

Dear Colleagues:

I've just finished reading your letter on the law enforcement information sharing issue, and I must say I am quite disappointed that you have chosen to communicate with me in this way. It appears that you are trying to force me to take some specific actions. It reads like a letter from Capitol Hill, not one from friends on the same team. This is particularly distressing because it is shared with folks outside of the Department. This is not the way we should be working through difficult issues.

I have worked hard to maintain an open line of regular communication with all U.S. Attorneys. I know as well as anyone how important it is to include the USA community in the DOJ policy-making process. I've spent 51/2 years working to strengthen that relationship.

I hope you realize that the Department may not be able to deliver on all that you seek. There are other important considerations involved in this matter. Does anyone see the problem with the Department "endorsing" a specific brand of info sharing when there are other types being used with success in various regions? That is why it is best to talk these things through a bit before laying down a challenge in writing which will set the Department up for failure.

I look forward to meeting with the working group, although now it will be a more challenging conversation.

**Elston, Michael (ODAG)**

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**From:** Elston, Michael (ODAG)  
**Sent:** Friday, September 22, 2006 7:40 PM  
**To:** Goodling, Monica; McNulty, Paul J  
**Subject:** RE: FYI

Even when he is in Ireland he causes problems! He needs to stop writing letters.

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**From:** Goodling, Monica  
**Sent:** Friday, September 22, 2006 7:38 PM  
**To:** Elston, Michael (ODAG); McNulty, Paul J  
**Subject:** FYI

Office Of U.S. Attorney 'stressed'  
By Paul Shukovsky, P-I REPORTER  
Seattle Post-Intelligencer, September 22, 2006

Federal prosecutor has seen budget steadily shrink

The federal prosecutor for Western Washington says his office is "stressed to the limit" because of years of budget cuts that threaten to slow the pace of criminal prosecutions. U.S. Attorney John McKay has issued this warning to county prosecutors and special agents in charge of federal agencies, including the FBI, the Drug Enforcement Administration and Immigration and Customs Enforcement: "We may not be as responsive as you want us to be on the cases you refer to us."

The office has been hemorrhaging prosecutors and support staff members even as the other Washington is poised to impose another budget cut for the 2006-07 fiscal year. The office, which handles federal criminal prosecutions and civil cases involving the U.S. government, is down six criminal prosecutors and one civil attorney, leaving 58 assistant U.S. attorneys, McKay said.

Fourteen positions in the office are unfilled, and McKay still must pay his 118 employees a mandatory 3 percent cost-of-living raise. McKay said he is proud that the office has been able to maintain its productivity -- prosecuting more than 800 defendants last year. "We are on track to do slightly more than that" this year, he said.

But cases that might have been prosecuted under tougher federal laws are increasingly being sent to local prosecutors. "We're not taking as many of these cases as we'd like to take," McKay said. "We're working hard to take up the slack, but we're not always successful in taking the cases we should." A bigger budget would mean more prosecutions in burgeoning problem areas, such as cybercrime, according to McKay's top assistant, Mark Bartlett.

"You'd see more cases like 'botnet,'" he said, referring to the recent prosecution of a young man from California who infected thousands of computers around the world for personal profit. "You'd see more collaboration with Microsoft and other intellectual-property firms where piracy is a huge concern."

The office's cybercrime unit has two vacancies that "prevent us from being as proactive as we'd like to be," Bartlett said.

In fiscal 2003-04, the office's budget was \$12.1 million. In fiscal 2004-05, it slid to \$11.4 million. In the current fiscal year ending next week, the budget will have shrunk further, to \$11 million.

It's not clear what the next budget will bring, but McKay has been told that the best case is a flat budget and that more cuts are possible. The strain on the U.S. Attorney's Office is being felt in Whatcom County, where criminals who move contraband such as drugs, undeclared cash and illegal immigrants across the U.S.-Canadian border are arrested by the federal agents, but frequently prosecuted by locals.

McKay said his office is declining about 80 percent of the cases at the border that could be prosecuted in federal court. It's a lost opportunity, he said.

"We try to flip people by putting them through federal prosecution," said McKay, using a slang term for persuading criminals to cooperate with law enforcement in return for a lighter sentence. "We don't have that flexibility right now."

Whatcom County Prosecutor Dave McEachran said he's "amazed" that McKay is facing the possibility of more budget cuts. McEachran needs federal prosecutors to take some of the load off his attorneys, who are handling an average of 200 felony cases apiece.

"We have a huge caseload here," he said. McEachran said local prosecutors on the U.S. side of the Mexican border had to threaten to stop prosecuting arrests made by federal agents to get federal dollars to help them with the crush of border-related crime.

There have been attempts by northern border prosecutors to get similar federal assistance. But they have never received congressional approval, McEachran said. Cuts in the U.S. attorney's budget also affect violent crimes such as bank robberies, which occur at a high rate in Western Washington.

Bank robberies can be prosecuted federally, and those convicted given harsher sentences. But "most of them are shifting over to the locals," McKay said. Only the most violent cases or serial bank robberies are seeing the inside of a federal courtroom.

As for "note jobs," in which an unarmed robber slides a demand note to a teller -- "we're not seeing those," McKay said. "This is going into our third year of really tough budgets," he said. "We keep expecting it to get fixed, but that's dependent on Congress."

**Elston, Michael (ODAG)**

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**From:** Roehrkasse, Brian  
**Sent:** Tuesday, September 26, 2006 3:51 PM  
**To:** Elston, Michael (ODAG); Smith, Kimberly A; Nowacki, John (USAEO)  
**Cc:** McNulty, Paul J; Scolinos, Tasia  
**Subject:** SEATTLE POST-INTELLIGENCER - Office of U.S. attorney 'stressed'

I happened to see this article when I was traveling last week in the Northwest. These comments are not exactly helpful. John, anything we can do?

**SEATTLE POST-INTELLIGENCER**

[http://seattlepi.nwsource.com/local/286099\\_prosecutors22.html](http://seattlepi.nwsource.com/local/286099_prosecutors22.html)

**Office of U.S. attorney 'stressed'**

**Federal prosecutor has seen budget steadily shrink**

*Friday, September 22, 2006*

**By PAUL SHUKOVSKY**  
P-I REPORTER

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*P-I reporter Paul Shukovsky can be reached at 206-448-8072 or paulshukovsky@seattlepi.com.*

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Deputy Director of Public Affairs  
U.S. Department of Justice  
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**Elston, Michael (ODAG)**

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



tmp.htm (34 KB)



ole0.bmp (528 B)



ole1.bmp (528 B)



ole2.bmp (528 B)



ole3.bmp (528 B)



ole4.bmp (528 B)

fyi

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

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

Attorneys in the office disparaged him as isolated, inflexible, and disengaged from the agency's work. They blamed his managerial style for poisoning morale and neutering the authority of supervisors. Several accused him of granting too much control over personnel and legal decisions to his first assistant, creating an autocracy by proxy.

Those who attended the meeting or watched the simulcast suspected that, as he absorbed the harsh remarks, fury roiled beneath Ryan's rigid exterior. When the auditors finished their presentation, he said little before stalking from the room. "I'm sure it was unpleasant for him," one federal prosecutor says. "But he shouldn't have been surprised."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"He had the pulse of the entire office," one veteran prosecutor says. "But he trusted his division chiefs and he gave people the freedom to make decisions." Shapiro more or less sustained the momentum between Mueller's exit and Ryan's entrance.

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

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

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

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

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

(Metaverse)>>

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

The gang and drug busts, though lesser known than BALCO, land on the list of high-profile cases handled by Ryan's office. Macauley, his spokesman, ticks off others: convictions of 10 people on charges related to trafficking of prostitutes from South Korea to San Francisco brothels; Operation Copycat, a nationwide music, movie, and software piracy case that so far has seen 32 defendants convicted; and the ongoing prosecution of Reliant Energy executives accused of price-fixing during the state energy crisis in 2000.

But beneath the headlines lies the small print that reveals a plunge in the office's overall caseload. In 2001, with Mueller and then Shapiro in charge, prosecutors filed 1,291 cases, according to a Syracuse University database that tracks Justice Department statistics. The next year, Ryan's first, the number tumbled to 1,013, and from 2003 to 2005, the office averaged 947 prosecutions a year, a drop of nearly 27 percent in four years.

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

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

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

Prosecutors in Ryan's office contend that the constant staff churn slows pursuit of complex white-collar crimes, as new attorneys must spend weeks, sometimes months, bushwhacking through documents to learn a case. The ongoing federal probe of state Senator

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

disclose details to the defense about an expert's potential testimony. During a theft trial last year, Judge Jeffrey White excoriated prosecutors for failing to cough up information on the defendant to his lawyer; they soon dropped the case. But those flare-ups were cool breezes compared to Judge William Alsup's eruption this summer over the steady refusal of prosecutors to release to defense lawyers the names of witnesses and informants in an ongoing murder case. Prosecutors maintain that divulging the identities invites retaliation on the sources from allies of the gang members facing homicide charges; defense attorneys argue they need the names to investigate the case. During a pretrial hearing, Alsup, after months of futile prodding of prosecutors, blew up at them. He swatted away the retaliation rationale as "bogus" and charged that prosecutors sought only a "tactical advantage." They have appealed a sanction imposed by him that could exclude the unnamed sources from testifying.

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

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

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

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

<<Picture (Metafile)>>

In 2002, Ryan applied for a vacancy on the Northern District bench. As the story goes, White House officials urged him to instead take the job of U.S. Attorney, assuring him that after gaining a bit of federal seasoning, he would don a judge's robe. Whether Ryan still carries that career ambition is unknown. Yet considering his cold relationship with the region's federal judges and the speculation in legal circles that Justice Department officials would prefer that he step down, the optimism of four years ago seems a distant glimmer.

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

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

**Elston, Michael (ODAG)**

---

**From:** USAEO-OTD  
**Sent:** Thursday, October 05, 2006 3:54 PM  
**To:** USAEO-USAttorneys@usa.doj.gov; USAEO-FirstAUSAs@usa.doj.gov; USAEO-AdminOfficers@usa.doj.gov  
**Cc:** USAEO-USASecretaries@usa.doj.gov; USAEO-CrimChiefs@usa.doj.gov; USAEO-CivChiefs@usa.doj.gov  
**Subject:** Resignation Guidance for United States Attorneys  
**Attachments:** tmp.htm; Resignation Guidance.pdf; Resignation Guidance Attach.pdf



tmp.htm (3 KB)



Resignation Guidance.pdf (22 K)



Resignation Guidance Attach.pdf

reply to this address.

This is an unattended E-Mail account. Please do not

**TO:** ALL UNITED STATES ATTORNEYS  
ALL FIRST ASSISTANT UNITED STATES ATTORNEYS  
ALL ADMINISTRATIVE OFFICERS

**FROM:** Michael A. Battle  
Director

**SUBJECT:** Resignation Guidance for United States Attorneys

**ACTION REQUIRED:** Information Only.

**CONTACT PERSON:** John A. Nowacki  
Principal Deputy Director  
Telephone: (202) 514-2121  
E-mail: John.Nowacki@usdoj.gov

Please see the attached memorandum regarding Resignation Guidance for United States Attorneys.

To open attachment right click, select "open" select "open it", and select "ok".

Attachment

<<Resignation Guidance.pdf>> <<Resignation Guidance Attach.pdf>>

cc: All United States Attorneys' Secretaries



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Room 2261, RFK Main Justice Building  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

(202) 514-2121

**MEMORANDUM - Sent via Electronic Mail**

DATE: OCT 05 2006

TO: ALL UNITED STATES ATTORNEYS  
ALL FIRST ASSISTANT UNITED STATES ATTORNEYS  
ALL ADMINISTRATIVE OFFICERS

FROM: Michael A. Battle  
Director

SUBJECT: Resignation Guidance for United States Attorneys

ACTION REQUIRED: Information Only.

CONTACT PERSON: John A. Nowacki  
Principal Deputy Director  
Telephone: (202) 514-2121  
E-mail: [John.Nowacki@usdoj.gov](mailto:John.Nowacki@usdoj.gov)

Recently, a few United States Attorneys have contacted me regarding the procedures for submitting their resignations. To assist you, I have attached answers to some of the most frequently asked questions regarding the resignation process including guidance for a resigning interim United States Attorney who is returning to a position as an Assistant United States Attorney. If you intend to resign, please advise me at your earliest opportunity either by electronic mail or by phone (202) 514-2121. It is very important for us to provide the President and the Attorney General with as much advance notice as possible.

Letters of resignation addressed to the President and to the Attorney General should be sent by express mail to the U.S. Attorney Nominations and Appointments Unit, EOUSA. Once a United States Attorney announces their intention to resign, please be aware that discretionary staff personnel changes (e.g., appointments, promotions, and reassignments), at all grade levels, from all sources, will be restricted. This affects actions which increase employment by adding a new employee to a district's rolls and internal actions which involve a change in position, such as a promotion or reassignment.

Any offer of employment extended verbally or in writing before the United States Attorney announces their resignation, including offers that were contingent on clearances such as drug testing or background investigation, will be honored.

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-2-

No new offer of employment in the district may be made after the United States Attorney announces their resignation. If the office is in the final interview stage with any candidate, the selecting official must inform the applicant that no offer can be extended until the new United States Attorney is appointed.

If you have any questions, please contact John Nowacki at (202) 514-2121.

Attachments

cc: All United States Attorneys' Secretaries

DAG000000536

## RESIGNATION OF A UNITED STATES ATTORNEY

### FREQUENTLY ASKED QUESTIONS

- **The district's United States Attorney has decided to resign from their position. Who needs to be notified?**

The United States Attorney should prepare letters of resignation to the President and the Attorney General stating the date and time of the proposed resignation. Generally, the letter to the President is brief, while the letter to the Attorney General is usually longer and more personal (see examples attached). These letters should be sent by express mail to the U.S. Attorney Nominations and Appointments Unit, Executive Office for United States Attorneys (EOUSA), to handle delivery.

The United States Attorney should personally notify the Attorney General of their resignation. The United States Attorney should also contact their United States Senators or other individuals involved with recommending a replacement, so that the process of selecting a successor can begin.

The United States Attorney should call the Director, EOUSA, (202) 514-2121, at their earliest opportunity to notify them of their plans to resign.

The United States Attorney should announce their resignation to their district. They may send a memorandum announcing their departure to government agency heads and other interested parties.

- **Does a press release need to be prepared? And if so, what should it say?**

The United States Attorney's Office may send a news release announcing the United States Attorney's resignation. The press release should include in general terms the United States Attorney's future plans and any specific accomplishments (see example attached). The press release should not be used as an announcement of a political campaign or a new business. Courtesy copies of the press release should be forwarded to EOUSA and the Department of Justice, Office of Public Affairs.

- **Who handles paperwork for a United States Attorney's resignation, and what documents need to be prepared?**

The EOUSA's Personnel Staff handles separation actions for all United States Attorneys, both Servicing Personnel Office districts (SPO) and non-SPO districts. EOUSA also processes all insurance forms and associated benefits for departing United States Attorneys.

The district's Administrative Officer should complete an SF-52, Request for Personnel Action, for the United States Attorney's resignation. This document, along with a copy

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of the United States Attorney's resignation letter, is sent to EOUSA's Personnel Staff.

• **What happens to the United States Attorney's annual leave upon his/her resignation?**

A Presidentially-appointed United States Attorney does not earn leave. If a United States Attorney was a federal employee earning leave prior to the Presidential appointment, their leave was frozen upon appointment. The United States Attorney generally receives a lump sum leave payment upon resignation for any annual leave accrued prior to the Presidential appointment. The lump sum payment is calculated at the hourly rate the employee earned at the time their annual leave was frozen. If the United States Attorney accepts a position in the federal government after their resignation (e.g., appointment to a federal judgeship), annual leave may transfer to the new appointment. Lump sum leave payments are processed by EOUSA's Personnel Staff.

• **What other steps need to be taken before the United States Attorney actually separates from the office?**

The United States Attorney should ensure that the district's Administrative Officer has their correct home and work forwarding information. The United States Attorney should also work with the district's Administrative Officer to ensure that all obligations are met concerning the return of government property, the removal or preservation of federal records, and post-employment restrictions.

• **Are there any restrictions on hiring and staffing changes within the office after the United States Attorney announces their resignation?**

Yes. After a United States Attorney announces his or her resignation, all discretionary staff personnel changes (e.g., appointments, promotions, and reassignments), at all grade levels, from all sources, will be restricted. This affects actions which increase employment by adding a new employee to the district's rolls and internal actions which involve a change in position, such as a promotion or reassignment. Career ladder promotions for support employees are exempt because they do not involve filling a different position and all non-discretionary personnel actions (e.g., within-grade increases and pay adjustments) are also exempt from this prohibition.

Offers of employment extended verbally or in writing prior to the resignation announcement of a United States Attorney, including offers that were contingent on clearances such as drug testing or background investigation, will be honored.

No new offers of employment in the district may be made after the United States Attorney announces his/her resignation. If the office is in the final interview stage with any candidate, the selecting official must inform the applicant that no offer can be extended



until the new United States Attorney is appointed either by the President or as an interim.

- **What is the process for determining the new United States Attorney?**

When the vacancy of a Presidentially-appointed United States Attorney occurs, the Attorney General has the authority to appoint an interim United States Attorney whose term lasts until the confirmation of a Presidential appointment. In the absence of an interim United States Attorney appointed by the Attorney General, the Department of Justice's Office of Legal Counsel has determined that the First Assistant United States Attorney (FAUSA) may act as the United States Attorney under the Vacancies Reform Act for no more than 210 days and should be referred to as "Acting United States Attorney." No paperwork (SF-52, SF-61 Appointment Affidavit, etc.) is required for this change.

- **How long is a Presidentially-appointed United States Attorney's term?**

A Presidentially-appointed United States Attorney serves for a four-year term but may hold over after his/her term expires (and without formal reappointment), at the pleasure of the President.

- **Where should recommendations for United States Attorney appointments be sent?**

Recommendations for United States Attorneys should be forwarded to the Attorney General. Copies of recommendation letters should be sent to the Director, EOUSA.

- **Who can make recommendations for an interim United States Attorney?**

The departing United States Attorney may make a recommendation of an interim United States Attorney to the Director, EOUSA.

- **When serving as an interim United States Attorney, what title should be used?**

When serving under an Attorney General appointment or Presidential appointment, the title of "United States Attorney" should be used. "Interim United States Attorney" refers to the status not the title of the appointment. If the FAUSA is serving as the Acting United States Attorney under the Vacancies Reform Act, the title "Acting United States Attorney" should be used.



U.S. Department of Justice

*United States Attorney  
Eastern District of the United States*

---

The President  
The White House  
Washington, DC 20500

Dear Mr. President:

I am hereby submitting my resignation as United States Attorney for the Eastern District of the United States, effective midnight December 31, 2006.

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

Sincerely,

John A. Smith  
United States Attorney

DAG000000540



U.S. Department of Justice

*United States Attorney  
Eastern District of the United States*

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The Attorney General  
United States Department of Justice  
Main Justice Building, Room 5111  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Mr. Attorney General:

I am hereby submitting my resignation as United States Attorney for the Eastern District of the United States, effective midnight December 31, 2006. It has been a great honor and privilege to have served these past two years as a United States Attorney, initially by your appointment and thereafter by Presidential appointment.

Serving the United States as a United States Attorney has been the highest honor and most fulfilling duty of my public career. Thank you for your support and the support of the Department of Justice during my tenure.

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

Sincerely,

John A. Smith  
United States Attorney

DAG000000541

**UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF  
THE UNITED STATES ANNOUNCES RESIGNATION**

Washington, DC . . . United States Attorney John A. Smith, 43, of Washington, DC, has announced his resignation effective midnight on March 30, 2000. After his resignation, he plans on joining a private law firm in the Washington, DC, area.

Smith, a graduate of American University and the University of Virginia Law School, had previously served as First Assistant United States Attorney and Chief Assistant United States Attorney for the Criminal Division. During his tenure as United States Attorney, he served on the Attorney General's Advisory Committee and was co-chair of the Civil Rights Subcommittee. Mr. Smith has also served as an Instructor at the Attorney General's Advocacy Institute and the National Institute of Trial Advocacy. He implemented the current Weed and Seed program, which helps local communities reduce crime by bringing in investment and opportunity.

As United States Attorney, Smith also successfully prosecuted many civil rights and hate crime cases. In *US v. Carter*, he sought the conviction in 1998 of Bob D. Carter for racially-biased assaults against African American citizens and police officers in the downtown Washington, DC, area. Mr. Smith also oversaw the prosecution of many individuals under the Deadbeat Parents Punishment Act, which charges parents who fail to pay court-ordered child support.

The Eastern District of the United States covers 13 states, and includes the cities of Washington, DC, New York City, Boston and Philadelphia. The United States Attorney's Office, with staffed offices in Washington, DC, and New York City, has 32 attorneys and is responsible for conducting all criminal and civil litigation in the district involving the United States government.

DAG000000542

**Elston, Michael (ODAG)**

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**From:** Elston, Michael (ODAG)  
**Sent:** Monday, October 16, 2006 7:12 PM  
**To:** Charlton, Paul (USAAZ)  
**Subject:** Re: When are you getting to DC?

You're off the hook on the second capital case -- although I was told that it was AZ, when I asked for the name of the case it turns out it was another district.

Mike

-----Original Message-----  
**From:** Charlton, Paul (USAAZ)  
**To:** Elston, Michael (ODAG)  
**Sent:** Mon Oct 16 17:29:06 2006  
**Subject:** Re: When are you getting to DC?

Mike - try me on my cell. I'm plugged in now. Thx

-----Original Message-----  
**From:** Elston, Michael  
**Sent:** Monday, October 16, 2006 05:15 PM Eastern Standard Time  
**To:** Charlton, Paul (USAAZ)  
**Subject:** Re: When are you getting to DC?

Could we meet at 8 for coffee near DOJ?

-----Original Message-----  
**From:** Charlton, Paul (USAAZ)  
**To:** Elston, Michael (ODAG)  
**Sent:** Mon Oct 16 16:34:54 2006  
**Subject:** RE: When are you getting to DC?

Just landed with a dying cell battery.  
Paul

-----Original Message-----  
**From:** Elston, Michael  
**Sent:** Monday, October 16, 2006 04:05 PM Eastern Standard Time  
**To:** Charlton, Paul (USAAZ)  
**Subject:** When are you getting to DC?

I would like to talk with you before the subcommittee starts.

**Elston, Michael (ODAG)**

---

**From:** Sampson, Kyle  
**Sent:** Tuesday, October 17, 2006 3:21 PM  
**To:** Elston, Michael (ODAG)  
**Subject:** FW: United States Attorneys

See below for my list of U.S. Attorneys we should consider replacing. Does it match up with yours.

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

**From:** Harriet\_Miers@who.eop.gov [mailto:Harriet\_Miers@who.eop.gov]  
**Sent:** Sunday, September 17, 2006 3:15 PM  
**To:** Sampson, Kyle  
**Subject:** RE: United States Attorneys

Kyle, thanks for this. I have not forgotten I need to follow up on the info, but things have been crazy. Will be back in touch!

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

**From:** Kyle.Sampson@usdoj.gov [mailto:Kyle.Sampson@usdoj.gov]  
**Sent:** Wednesday, September 13, 2006 4:23 PM  
**To:** Miers, Harriet  
**Subject:** RE: United States Attorneys

Harriet, the U.S. Attorney ranks currently break down as follows:

I. Vacancies w/o Candidates

D. Alaska  
E.D. Tenn.  
S.D.W.V.

II. USAs Who Have Been (Or Will Be) Nominated for Other Things (I am strongly of the view that we should be working now to get their replacements selected and in the pipeline)

III. USAs Who, Rumor Has It, Will Be Leaving in Coming Months

IV. USA in the Process of Being Pushed Out

E.D. Ark. (Bud Cummins)

V. USAs We Now Should Consider Pushing Out

D. Ariz. (Paul Charlton)  
S.D. Cal. (Carol Lam)

W.D. Mich. (Margaret Chiara)  
D. Nev. (Dan Boqden)

W.D. Wash. (John McKay)

VI. Summary

I am only in favor of executing on a plan to push some USAs out if we really are ready and willing to put in the time necessary to select candidates and get them appointed -- it will be counterproductive to DOJ operations if we push USAs out and then don't have replacements ready to roll immediately. In addition, I strongly recommend that, as a matter of Administration policy, we utilize the new statutory provisions that authorize the AG to make USA appointments. We can continue to do selection in JSC, but then should have DOJ take over entirely the vet and appointment. By not going the PAS route, we can give far less deference to home-State Senators and thereby get (1) our preferred person appointed and (2) do it far faster and more efficiently, at less political cost to the White House.

Let me know when you have read this; I have one follow up item I would want to do over the phone. What say you?

Kyle

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

From: Harriet\_Miers@who.eop.gov [mailto:Harriet\_Miers@who.eop.gov]  
Sent: Wednesday, September 13, 2006 2:39 PM  
To: Sampson, Kyle  
Subject: United States Attorneys

Kyle, any current thinking on holdover U. S. Attorneys? Any recent word on [redacted]'s intentions?

**Elston, Michael (ODAG)**

**From:** Elston, Michael (ODAG)  
**Sent:** Tuesday, October 17, 2006 3:36 PM  
**To:** Sampson, Kyle  
**Subject:** Re: United States Attorneys

Very much so -- I may have a few additions when I get back to my desk.

-----Original Message-----  
**From:** Sampson, Kyle  
**To:** Elston, Michael (ODAG)  
**Sent:** Tue Oct 17 15:20:55 2006  
**Subject:** FW: United States Attorneys

See below for my list of U.S. Attorneys we should consider replacing. Does it match up with yours.

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**From:** Harriet\_Miers@who.eop.gov [mailto:Harriet\_Miers@who.eop.gov]  
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W.D. Wash. (John McKay)

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Kyle

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To: Sampson, Kyle  
Subject: United States Attorneys

Kyle, any current thinking on holdover U. S. Attorneys? Any recent word on their intentions?

**Elston, Michael (ODAG)**

---

**From:** Sampson, Kyle  
**Sent:** Tuesday, November 07, 2006 6:21 PM  
**To:** Elston, Michael (ODAG)  
**Subject:** U.S. Attorney Replacement Plan

**Importance:** High

**Attachments:** USA replacement plan.doc

Please review and provide comments ASAP. I'd like to get this to Harriet tonight, if possible. I've pasted it into the e-mail for your convenience.

**PLAN FOR REPLACING CERTAIN  
UNITED STATES ATTORNEYS**

November 7, 2006

**STEP 1**

U.S. Attorney calls: On or about November 8-10, Mike Battle contacts the following U.S. Attorneys:

- Paul Charlton (D. Ariz.)
- Carol Lam (S.D. Cal.)
- 
- 
- Margaret Chiara (W.D. Mich.)
- Dan Bogden (D. Nev.)
- 
- John McKay (W.D. Wash.)
- David Iglesias (D.N.M.)

Battle informs the U.S. Attorneys as follows:

- What are your plans with regard to continued service as U.S. Attorney?
- The Administration is grateful for your service as U.S. Attorney, but has determined to give someone else the opportunity to serve as U.S. Attorney in your district for the final two years of the Administration.
- We will work with you to make sure that there is a smooth transition, but intend to have a new Acting or Interim U.S. Attorney in place by January 1<sup>st</sup>.

**STEP 2**

Senator calls: On or about November 8-10 (very important that Senator calls and U.S. Attorney calls happen simultaneously), Bill Kelley or appropriate Associate Counsel contacts the following Senators:

- Jon Kyl (re Charlton)
- 
-

- 
- John Ensign (re Bogden)
- 
- Pete Domenici (re Iglesias)

Kelley informs the Senators as follows:

- The Administration has determined to give someone else the opportunity to serve as U.S. Attorney in [relevant district] for the final two years of the Administration. [If pushed, this determination is based on a thorough review of the U.S. Attorney's performance.]
- [Relevant U.S. Attorney] has been informed of this determination and knows that we intend to have a new Acting or Interim U.S. Attorney in place by the end of the year.
- We will look to you, Senator, to recommend candidates that we should consider for appointment as the new U.S. Attorney. As always, we ask that you recommend at least three candidates for the President's consideration.

### STEP 3

Evaluation and Selection of "Interim" Candidates: During November-December 2006, the Department of Justice, in consultation with the Office of the Counsel to the President, evaluates and selects candidates for Attorney General-appointment (or candidates who may become Acting U.S. Attorney by operation of law) to serve upon the resignation of above-listed U.S. Attorneys.

### STEP 4

Selection, Nomination, and Appointment of New U.S. Attorneys: Beginning as soon as possible in November 2006, Office of the Counsel to the President and Department of Justice carry out (albeit on an expedited basis) the regular U.S. Attorney appointment process: obtain recommendations from Senators, other state political leadership, and other sources; evaluate candidates; make recommendations to the President; conduct background investigations; have President make nominations and work to secure confirmations of U.S. Attorney nominees.



USA replacement  
plan.doc (35 K...

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

**PLAN FOR REPLACING CERTAIN  
UNITED STATES ATTORNEYS**

November 7, 2006

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- Jon Kyl (re Charlton)
- 
- 
- 
- John Ensign (re Bogden)
- 
- Pete Domenici (re Iglesias)

Kelley informs the Senators as follows:

DAG000000550

- The Administration has determined to give someone else the opportunity to serve as U.S. Attorney in [relevant district] for the final two years of the Administration. [If pushed, this determination is based on a thorough review of the U.S. Attorney's performance.]
- [Relevant U.S. Attorney] has been informed of this determination and knows that we intend to have a new Acting or Interim U.S. Attorney in place by the end of the year.
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DAG000000551

**Elston, Michael (ODAG)**

---

**From:** Elston, Michael (ODAG)  
**Sent:** Tuesday, November 07, 2006 6:24 PM  
**To:** McNulty, Paul J  
**Subject:** Fw: U.S. Attorney Replacement Plan

**Importance:** High

**Attachments:** USA replacement plan.doc

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

**From:** Sampson, Kyle  
**To:** Elston, Michael (ODAG)  
**Sent:** Tue Nov 07 18:21:01 2006  
**Subject:** U.S. Attorney Replacement Plan

Please review and provide comments ASAP. I'd like to get this to Harriet tonight, if possible. I've pasted it into the e-mail for your convenience.

PLAN FOR REPLACING CERTAIN  
UNITED STATES ATTORNEYS

November 7, 2006

STEP 1

U.S. Attorney calls: On or about November 8-10, Mike Battle contacts the following U.S. Attorneys:

- \* Paul Charlton (D. Ariz.)
- \* Carol Lam (S.D. Cal.)
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- \* Dan Bogden (D. Nev.)
- \*
- \* John Mckay (W.D. Wash.)
- \* David Iglesias (D.N.M.)

Battle informs the U.S. Attorneys as follows:

- \* What are your plans with regard to continued service as U.S. Attorney?
- \* The Administration is grateful for your service as U.S. Attorney, but has determined to give someone else the opportunity to serve as U.S. Attorney in your district for the final two years of the Administration.
- \* We will work with you to make sure that there is a smooth transition, but intend to have a new Acting or Interim U.S. Attorney in place by January 1st.

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Senator calls: On or about November 8-10 (very important that Senator calls and U.S. Attorney calls happen simultaneously), Bill Kelley or appropriate Associate Counsel contacts the following Senators:

- \* Jon Kyl (re Charlton)
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kyle.sampson@usdoj.gov

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UNITED STATES ATTORNEYS**

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DAG000000555

**Elston, Michael (ODAG)**

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**From:** Elston, Michael (ODAG)  
**Sent:** Tuesday, November 07, 2006 6:29 PM  
**To:** Sampson, Kyle  
**Subject:** Re: U.S. Attorney Replacement Plan

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The only concern I have is that Paul just visited and asked that not be on the list. He does seem to be running things well (if somewhat independent of DOJ). On the other hand, Matt mentioned a scandal rumor that is of great concern to me. Should we mark him as tentative while we talk that out?

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**Elston, Michael (ODAG)**

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Sent: Tuesday, November 07, 2006 6:46 PM  
To: Elston, Michael (ODAG)  
Subject: Re: U.S. Attorney Replacement Plan

Yes. And I'll wait for the DAG's input (but no longer than tomorrow).

-----  
Sent from my BlackBerry Wireless Handheld

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From: Elston, Michael (ODAG)  
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**Elston, Michael (ODAG)**

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**From:** Goodling, Monica  
**Sent:** Wednesday, November 15, 2006 4:48 PM  
**To:** Blomquist, Kathleen M; Sampson, Kyle; Elston, Michael (ODAG)  
**Subject:** RE: USA Kevin Ryan question needing a response

Kat - As a general matter, we do not comment on these sort of personnel questions (we have received others like it this year since many of the U.S. Attorneys have passed the four year mark). Traditionally, OPA's response has been something simple like, "All U.S. Attorneys serve at the pleasure of the President, and we do not comment on personnel matters."

Kyle/Mike - Any desire to say anything different here?

(P.S. Technically, yes, it is a four year term but there is an automatic hold-over provision, so the four year term does not really mean anything and a large number of our USAs are serving well past their four year mark.)

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**From:** Blomquist, Kathleen M  
**Sent:** Wednesday, November 15, 2006 2:46 PM  
**To:** Goodling, Monica  
**Subject:** USA Kevin Ryan question needing a response

Hi Monica,

How should we respond to questions about the status of Kevin Ryan?

Thanks,

kat

---

**From:** Hale, Laura K  
**Sent:** Wednesday, November 15, 2006 2:25 PM  
**To:** Smith, Kimberly A  
**Subject:** Peter Blumberg, San Francisco Daily Journal,

He wanted to know if Kevin Ryan, the USA for the Northern District of California, is going to be reappointed or replaced. His term was up in July.

Kathleen Blomquist  
Office of Public Affairs  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
202/514-2007

**Elston, Michael (ODAG)**

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**From:** Sampson, Kyle  
**Sent:** Wednesday, November 15, 2006 4:58 PM  
**To:** Goodling, Monica; Blomquist, Kathleen M; Elston, Michael (ODAG)  
**Subject:** Re: USA Kevin Ryan question needing a response

I agree w/ Monica's proposed response.

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Sent from my BlackBerry Wireless Handheld

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

**From:** Goodling, Monica  
**To:** Blomquist, Kathleen M; Sampson, Kyle; Elston, Michael (ODAG)  
**Sent:** Wed Nov 15 16:47:57 2006  
**Subject:** RE: USA Kevin Ryan question needing a response

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**Elston, Michael (ODAG)**

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**From:** Blomquist, Kathleen M  
**Sent:** Wednesday, November 15, 2006 4:59 PM  
**To:** Sampson, Kyle; Goodling, Monica; Elston, Michael (ODAG)  
**Subject:** RE: USA Kevin Ryan question needing a response

Sounds good.

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

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**Sent:** Wednesday, November 15, 2006 4:58 PM  
**To:** Goodling, Monica; Blomquist, Kathleen M; Elston, Michael (ODAG)  
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**Sent:** Wednesday, November 15, 2006 5:57 PM  
**To:** Sampson, Kyle; Goodling, Monica; Blomquist, Kathleen M  
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I agree as well.

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**From:** Sampson, Kyle  
**To:** Goodling, Monica; Blomquist, Kathleen M; Elston, Michael (ODAG)  
**Sent:** Wed Nov 15 16:57:51 2006  
**Subject:** Re: USA Kevin Ryan question needing a response

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**To:** Blomquist, Kathleen M; Sampson, Kyle; Elston, Michael (ODAG)  
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ROUTING AND TRANSMITTAL SLIP		DATE
		November 16, 2006
TO: (Name, office symbol, room number, Agency/Post)	Initials	Date
Mike Elston		
Mike Scudder		
REMARKS:		
See attached per Bill Mercer		
<small>DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions.</small>		
FROM: (Name, org. symbol, Agency/Post)	Room No. - Bldg.	
Bill Mercer	Phone No.	
	202-514-9500	

DAG00000566

**CONGRESS-ADMINISTRATION:**

Mike Elster  
FYI

cc: Sudder

**Political Motives Suspected As Jobs On Bench Go Unfilled (SEATIMES)**

By David Bowermaster, Seattle Times staff reporter

The Seattle Times, November 15, 2006

Despite a process designed to keep politics out of judicial selections, some in the local legal community are wondering whether politics is behind a delay by the White House in filling two vacancies on the U.S. District Court in Western Washington.

A seat on the federal bench in Tacoma has been open since March 2005, and a seat on the federal bench in Seattle opened in July.

In both cases, a bipartisan panel of local attorneys screened applicants and sent three recommendations to the White House; since 1997, the president has picked his nominee from among three names chosen by such panels.

But the White House, in an unprecedented move, rejected all three candidates for the Tacoma vacancy. The office of White House Counsel Harriet Miers told the bipartisan panel that none of the candidates was sufficiently qualified and asked for three more nominees.

The decision troubled many local lawyers and judges who know the three spurned finalists. Sources close to the selection process, speaking on condition of anonymity, called the White House decision "appalling," "outrageous" and a "travesty," and suspect the White House already has a replacement in mind who was not on the list.

Republicans and Democrats alike said the candidates rejected by the White House were eminently qualified. One, confirmed by sources as Karen Strombom, is already a federal magistrate judge in Tacoma.

A new set of candidates for the Tacoma vacancy was sent to the White House in August, around the same time that candidates for the Seattle opening were proposed, sources said. A nomination still hasn't been made by the White House.

Finalists for the federal bench

A bipartisan panel of local lawyers has selected three candidates for a judicial vacancy on the U.S. District Court in Seattle. The White House did interviews in September but has yet to name a nominee. The finalists:

Marc Boman: Partner, Perkins Coie. Specialist in commercial litigation. Recipient of Washington State Bar Association's "Award of Merit" for long-term service to the bar. Served on Seattle Ethics and Election Commission from 1995 to 1998.

Richard Jones: King County Superior Court judge since 1994. Named 2004 "Judge of the Year" by King County Bar Association and Washington State Bar Association. Assistant U.S. attorney in Seattle, 1988 to 1994, associate at Bogle & Gates, 1983 to 1987.

Michael Rickert: Skagit County Superior Court judge since 1992. Previously Skagit County prosecutor, 1986 to 1992.

Source: Seattle Times reporting

The finalists for the Seattle opening have heard nothing since they were interviewed by the White House in September. Nor has the selection committee, said co-chairs Jenny Durkan of Seattle and J. Vander Stoep of Chehalis.

According to several sources close to the merit panel, the candidates selected for the Seattle vacancy were King County Superior Court Judge Richard Jones, Skagit County Superior Court Judge Michael Rickert and Marc Boman, a partner at the Perkins Coie law firm.

Rickert confirmed he was interviewed at the White House on Sept. 6. Jones and Boman declined to comment.

"It's an honor to be considered," Rickert said. "To have a dog in the hunt is very nice."

The delay has raised questions in local legal circles about whether the White House might again reject a merit panel's recommendations, or choose its own nominee.

The questions intensified when rumors surfaced that John McKay, the U.S. Attorney for Western Washington, was also interviewed by the White House Counsel's Office. McKay said last summer he applied for the Seattle vacancy, and many local lawyers considered him the front-runner for the job.

The Seattle Times confirmed that McKay traveled to Washington, D.C., to meet with White House officials about the vacancy, but sources said it was not clear if it was a formal job interview.

McKay declined to confirm or deny that the meeting took place.

"I'm not in a position to comment on this midprocess," McKay said. "I'm going to wait for the White House to make a decision along with everybody else."

If President Bush nominates McKay rather than one of the three judges selected by the bipartisan merit panel, it would be the second significant snub of the process by the White House in less than a year, judicial observers said.

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The merit-panel process started in 1997 after an agreement initially hammered out by Democratic Sen. Patty Murray, and former Republican Sen. Slade Gorton and the Clinton administration.

A letter from former White House Counsel Alberto Gonzales to Murray in March 2002 made it clear the Bush administration reserved the right to go its own way with judicial nominations.

"All parties have agreed that [bipartisan panels] can be a source for identifying and evaluating candidates," wrote Gonzales, who is now attorney general. "I also propose that neither the president nor you be bound to adhere to the [panels'] evaluations in all instances."

The White House declined to shed light on any of the developments.

"As far as nominations always go, we don't speculate or comment until the process has been completed and the president is ready to make his announcement," said Peter Watkins, a White House spokesman.

Vander Stoep said he does not know when Bush will select his nominees.

"I know the White House wants to move as quickly as possible, and I know the senators want to move as quickly as possible," Vander Stoep said. Durkan said she is hopeful that the White House will abide by the process that has worked to name judges in Washington for the past decade, but she is not making predictions.

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Any of the candidates [for the Seattle vacancy] would serve the president and the country incredibly well," Durkan said. "But that's what I thought about Tacoma."

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