton@usdoj.gov</a>
Wainstein, Kenneth	<a href="mailto:wainstein.kenneth@usdoj.gov">wainstein.kenneth@usdoj.gov</a>
Wulf, David	<a href="mailto:david.wulf@atf.gov">david.wulf@atf.gov</a>