

**DISTRICT OF** United States Attorney

<b>Statistical Information</b>	
Indictments: FY00: 229 FY01: 197 FY02: 137 FY03: 175	
Defendants: FY00: 245 FY01: 224 FY02: 171 FY03: 206	
Percent Change in Indictments - FY03 compared to FY00	<b>-23.6</b>
Percent Change in Defendants - FY03 compared to FY00	<b>-15.9%</b>
PSN Resources: Attorneys (3) Support (1)	
Indictments per criminal work years - FY03	<b>3.33</b>
Defendants per criminal work years - FY03	<b>3.92</b>
Indictments per 100,000 population - FY03	<b>3.30</b>
Defendants per 100,000 population - FY03	<b>3.89</b>
Percent Change in Indictments - FY03 compared to FY02	<b>27.7%</b>
Percent Change in Defendants - FY03 compared to FY02	<b>20.5%</b>

**Analysis**

- From FY 2000 to FY 2003, there has been a 23.6% decrease in firearms prosecutions.
- From FY 2000 to FY 2003, there has been a 15.9% decrease in firearms defendants.
- The decrease in firearms prosecutions and defendants is even more telling given the three dedicated firearms prosecutors and one support position that the District was allocated through PSN.
- The District has improved its firearms prosecutions and defendants from FY 2002 to FY 2003, though mid-year data for FY 2004 is not yet available to determine if this trend is continuing.
- The District's firearms prosecutions per 100,000 population (3.30 per 100,000) is slightly below the national average of 3.70 and slightly below the similarly-sized District of \_\_\_\_\_ which brought 4.11 firearms indictments per 100,000 population in FY 2003.
- In addition, according to the Federal Bureau of Investigation (FBI) Uniform Crime Reports for 2001-2002, the State of \_\_\_\_\_ experienced a decrease of 1.7% in its violent crime rate.

**DISTRICT OF N. United States Attorney**

<b>Statistical Information</b>	
Indictments: FY00: 55 FY01: 41 FY02: 34 FY03: 65	
Defendants: FY00: 67 FY01: 44 FY02: 43 FY03: 81	
Percent Change in Indictments - FY03 compared to FY00	18.2%
Percent Change in Defendants - FY03 compared to FY00	20.9%
PSN Resources: Attorneys (2) Support (1)	
Indictments per criminal work years - FY03	2.12
Defendants per criminal work years - FY03	2.64
Indictments per 100,000 population - FY03	1.32
Defendants per 100,000 population - FY03	1.65
Percent Change in Indictments - FY03 compared to FY02	91.2%
Percent Change in Defendants - FY03 compared to FY02	88.4%

**Analysis**

- From FY 2000 to FY 2003, there has been a 18.2% increase in firearms prosecutions.
- From FY 2000 to FY 2003, there has been a 20.9% increase in firearms defendants.
- The increase in prosecutions which falls far below the national increase in firearms prosecutions (68%) is even more telling given the two dedicated firearms prosecutors and one support personnel that the District was allocated through PSN.
- The District substantially increased its firearms prosecutions and defendants from FY02 to FY03, though mid-year data for FY 2004 is not yet available to determine if this trend is continuing.
- The District's firearms prosecutions per capita (1.32 per 100,000) is low when compared to a similarly-sized district such as th District a which brought 3.32 firearms prosecutions per 100,000 of its population and the national average of 3.70 per 100,000 population.
- In addition, according to the Federal Bureau of Investigation (FBI) Uniform Crime Reports for 2001-2002, the State of experienced an increase of approximately 2.1% in violent crime.

<b>Statistical Information</b>	
Indictments: FY00: 22 FY01: 31 FY02: 35 FY03: 24	
Defendants: FY00: 30 FY01: 42 FY02: 49 FY03: 35	
Percent Change in Indictments - FY03 compared to FY00	9.1%
Percent Change in Defendants - FY03 compared to FY00	16.7%
PSN Resources: Attorneys (1) Support (0)	
Indictments per criminal work years - FY03	2.07
Defendants per criminal work years - FY03	3.02
Indictments per 100,000 population - FY03	2.24
Defendants per 100,000 population - FY03	3.27
Percent Change in Indictments - FY03 compared to FY02	-31.4%
Percent Change in Defendants - FY03 compared to FY02	-28.6%

**Analysis**

- From FY 2000 to FY 2003, there has been a 9.1% increase in firearms prosecutions.
- From FY 2000 to FY 2003, there has been a 16.7% increase in firearms defendants.
- These increases in prosecutions and defendants were made with only one dedicated firearms prosecutor allocated through PSN.
- The District's firearms indictments per capita (per 100,000 population) at 2.24 are lower than the national average of 3.70 firearms indictments per population, but exceed a similarly-sized district of \_\_\_\_\_ which brought 1.65 firearms prosecutions per 100,000 population in FY 2003.
- The District was recently evaluated in January 2004 by EOUSA's EARS and received an \_\_\_\_\_
- A team of prosecutors and law enforcement from the \_\_\_\_\_ Police Department also received an award in 2003 for efforts directly related to the \_\_\_\_\_ PSN program.
- No violent crime statistics were available.

<b>Statistical Information</b>	
Indictments: FY00: 107 FY01: 82 FY02: 90 FY03: 98	
Defendants: FY00: 170 FY01: 142 FY02: 131 FY03: 159	
Percent Change in Indictments - FY03 compared to FY00	-8.4%
Percent Change in Defendants - FY03 compared to FY00	-6.5%
PSN Resources: Attorneys (2) Support (0)	
Indictments per criminal work years - FY03	4.09
Defendants per criminal work years - FY03	6.64
Indictments per 100,000 population - FY03	3.92
Defendants per 100,000 population - FY03	6.36
Percent Change in Indictments - FY03 compared to FY02	8.9%
Percent Change in Defendants - FY03 compared to FY02	21.4%

**Analysis**

- From FY 2000 to FY 2003, there has been a 8.4% decrease in firearms prosecutions.
- From FY 2000 to FY 2003, there has been a 6.5% decrease in firearms defendants.
- The decrease in prosecutions is even more telling given the two dedicated firearms prosecutors that the District was allocated through PSN.
- The District did increase its firearms prosecutions and defendants from FY 2002 to FY 2003.
- The District's firearms prosecutions per capita (3.92 per 100,000) exceeds the national average of 3.70 firearms prosecutions per 100,000 population, but is low when compared to a similarly-sized district such as the District which brought 8.38 firearms prosecutions per 100,000 of its population.
- In addition, according to the Federal Bureau of Investigation (FBI) Uniform Crime Reports for 2001-2002, the cities of le and e combined experienced an increase of 5% in violent crime incidents.

**DISTRICT OF** \_\_\_\_\_ **United States Attorney**

<b>Statistical Information</b>	
Indictments: FY00: 108 FY01: 60 FY02: 83 FY03: 96	
Defendants: FY00: 118 FY01: 66 FY02: 88 FY03: 99	
Percent Change in Indictments - FY03 compared to FY00	-11.1%
Percent Change in Defendants - FY03 compared to FY00	-16.1%
PSN Resources: Attorneys (4) Support (1)	
Indictments per criminal work years - FY03	1.02
Defendants per criminal work years - FY03	1.05
Indictments per 100,000 population - FY03	1.14
Defendants per 100,000 population - FY03	1.18
Percent Change in Indictments - FY03 compared to FY02	15.7%
Percent Change in Defendants - FY03 compared to FY02	12.5%

**Analysis**

- From FY 2000 to FY 2003, there has been an 11.1% decrease in firearms prosecutions and a 16.1% decrease in firearms defendants.
- These reductions are even more telling given the four dedicated firearms prosecutors and one support personnel that the District was allocated through PSN.
- The District's firearms prosecutions per capita (1.14 per 100,000) is below the national average of 3.70 firearms indictments per 100,000 population.
- It should be noted, however, that the District was recently evaluated in June 2003 and both federal and local law enforcement agencies gave the District high marks with respect to its PSN program.
- In addition, according to the Federal Bureau of Investigation (FBI) Uniform Crime Reports for 2001-2002, violent crimes in the State of \_\_\_\_\_ decreased by 2.9%.

<b>Statistical Information</b>	
Indictments: FY00: 36 FY01: 49 FY02: 50 FY03: 41	
Defendants: FY00: 44 FY01: 58 FY02: 66 FY03: 43	
Percent Change in Indictments - FY03 compared to FY00	13.9%
Percent Change in Defendants - FY03 compared to FY00	-2.3%
PSN Resources: Attorneys (2) Support (0)	
Indictments per criminal work years - FY03	1.41
Defendants per criminal work years - FY03	1.47
Indictments per 100,000 population - FY03	1.02
Defendants per 100,000 population - FY03	1.07
Percent Change in Indictments - FY03 compared to FY02	-18.0%
Percent Change in Defendants - FY03 compared to FY02	-34.8%

**Analysis**

- From FY 2000 to FY 2003, there has been a 13.9% increase in firearms prosecutions.
- From FY 2000 to FY 2003, there has been a 2.3% decrease in firearms defendants.
- The increase in prosecutions which falls far below the national increase in firearms prosecutions (68%) is even more telling given the two dedicated firearms prosecutors that the District was allocated through PSN.
- The District's firearms prosecutions and defendants fell 18% and 34.8% respectively from FY 2002 to FY 2003.
- The District's firearms prosecutions per capita (1.02 per 100,000) is low when compared to a similarly-sized district such as \_\_\_\_\_ which brought 6.06 firearms prosecutions per 100,000 of its population and falls below the national average of 3.70 firearms prosecutions per 100,000 population.
- The District was evaluated in November 2003 and USA-5 data reflected a significant shortage of time spent on PSN cases by AUSAs.
- In addition, according to the Federal Bureau of Investigation (FBI) Uniform Crime Reports for 2001-2002, three cities in this District: \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ experienced a combined increase in violent crime of 18.2%.

DISTRICT (

United States Attorney

<b>Statistical Information</b>	
Indictments: FY00: 27 FY01: 26 FY02: 30 FY03: 28	
Defendants: FY00: 33 FY01: 31 FY02: 31 FY03: 31	
Percent Change in Indictments - FY03 compared to FY00	3.7%
Percent Change in Defendants - FY03 compared to FY00	-6.1%
PSN Resources: Attorneys (1) Support (0)	
Indictments per criminal work years - FY03	1.59
Defendants per criminal work years - FY03	1.76
Indictments per 100,000 population - FY03	3.71
Defendants per 100,000 population - FY03	4.11
Percent Change in Indictments - FY03 compared to FY02	-6.7%
Percent Change in Defendants - FY03 compared to FY02	0.0%

**Analysis**

- From FY 2000 to FY 2003, there has been a 3.7% increase in firearms prosecutions.
- From FY 2000 to FY 2003, there has been a 6.1% decrease in firearms defendants.
- The increase in prosecutions fell far below the national increase in firearms prosecutions (68%) over the same time period.
- The District's firearms indictments decreased by 6.7% from FY 2002 to FY 2003.
- The District received one dedicated firearms prosecutor through PSN.
- The District's firearms prosecutions per capita (3.71 per 100,000) is close to the national average of 3.70 firearms indictments per 100,000 population, but is low compared to the District of which brought 5.29 firearms prosecutions per 100,000 of its population.
- In addition, according to the Federal Bureau of Investigation (FBI) Uniform Crime Reports for 2001-2002, the State of a experienced a 13.3% increase in its violent crime rate from 1,171 incidents in 2001 to 1,350 incidents in 2002.

**DISTRICT**

**United States Attorney**

<b>Statistical Information</b>	
Indictments: FY00: 176 FY01: 154 FY02: 126 FY03: 158	
Defendants: FY00: 213 FY01: 200 FY02: 178 FY03: 203	
Percent Change in Indictments - FY03 compared to FY00	-10.2%
Percent Change in Defendants - FY03 compared to FY00	-4.7%
PSN Resources: Attorneys (3) Support (1)	
Indictments per criminal work years - FY03	3.16
Defendants per criminal work years - FY03	4.06
Indictments per 100,000 population - FY03	2.69
Defendants per 100,000 population - FY03	3.46
Percent Change in Indictments - FY03 compared to FY02	25.4%
Percent Change in Defendants - FY03 compared to FY02	14.0%

**Analysis**

- From FY 2000 to FY 2003, there has been a 10.2% decrease in firearms prosecutions.
- From FY 2000 to FY 2003, there has been a 4.7% decrease in firearms defendants.
- The decrease in prosecutions is even more telling given the three dedicated firearms prosecutors and one support personnel that the District was allocated through PSN.
- The District has shown an increase in firearms prosecutions and defendants from FY 2002 to FY 2003.
- The District's firearms prosecutions per capita (2.69 per 100,000) is low when compared to the national average of firearms prosecutions per 100,000 population, but exceeds the similarly-sized district of \_\_\_\_\_ which brought 2.26 firearms prosecutions per 100,000 of its population.
- In addition, according to the Federal Bureau of Investigation (FBI) Uniform Crime Reports for 2001-2002, four cities in this District: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ experienced a combined overall 2% increase in violent crime.



**DISTRICT**

**United States Attorney**

<b>Statistical Information</b>	
Indictments: FY00: 199 FY01: 292 FY02: 176 FY03: 193	
Defendants: FY00: 220 FY01: 318 FY02: 196 FY03: 223	
Percent Change in Indictments - FY03 compared to FY00	<b>-3.0%</b>
Percent Change in Defendants - FY03 compared to FY00	<b>1.4%</b>
PSN Resources: Attorneys (4) Support (1)	
Indictments per criminal work years - FY03	<b>1.98</b>
Defendants per criminal work years - FY03	<b>2.29</b>
Indictments per 100,000 population - FY03	<b>2.78</b>
Defendants per 100,000 population - FY03	<b>3.21</b>
Percent Change in Indictments - FY03 compared to FY02	<b>9.7%</b>
Percent Change in Defendants - FY03 compared to FY02	<b>13.8%</b>

**Analysis**

- From FY 2000 to FY 2003, there has been a 3% decrease in firearms prosecutions.
- From FY 2000 to FY 2003, there has been almost no growth in firearms defendants.
- The decrease in prosecutions is even more telling given the four dedicated firearms prosecutors and one support personnel that the District was allocated through PSN.
- The District's firearms prosecutions per capita (2.78 per 100,000) is low when compared to the national average of 3.70 firearms indictments per 100,000 population and is also low compared to the similarly-sized District which brought 3.80 firearms prosecutions per 100,000 of its population.
- In addition, according to the Federal Bureau of Investigation (FBI) Uniform Crime Reports for 2001-2002, six cities in this District: , and xperienced a combined overall 4.7% increase in violent crime.

**DISTRICT OF** \_\_\_\_\_ **United States Attorney**

<b>Statistical Information</b>	
Indictments: FY00: 19 FY01: 15 FY02: 16 FY03: 4	
Defendants: FY00: 32 FY01: 16 FY02: 23 FY03: 4	
Percent Change in Indictments - FY03 compared to FY00	-78.9%
Percent Change in Defendants - FY03 compared to FY00	-87.5%
PSN Resources: Attorneys (1) Support (0)	
Indictments per criminal work years - FY03	.29
Defendants per criminal work years - FY03	.29
Indictments per 100,000 population - FY03	3.68
Defendants per 100,000 population - FY03	3.68
Percent Change in Indictments - FY03 compared to FY02	-75.0%
Percent Change in Defendants - FY03 compared to FY02	-82.6%

**Analysis**

- From FY 2000 to FY 2003, there has been a 78.9% decrease in firearms prosecutions and a 87.5% decrease in firearms defendants.
- The District received one additional attorney position since 2001.
- Indeed, as is evident from the above firearms chart, only four single-defendant indictments were returned in FY 2003.
- While a portion of this reduction can be attributed to a temporary suspension of coordination between the USAO and the local Island authorities, the decrease in productivity is seen across many facets of the District's work.
- While the District has focused many of its resources on complex public corruption and white collar prosecutions, the District brought 41% fewer total indictments in FY 2003 than it did in FY 2002. Indictments filed per AUSA were down 54% over this same time period. Both these decreases are the highest in the country.
- The District's firearms prosecutions per capita (3.68 per 100,000) is consistent with the national average of 3.70 firearms indictments per 100,000 population.
- The next EARS evaluation is scheduled for April 2004.

**DISTRICT****United States Attorney**

<b>Statistical Information</b>	
Indictments: FY00: 57 FY01: 70 FY02: 65 FY03: 56	
Defendants: FY00: 62 FY01: 79 FY02: 82 FY03: 64	
Percent Change in Indictments - FY03 compared to FY00	-1.8%
Percent Change in Defendants - FY03 compared to FY00	3.2%
PSN Resources: Attorneys (4) Support (1)	
Indictments per criminal work years - FY03	2.41
Defendants per criminal work years - FY03	2.76
Indictments per 100,000 population - FY03	1.74
Defendants per 100,000 population - FY03	1.99
Percent Change in Indictments - FY03 compared to FY02	-13.8%
Percent Change in Defendants - FY03 compared to FY02	-22.0%

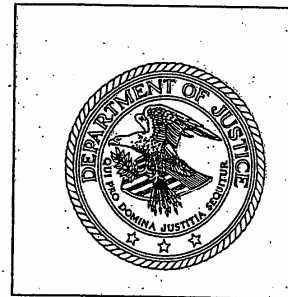
**Analysis**

- From FY 2000 to FY 2003, there has been a 1.8% decrease in firearms prosecutions.
  - From FY 2000 to FY 2003, there has been a 3.2% increase in firearms defendants.
  - The District's firearms prosecutions per capita (1.74 per 100,000) is low when compared to the national average of 3.70 firearms prosecutions per 100,000 population.
  - Since August 2001, the District was allocated four dedicated firearms prosecutors and one dedicated support staff position. These increased resources have not appreciably increased productivity as it relates to PSN prosecutions.
  - In addition, the August 2003 EARS evaluation made:
- \_\_\_\_\_
- In its last two semi-annual PSN reports, the District stated that it intends to self-evaluate its PSN strategies, but, to date, has taken few steps to achieve this goal.





Office of the Deputy Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave., NW, Rm. 4313  
Washington, D.C. 20530



MEMORANDUM FOR: Kyle Sampson  
Counsel to the Attorney General

FROM: T. C. Spencer Pryor  
Counsel to the Deputy Attorney General

DATE: July 20, 2004

SUBJECT: PSN Under-Performing Districts

The following memorandum details the results of the conference calls and the meetings the Deputy Attorney General conducted with the PSN under-performing districts. The participants were the Deputy Attorney General, ATF Director, US Attorney, ATF SAC, Spence Pryor (ODAG), and Kelly Shackelford (EOUSA). The calls and meetings were well received and served as an important reminder to the districts that PSN is a Presidential priority that must be focused on by each of the U.S. Attorney's offices and their respective PSN task forces.

The following districts were previously identified as under-performing districts:  
(2) Southern District of California (Carol Lam)

1).

Below are call/meeting summaries for each under-performing district:

District of

Meeting at 2004 National PSN conference. USA acknowledged problems, but also stated the following:

- ATF needs more resources in: **Recently received additional ATF resources for VCIT initiative which should increase number of firearms cases;**
- now has three strikes law. Thus, many firearms cases go to the DA's office. Have an aggressive DA that does a good job. Problem is tracking the cases once the decision to prosecute

ASG00000084

them in the DA's office is made;

- Problems with present huge hurdles for USAO with adoptive cases. Thus, USAO does not prosecute adoptive cases. In the past, they lost a number of adoptive cases due to credibility problems of;
- Have recently revamped PSN program. Have a new PSN coordinator, working with state and local law enforcement to ensure that they focus on guns and drugs;
- , stated as follows:
- USAO's prosecution guidelines for firearms cases are too burdensome. They need to be relaxed. If they are, their PSN prosecution numbers will increase dramatically.

**Follow-up:**

- I visited the USAO in \ on Tuesday, July 12, 2004 and had a very positive meeting with the USA. During the meeting, I provided a number of suggestions as to how they can improve their overall PSN initiative, and the USA and her staff involved with the PSN initiative were receptive. I am cautiously optimistic that we are finally on the right track.

**Southern District of California (Carol Lam)**

Conference call where USA acknowledged problems with PSN initiative; but also stated that:

- SDCA did not receive any PSN resources. **Actually, they received one new PSN prosecutor;**
- With the enormous immigration problem in the district, need more resources to devote to PSN;
- PSN case screening process with the state and local prosecutors was broken. Have a new system in place which should help PSN prosecutions;
- Have a new firearms point of contact in the office who will oversee the intake process for all firearms cases;
- California's tough firearms laws are partially responsible for low PSN prosecution numbers;

**Follow-up:**

- I plan on visiting the district with someone from ATF HQ in September to follow-up on the discussions we had and confirm that the PSN initiative in SDCA is on the right track. **Badly need more prosecutorial resources to focus on PSN initiative.**

**District**

In a written memorandum, the USA strongly defended his PSN initiative by stating:

- had a percentage down year in one out of five which is hardly a continued decrease in prosecutive output;
- Sent a five-inch three ring binder to DAG and others which highlighted his districts strong commitment to PSN;
- ranks 27<sup>th</sup> in total firearms filed from FY00 to FY03;
- In the cases filed per AUSA category, NDIN is well ahead of the national average;
- aggressively prosecuted firearms cases prior to the implementation of PSN and has continued to do so since PSN's inception;
- **Suffice it to say that while there numbers may be down, as we all know, numbers do not tell the whole story. This is not a district that has any problems with its PSN program. No follow-up needed.**

District

Conference call where the USA acknowledged that their numbers were down, but defended the PSN initiative in [redacted] by stating:

- [redacted] violent crime is down 50% since 1996 in [redacted];
- [redacted]'s firearms laws are strong and the State Attorney's Offices aggressively prosecute firearms cases;
- USAO has aggressively prosecuted firearms cases for a long time ... prior to PSN's inception;
- Need more ATF resources. **Recently received additional ATF resources for VCIT initiative which should increase number of firearms cases.**

**Follow-up:**

- I plan on visiting the district with someone from ATF HQ this fall to follow-up on the discussions we had and confirm that the PSN initiative in [redacted] is on the right track.

District b

Conference call where USA objected to our characterization of his district as under-performing by stating:

- 47% of the [redacted]'s indictments have a firearms charge included in the indictment;
- [redacted] prosecutes all firearms cases that are referred to them;
- [redacted] traces all firearms that are recovered in [redacted] and then review all of those traces for potential federal firearms cases;
- [redacted] has a tough firearms law that results in a five year minimum mandatory sentence upon conviction. This state law leads to the prosecution of many PSN cases in the state system;
- ATF needs more resources. **Recently received additional ATF resources for VCIT initiative which should increase number of firearms cases;**

**Follow-up:**

- I plan on visiting the district with someone from ATF HQ this fall to follow-up on the discussions we had and confirm that the PSN initiative in Maryland is on the right track.

District c

Conference call where USA acknowledge his district's output problems, but stated:

- State gun laws are tough;
- Have re-focused their efforts on PSN;
- To date, have indicted 68 firearms cases and expect to reach 100 - 120 firearms indictments by the end of the fiscal year;
- [redacted] focuses on firearms trafficking cases and have been successful in bringing trafficking prosecutions;
- ATF badly needs more resources.

**Follow-up:**

- I plan on visiting the district with someone from ATF HQ this fall to follow-up on the discussions we had and confirm that the PSN initiative in New Jersey is on the right track.

District

Conference call where USA acknowledged that their FY 03 numbers were down, but defended their initiative by stating:



- Have a new direct referral system in place where the USAO sees all potential firearms cases including state and local cases and can quickly make decisions about which cases to prosecute in the federal system;
- Have already filed 71 firearms indictments this fiscal year;
- Need more ATF resources. Recently received additional ATF resources for VCIT initiative which should increase number of firearms cases;
- Suggested that ATF should consider changing their formal blue-cover report system. Current reporting system unnecessarily delays prosecutions;
- **USA is clearly engaged in the PSN initiative and they have things on the right track. No follow-up needed.**

**District:**

Conference call where USA acknowledged his programs low output, but emphasized that they are working very hard to right the ship. He stated:

- Following the Petite Policy has drastically decreased the number of firearms referrals from the DA's office;
- The County DA's Office is very aggressively prosecuting firearms cases;
- Lost five SAUSAs that were prosecuting firearms cases due to state budget cuts. Governor has recently re-instated two of them;
- ATF is at maximum capacity. They do a great job, but need more resources;
- Suggested liberalizing the ATF blue-cover reporting system;
- **USA is clearly engaged. At this point no follow-up is needed. Will review progress at conclusion of FY04.**

**District:**

Conference call with FAUSA and PSN coordinator where they defended their PSN initiative by stating:

- There is not a lot of gun violence in ;
- Have been innovative in their firearms prosecutions. First district to prosecute 922(g)(9) (domestic violence cases). Leader in "Lie and Try" prosecutions. Met with every State Attorney's Office about referring firearms cases. Also, working closely with tribal law enforcement to combat gun crime;
- ATF badly needs more resources. Only have three agents to address firearms crimes in South Dakota;
- **No follow-up necessary. They are engaged and focused on the small amount of gun crime that exists in**

**District:**

Conference call where USA defended his district's PSN initiative by stating:

- has had a high-profile federal firearms prosecution program for the past five years which contributed to a decrease in the violent crime rate. This program was necessary because of lax state firearms laws. In response to the aggressive federal prosecution of firearms crimes, the state of passed new legislation which increased the maximum penalty for firearms crimes to ten years and implemented "truth-in-sentencing" (no parole);

- Now, many PSN firearms cases are prosecuted by PSN grant funded state prosecutors in state court;
- While the office now has four fully funded and staffed firearms AUSAs, these positions were not fully staffed until the beginning of FY03;
- Have implemented a domestic violence focus in PSN program which should address a major problem in the \_\_\_ and generate a significant number of federal firearms prosecutions;
- **USA is fully engaged in PSN initiative. No follow-up needed at this time.**

**District c**

Call with PSN coordinator where he defended their PSN initiative by stating:

- "In Guam there are no gangs, no drugs, no shootings, and no gun violence;"
- Have tried to use domestic violence statute, 922(g)(9), to increase firearms prosecutions, but most acts of domestic violence involved weapons other than firearms;
- **Have program in place, but do not have gun violence issues that most districts have. No follow-up needed at this time. ATF has a firearms enforcement training program scheduled for January 2005.**

**District**

USA defended their PSN initiative by stating:

- Firearms prosecution was down last year due to a public corruption case that the USAO prosecuted. Because of this highly publicized case, the AG retaliated by keeping all firearms cases. This retaliation was accomplished by ordering the police commissioner to send all firearms cases directly to the AG rather than the USAO;
- Because of the above-mentioned dilemma, the USAO focused on getting guns off of the streets with the hopes of reducing the homicide rate. The USAO partnered with the local police and removed 100 firearms from the streets. The homicide rate when down from 41 to 24;
- Changes have been made in the local government and the USAO is now getting firearms referrals from local law enforcement again;
- Firearms prosecutions are up dramatically this year and will continue to improve;
- **Focusing on PSN initiative. Seem to be on the right track. No follow-up currently needed. Re-assessment at the conclusion of FY 04.**



United States Attorneys—Criminal Caseload Statistics\*

18 U.S.C. 922, 924\*\*

Cases Filed

Listing Sorted: Based on the Percent Change; highest to lowest

Rank	District	FY 2004	FY 2005***	Percent Change
1	Guam	2	9	350.0%
2	Illinois, Southern	41	68	65.9%
3	North Dakota	29	47	62.1%
4	Arkansas, Eastern	70	107	52.9%
5	Georgia, Middle	63	96	52.4%
6	Louisiana, Middle	58	88	51.7%
7	Michigan, Western	72	109	51.4%
8	Indiana, Northern	120	171	42.5%
9	Texas, Eastern	150	211	40.7%
10	Tennessee, Middle	66	92	39.4%
11	Arkansas, Western	23	32	39.1%
12	Washington, Western	64	89	39.1%
13	Oklahoma, Northern	62	86	38.7%
14	Alabama, Middle	83	114	37.3%
15	New Mexico	123	164	33.3%
16	Alabama, Southern	82	109	32.9%
17	West Virginia, Northern	49	65	32.7%
18	Iowa, Northern	65	83	27.7%
19	New York, Northern	40	51	27.5%
20	Ohio, Northern	153	190	24.2%
21	Ohio, Southern	128	156	21.9%
22	Texas, Northern	182	214	17.6%
23	Kentucky, Western	74	87	17.6%
24	South Carolina	242	283	16.9%
25	Arizona	230	268	16.5%
26	Florida, Northern	67	77	14.9%
27	Idaho	46	52	13.0%
28	North Carolina, Western	220	248	12.7%
29	New Jersey	86	96	11.6%
30	California, Northern	92	102	10.9%
31	Washington, Eastern	74	82	10.8%
32	Kentucky, Eastern	115	127	10.4%
33	Nebraska	157	171	8.9%
34	Illinois, Northern	105	114	8.6%
35	Georgia, Southern	100	107	7.0%
36	Virginia, Western	160	171	6.9%
37	California, Eastern	119	126	5.9%
38	Missouri, Western	323	341	5.6%
39	Massachusetts	72	75	4.2%
40	Rhode Island	36	37	2.8%
41	Montana	84	86	2.4%
42	Iowa, Southern	89	91	2.2%
43	Texas, Western	280	285	1.8%
44	Florida, Middle	179	179	0.0%
45	Wyoming	60	60	0.0%
46	Indiana, Southern	60	59	-1.7%
47	Tennessee, Eastern	215	210	-2.3%
48	Missouri, Eastern	255	248	-2.7%
49	Wisconsin, Eastern	90	87	-3.3%

ASG00000090

Rank	District	FY 2004	FY 2005***	Percent Change
50	Alabama, Northern	171	165	-3.5%
51	Florida, Southern	189	182	-4.4%
52	Illinois, Central	67	63	-6.0%
53	South Dakota	33	31	-6.1%
54	Maryland	176	164	-6.8%
55	Virginia, Eastern	291	274	-6.9%
56	Pennsylvania, Eastern	250	231	-7.6%
57	North Carolina, Eastern	272	250	-8.1%
58	California, Central	144	131	-9.0%
59	Oklahoma, Western	41	37	-9.8%
60	Pennsylvania, Western	111	99	-10.8%
61	Colorado	149	132	-11.4%
62	Texas, Southern	252	223	-11.5%
63	Oregon	152	134	-11.8%
64	Minnesota	71	62	-12.7%
65	Louisiana, Eastern	92	80	-13.0%
66	Michigan, Eastern	171	148	-13.5%
67	Mississippi, Southern	80	69	-13.8%
68	North Carolina, Middle	187	161	-13.9%
69	Alaska	35	30	-14.3%
70	Wisconsin, Western	38	32	-15.8%
71	Connecticut	71	59	-16.9%
72	Nevada	171	138	-19.3%
73	New Hampshire	46	37	-19.6%
74	Hawaii	84	66	-21.4%
75	Vermont	43	33	-23.3%
76	Maine	76	58	-23.7%
77	Utah	274	208	-24.1%
78	New York, Southern	246	185	-24.8%
79	Louisiana, Western	124	93	-25.0%
80	Puerto Rico	48	36	-25.0%
81	Kansas	186	136	-27.4%
82	New York, Western	153	110	-28.1%
83	Delaware	41	29	-29.3%
84	Georgia, Northern	188	129	-31.4%
85	Tennessee, Western	283	192	-32.2%
86	California, Southern	18	12	-33.3%
87	West Virginia, Southern	72	47	-34.7%
88	Pennsylvania, Middle	101	64	-36.6%
89	District of Columbia	271	170	-37.3%
90	Virgin Islands	20	12	-40.0%
91	New York, Eastern	143	83	-42.0%
92	Oklahoma, Eastern	50	29	-42.0%
93	Mississippi, Northern	61	30	-50.8%
94	Northern Mariana Islands	0	1	
	All Districts	11,067	10,841	-2.0%

\*Caseload data extracted from the United States Attorneys' Case Management System.

\*\*Includes any and all criminal cases where 18 U.S.C. 922 or 924 was brought as any charge against a defendant. However, both statutes were run together to eliminate any double counting of cases/defendants when more than one subsection of Section 922 or 924 was charged against the same defendant, or both Sections 922 and 924 were charged against the same defendant.

\*\*\*FY 2005 numbers are actual data through the end of September 2005.

EOUSA/DA/ANALYSIS STAFF/FIRE 922-924RANKCASES\_RANK

ASG00000091



United States Attorneys—Criminal Caseload Statistics\*  
 18 U.S.C. 922, 924\*\*  
 Cases Filed

Listing Sorted: Based on the number of Cases Filed in FY 2005; highest to lowest

Rank	District	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005**
1	Missouri, Western	53	56	40	50	46	60	171	184	222	306	323	341
2	Texas, Western	115	107	107	57	129	127	161	150	190	248	280	285
3	South Carolina	128	123	90	85	110	133	89	144	268	243	242	283
4	Virginia, Eastern	84	81	70	166	312	297	263	292	260	311	291	271
5	Arizona	85	86	90	36	110	117	137	154	165	227	230	268
6	North Carolina, Eastern	52	48	31	24	57	52	84	108	155	282	272	250
7	North Carolina, Western	55	71	37	52	56	74	107	82	90	98	220	248
8	Missouri, Eastern	88	91	68	83	99	116	121	119	152	256	255	248
9	Pennsylvania, Eastern	58	123	81	87	80	210	165	183	215	223	250	231
10	Texas, Southern	75	96	65	65	115	138	199	292	176	193	252	223
11	Texas, Northern	117	86	77	70	119	100	176	154	126	158	182	214
12	Texas, Eastern	81	66	50	62	60	61	84	100	101	147	150	211
13	Tennessee, Eastern	67	78	41	57	70	77	105	172	145	181	215	210
14	Utah	32	29	27	32	34	61	90	185	224	337	274	208
15	Tennessee, Western	50	55	39	40	38	86	46	84	194	233	283	192
16	Ohio, Northern	104	96	76	34	60	59	81	84	116	134	153	190
17	New York, Southern	89	90	109	104	114	128	122	108	177	234	246	186
18	Florida, Middle	66	125	90	119	92	93	96	93	128	162	179	179
19	Virginia, Western	80	60	43	44	53	91	68	75	129	173	160	171
20	Nebraska	17	22	23	23	46	32	35	54	95	166	157	171
21	Indiana, Northern	28	31	22	43	44	81	117	116	127	111	120	171
2	District of Columbia	95	45	104	141	107	133	136	165	190	246	271	170
23	Alabama, Northern	39	25	32	26	34	48	98	136	186	218	171	165
24	New Mexico	50	52	50	28	47	61	72	101	103	96	123	164
25	Maryland	79	100	105	111	118	154	229	197	137	175	176	164
26	North Carolina, Middle	57	53	35	35	43	79	104	108	117	154	187	161
27	Ohio, Southern	48	56	33	18	32	34	50	52	71	99	128	156
28	Florida, Southern	147	163	146	143	153	131	120	162	156	167	159	152
29	Michigan, Eastern	137	141	102	89	147	127	86	127	216	252	171	148
30	Nevada	50	39	24	30	61	71	74	72	168	192	171	138
31	Kansas	59	82	42	54	66	73	101	93	103	147	186	135
32	Oregon	50	75	47	52	108	126	103	92	132	150	152	134
33	Colorado	51	66	59	36	36	44	109	110	108	146	149	132
34	California, Central	110	109	103	74	65	70	88	147	154	108	144	131
35	Georgia, Northern	69	111	103	83	49	108	115	135	105	167	188	129
36	Kentucky, Eastern	54	39	36	27	43	71	64	84	96	114	115	127
37	California, Eastern	51	57	66	48	28	46	48	55	70	78	119	126
38	Illinois, Northern	41	27	23	33	28	43	46	45	103	104	105	114
39	Alabama, Middle	24	21	19	13	15	8	15	20	31	92	83	114
40	New York, Western	20	34	30	25	30	86	91	101	107	125	153	110
41	Michigan, Western	35	16	17	28	13	31	42	58	80	99	72	109
42	Alabama, Southern	31	39	21	22	29	33	46	48	81	87	82	109
43	Georgia, Southern	15	15	17	14	30	30	42	75	77	89	100	107
44	Arkansas, Eastern	42	36	47	30	36	27	26	28	53	59	70	107
45	California, Northern	60	33	50	37	43	119	120	96	89	114	92	102
46	Pennsylvania, Western	31	29	24	16	20	13	36	49	50	41	111	99
47	New Jersey	48	55	34	51	52	88	108	60	83	96	86	96
48	Georgia, Middle	43	31	14	25	18	19	29	70	42	64	63	98
49	Louisiana, Western	16	39	27	17	17	25	26	39	50	82	124	93
50	Tennessee, Middle	8	12	12	21	29	31	38	37	60	94	66	92

ASG00000093

Rank	District	FY 1994	FY 1995	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005***
1	Iowa, Southern	17	32	28	19	32	41	47	27	53	76	89	91
52	Washington, Western	29	42	38	32	35	35	27	20	43	60	64	89
53	Louisiana, Middle	5	13	5	8	16	92	65	46	47	61	58	86
54	Wisconsin, Eastern	38	37	25	39	21	31	57	70	65	56	90	87
55	Kentucky, Western	30	34	24	24	32	36	38	89	83	86	74	87
56	Oklahoma, Northern	27	38	24	23	24	28	32	29	48	53	62	86
57	Montana	30	28	38	27	18	28	34	36	55	95	84	86
58	New York, Eastern	85	96	74	79	67	79	75	96	133	129	143	86
59	Iowa, Northern	22	27	23	36	25	32	73	81	58	94	65	83
60	Washington, Eastern	68	71	54	48	28	37	48	38	88	92	74	82
61	Louisiana, Eastern	31	40	29	33	23	74	74	68	91	98	92	80
62	Florida, Northern	59	57	62	51	45	61	53	66	64	93	67	77
63	Massachusetts	46	80	65	27	47	51	35	56	81	90	72	75
64	Mississippi, Southern	38	33	14	11	34	22	77	61	63	96	80	69
65	Illinois, Southern	38	63	38	19	43	42	61	34	48	85	41	68
66	Hawaii	11	21	7	8	23	12	10	11	31	86	84	66
67	West Virginia, Northern	17	19	25	18	17	22	32	21	54	51	49	65
68	Pennsylvania, Middle	49	49	26	23	20	35	39	40	42	49	101	64
69	Illinois, Central	23	42	32	24	42	38	47	38	53	63	67	63
70	Minnesota	39	31	30	42	50	47	55	41	34	65	71	62
71	Wyoming	19	12	16	16	35	29	24	21	44	71	60	60
72	Indiana, Southern	36	46	30	29	25	49	24	27	48	61	60	59
73	Connecticut	30	36	40	41	27	43	44	53	55	58	71	59
74	Maine	19	17	23	45	32	41	48	33	62	69	76	58
75	Idaho	15	18	10	12	17	10	12	16	43	58	46	52
76	New York, Northern	13	19	10	10	18	15	20	38	40	42	40	51
77	West Virginia, Southern	28	38	20	35	25	43	51	45	73	61	72	47
8	North Dakota	21	15	24	22	26	29	29	22	44	34	29	47
79	Rhode Island	20	21	15	14	18	24	17	20	29	36	36	37
80	Oklahoma, Western	29	26	27	26	29	30	36	32	41	69	41	37
81	New Hampshire	18	7	9	10	6	16	14	12	13	28	46	37
82	Puerto Rico	37	33	44	26	16	41	23	38	35	36	48	36
83	Vermont	20	12	12	13	12	12	18	37	28	29	43	33
84	Wisconsin, Western	11	11	5	13	4	6	13	13	24	28	38	32
85	Arkansas, Western	23	12	13	12	6	13	11	18	13	19	23	32
86	South Dakota	16	24	27	25	18	22	27	26	30	28	33	31
87	Mississippi, Northern	17	26	21	8	8	16	22	31	35	24	61	30
88	Alaska	17	10	4	13	9	17	18	18	21	33	35	30
89	Oklahoma, Eastern	7	11	10	9	6	13	21	23	21	45	50	29
90	Delaware	11	14	13	18	20	10	6	13	67	41	41	29
91	Virgin Islands	20	28	21	5	13	26	19	15	16	4	20	12
92	California, Southern	34	40	24	28	25	17	16	19	24	17	18	12
93	Guam	25	14	13	19	13	7	8	8	15	8	2	9
94	Northern Mariana Islands	2	1	3	1	0	6	2	0	6	2	0	1
	All Districts	4,274	4,564	3,793	3,703	4,391	5,500	6,281	7,041	8,534	10,556	11,067	10,841

\*Caseload data extracted from the United States Attorneys' Case Management System.

\*\*Includes any and all criminal cases where 18 U.S.C. 922 or 924 was brought as any charge against a defendant. However, both statutes were run together to eliminate any double counting of cases/defendants when more than one subsection of Section 922 or 924 was charged against the same defendant, or both Sections 922 and 924 were charged against the same defendant.

\*\*\*FY 2005 numbers are actual data through the end of September 2005.

EOUSA/DATA ANALYSIS STAFF/FIRE 922-924RANKCASES\_RANK

07-Nov-05

ASG00000094





Immigration/Drug/Fraud Cases

The Sentencing Commission has just released its report for fiscal year 2005. This contains information about sentencings in felony and class A misdemeanors.

**Arizona: 4,521 defendants** were sentenced there in FY 05.

Of those, 2,275 were sentenced for immigration offenses.  
947 were sentenced for drug trafficking offenses  
140 were sentenced for fraud offenses.

**New Mexico: 2,575 defendants** were sentenced there in FY 05.

Of those, 1,635 were sentenced for immigration offenses.  
649 were sentenced for drug trafficking offenses  
24 were sentenced for fraud offenses.

**SD California: 2,536 defendants** were sentenced there in FY 05.

Of those, 1,413 were sentenced for immigration offenses.  
826 were sentenced for drug trafficking offenses  
153 were sentenced for fraud offenses.

**SD Texas: 6,414 defendants** were sentenced there in FY 05. This is the largest number for any district in the country in FY05.

Of those, 4,313 were sentenced for immigration offenses.  
1,482 were sentenced for drug trafficking offenses  
99 were sentenced for fraud offenses.

**WD Texas: 5,839 defendants** were sentenced there in FY 05.

Of those, 2,519 were sentenced for immigration offenses.  
2,412 were sentenced for drug trafficking offenses  
215 were sentenced for fraud offenses.

Firearms Cases

The Commission has also published sentencing data for defendants in firearms cases for the FY 02-05 period where the primary offense is a "firearms" offense. They report the following information per district:

**Arizona**

2002 -- 100 defendants

ASG000000096

2003 -- 145 defendants  
2004 -- 184 defendants  
2005 -- 226 defendants

**New Mexico**

2002 -- 69 defendants  
2003 -- 63 defendants  
2004 -- 86 defendants  
2005 -- 103 defendants

**Southern District of California**

2002 -- 18 defendants  
2003 -- 19 defendants  
2004 -- 12 defendants  
2005 -- 10 defendants

**Southern District of Texas**

2002 -- 192 defendants  
2003 -- 153 defendants  
2004 -- 161 defendants  
2005 -- 227 defendants

**Western District of Texas**

2002 -- 131 defendants  
2003 -- 133 defendants  
2004 -- 213 defendants  
2005 -- 204 defendants

ASG000000097

July 5, 2006

**MEMORANDUM**

**TO:** Carol Lam  
United States Attorney  
Southern District of California

**FROM:** William W. Mercer  
Principal Associate Deputy Attorney General

**SUBJECT:** Reconciliation of Sentencing Data for Immigration and Firearms Offenses  
in the Southern District of California

In the course of on-going discussions regarding resource allocation and DOJ priorities, I have reviewed different data. The following summary is drawn from Sentencing Commission data. It is dependent upon information provided to the Commission by the judges in each district. So, if a particular district court underreports, these data understate the work of the federal prosecutors in that district. Can you advise whether these data underreport the work of your office?

Immigration/Drug/Fraud Cases

The Sentencing Commission has just released its report for fiscal year 2005. This contains information about sentencings in felony and class A misdemeanors.

**Arizona: 4,521 defendants** were sentenced there in FY 05.

Of those, 2,275 were sentenced for immigration offenses.  
947 were sentenced for drug trafficking offenses  
140 were sentenced for fraud offenses.

**New Mexico: 2,575 defendants** were sentenced there in FY 05.

Of those, 1,635 were sentenced for immigration offenses.  
649 were sentenced for drug trafficking offenses  
24 were sentenced for fraud offenses.

**SD California: 2,536 defendants** were sentenced there in FY 05.

Of those, 1,413 were sentenced for immigration offenses.

ASG000000098

826 were sentenced for drug trafficking offenses  
153 were sentenced for fraud offenses.

**SD Texas: 6,414 defendants** were sentenced there in FY 05. This is the largest number for any district in the country in FY05.

Of those, 4,313 were sentenced for immigration offenses.  
1,482 were sentenced for drug trafficking offenses  
99 were sentenced for fraud offenses.

**WD Texas: 5,839 defendants** were sentenced there in FY 05.

Of those, 2,519 were sentenced for immigration offenses.  
2,412 were sentenced for drug trafficking offenses  
215 were sentenced for fraud offenses.

#### Firearms Cases

The Commission has also published sentencing data for defendants in firearms cases for the FY 02-05 period where the primary offense is a "firearms" offense. They report the following information per district:

#### **Arizona**

2002 -- 100 defendants  
2003 -- 145 defendants  
2004 -- 184 defendants  
2005 -- 226 defendants

#### **New Mexico**

2002 -- 69 defendants  
2003 -- 63 defendants  
2004 -- 86 defendants  
2005 -- 103 defendants

#### **Southern District of California**

2002 -- 18 defendants  
2003 -- 19 defendants  
2004 -- 12 defendants  
2005 -- 10 defendants

#### **Southern District of Texas**

ASG000000099

2002 -- 192 defendants  
2003 -- 153 defendants  
2004 -- 161 defendants  
2005 -- 227 defendants

**Western District of Texas**

2002 -- 131 defendants  
2003 -- 133 defendants  
2004 -- 213 defendants  
2005 -- 204 defendants

ASG000000100

III. Current AUSA resources in the SW border districts

As of early March, the on-board full-time AUSA counts from the direct appropriation (excluding ACE, health care fraud, and OCDETF) was as follows:

Arizona	114
SD Cal	111
New Mexico	63
SD Texas	143
WD Texas	111

ASG000000101

**Mercer, William W**

---

**From:** Connor, Mark  
**Sent:** Tuesday, February 21, 2006 9:13 AM  
**To:** Mercer, Bill (ODAG); Elston, Michael (ODAG); Davis, John S (ODAG)  
**Subject:** RE: Developments from JICC Meeting

I have heard nothing more on the FCR memo. As for the McKay memo, after additional discussion (ODAG and OCIO recommendations) the JICC is revising its memo on this topic. Specifically, they are in the process of drafting a memorandum requesting the DAG provide (endorse) guidance to all components regarding the Department's long term information sharing strategy. I requested that the JICC provide recommendations for the DAG to consider such as criteria for site selection (for partnerships), a timetable for expansion of sites, and a list of potential sites to be utilized on a continuing and flexible basis. An original draft has been prepared and is being reviewed and modified. I am working with the JICC on this matter and anticipate having substantial input. I anticipate that the memo will be finalized within a few weeks.

Van Hitch, John (by phone) and I are scheduled to meet with Paul tomorrow at 1000 to discuss potential recommendations from the McKay group (Regional Information Sharing Working Group, AGAC). We wanted to make Paul aware of some potential recommendations prior to the U.S. Attorneys conference. MAC

---

**From:** Mercer, Bill (ODAG)  
**Sent:** Monday, February 20, 2006 9:50 PM  
**To:** Connor, Mark; Elston, Michael (ODAG); Davis, John S (ODAG)  
**Subject:** RE: Developments from JICC Meeting

When do you anticipate that the memos will be finalized?

---

**From:** Connor, Mark  
**Sent:** Thursday, January 19, 2006 4:17 PM  
**To:** Mercer, Bill (ODAG); Elston, Michael (ODAG); Davis, John S (ODAG)  
**Subject:** Developments from JICC Meeting

Gents: I want to make you aware of a couple of developments that came from the Justice Intelligence Coordinating Council meeting today.

1)

The JICC will be forwarding a memo to the A/DAG regarding this matter. The memo will provide details of the working groups study of this issue as well as possible options.

2) Components concerned about U.S. Attorney John McKay's activities.

The DEA representative to the JICC advised that the DEA Albany office reported that John McKay was going to be in Albany meeting with Law Enforcement personnel regarding LinX. This prompted a lengthy discussion regarding component concerns regarding Mr. McKay. The components expressed frustration that a Department representative was traveling around the country endorsing a Navy system. The components believe that DOJ Field Offices and local law enforcement are receiving conflicting signals because Mr. McKay is a Department employee but is not representing Department strategy of a Department system.

There was additional discussion which I can provide at another time if you so desire.



The JICC will be forwarding a memo to the A/DAG expressing its concern regarding the activities of John McKay as they relate to LinX.

I do not anticipate either memo being ready prior to the next JICC meeting, which is currently scheduled for 16 Feb 06.

MAC

**Mercer, William W**

---

**From:** Connor, Mark  
**Sent:** Tuesday, February 21, 2006 5:48 PM  
**To:** Mercer, Bill (ODAG)  
**Subject:** FW: Notes from AGAC/RIS

Bill: My thoughts on some of the issues discussed at the RIS Working Group meeting in St. Louis.

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

**From:** Connor, Mark  
**Sent:** Tuesday, February 21, 2006 2:11 PM  
**To:** Duffy, Michael (OCIO); Hitch, Vance (OCIO); Davis, John S (ODAG)  
**Cc:** Connor, Mark  
**Subject:** RE: Notes from AGAC/RIS

Gents: Here are some of my thoughts on the issues highlighted in Mike's notes.

1. DoD plans to renew its offer of a partnership to DOJ (via the DAG) and to DHS. This is a logical course of action by NCIS and in the long term we hope to partner with as many systems nationwide as possible. However, in the near term, I do not believe it is in the Department's best interests or consistent with the LEISP strategy to commit only to a relationship with LInX. Further response to this below.
2. For the five read ahead questions (there were only four, was that a test?):
  - a) Should the DAG endorse the LInX concept, standards, and project approach? Again, I think this is somewhat inconsistent with LEISP strategy. Our goal is to be able to partner with a wide variety of systems and partners nationwide. We can certainly learn from each new initiative and refine our basic standards but to endorse a specific approach takes us further from our ability to be flexible in our partnering choices.
  - b) Should the DAG concur with the DoD/NCIS national deployment plan? Presumably, this means should the DAG endorse the nationwide DOJ-DoD partnership. I think there are a number of information sharing systems in existence and in important locations that would benefit from by partnering with. If this is not what is meant then the answer is no. I do not believe the DAG should take a position one way or the other on another Department's plans and strategy unless those plans directly affected Department objectives. In this case, simply stating that information sharing initiatives are a good thing should suffice.
  - c) Should the U.S. Attorney's role in LInX projects to date be formalized in each judicial district? What do we mean by formalized? Requiring certain job performance criteria to be met? I'm not sure the DAG should place such additional requirements on U.S. Attorneys.
  - d) Should the A/DAG assert strong oversight over the compliance with the April '05 DAG Comey memo? Good question and may depend on what course of action the DAG intends to pursue with regards to the Department's long term information sharing strategy. The JICC will be recommending additional steps and criteria for the DAG's consideration shortly. These recommendations will most likely include the use of structured data for closed cases (except for FBI) and a pointer system for open cases. This will ease the resource burden on the components and make the Department's ability to enter into partnerships a more timely process, thereby allowing us to partner with more systems sooner than we would by pursuing relationships using unstructured data. In addition, once the national data from the components was ingested into R-DEX, there would no longer be a need to review documents from each component at each location (again, except FBI).
3. The emerging consensus of the U.S. Attorneys:
  - i) DOJ and the DAG should endorse in general the contributions DoD/NCIS has made to information sharing through LInX. I believe the Department has done that on several occasions. I think this should remain on a case by case basis, that is, when the

Department partners with LInX at another site we would acknowledge the role of NCIS and LInX at that site (and any other existing partnership sites). I believe if we move beyond that we might somehow influence state or local agencies or systems into believing that they have to use LInX to partner with the Department.

ii) DOJ should help DoD/NCIS get DHS involved as a funding partner so that DoD/NCIS can expand the deployment of LInX systems to other jurisdictions. In general, engaging DHS regarding funding for information sharing systems is a good idea. However, I am not comfortable that the Department should be doing this solely for LInX. What about other systems? Other sites used by other police and sheriffs departments?

iii) DOJ needs to recommit to the information sharing policy stipulated in the April '05 memo. The DAG will make this determination following additional briefings and recommendations from the JICC. Are we talking about Seattle only?

iv) DOJ should commit to connect R-DEX to all LInX sites. This is ideal in the long term as we hope to partner with as many systems as possible across the country. Doing this in the short term might negate partnerships that would better serve the Department's strategic and tactical interests.

v) DOJ should adopt as part of the LEISP the five standards promoted by LInX (these standards would have to be met by any information sharing system to which DOJ chose to partner with). We should certainly review those standards to determine if the Department can improve in certain areas. However, once again this would seem to take us down the road of only partnering with LInX or potentially forcing other systems into the LInX mode. If the standards are generic enough to be inclusive of non-LInX sites and are beneficial to the Department we should give them serious consideration. How do they compare with our LEISP guidelines?

vi) U.S. Attorneys should be key players in regional information sharing systems. This is generally a good idea. Two points I would make are 1) the U.S. Attorneys should not be required to conduct specific activities in this regard as the effort required will probably vary greatly from site to site, and 2) the U.S. Attorneys should not focus solely on LInX. If other systems are out there that make sense for the Department to partner with that is where the U.S. Attorney should be engaged.

MAC

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

From: Duffy, Michael (OCIO)  
Sent: Monday, February 20, 2006 6:45 PM  
To: Hitch, Vance (OCIO); Warren, Jeremy; Connor, Mark; Davis, John S (ODAG)  
Cc: Garrett, Paul  
Subject: Fw: Notes from AGAC/RIS

Here are my notes from Feb-8 mtg in St. Louis. MDD

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

From: mduffys@earthlink.net <mduffys@earthlink.net>  
To: Duffy, Michael (OCIO) <Michael.Duffy@SMOJMD.USDOJ.gov>  
Sent: Mon Feb 20 13:48:32 2006  
Subject: Notes from AGAC/RIS

**Mercer, William W**

---

**From:** Elston, Michael (ODAG)  
**Sent:** Friday, March 31, 2006 11:17 PM  
**To:** Margolis, David  
**Cc:** Mercer, Bill (ODAG)  
**Subject:** FW: San Francisco Press Release

**Importance:** High

**Attachments:** tmp.htm; DOJ\_clr\_sm.gif; ole1.bmp; Steroid Guidelines Chart.wpd



tmp.htm (16 KB)



DOJ\_clr\_sm.gif (15 KB)



ole1.bmp (6 KB)



Steroid Guidelines Chart.wpd (... KB)

David:

For your NDCA file. I have not received a response.

Mike

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

**From:** Elston, Michael (ODAG)  
**Sent:** Wednesday, March 29, 2006 12:55 PM  
**To:** Ryan, Kevin (USACAN)  
**Cc:** Mercer, Bill (ODAG); Roehrkasse, Brian  
**Subject:** FW: San Francisco Press Release  
**Importance:** High

Kevin:

Not sure that this was particularly helpful. I have already quashed DEA's effort to issue a press release on this subject at this time -- it is my judgment, as the Department's ex officio Commissioner, that this kind of thing actually harms our ability to ensure that the emergency amendment will become the permanent amendment. After our conversations, I am fairly surprised that you would not consult with me or anyone else in Main Justice before issuing a press release on something that has nothing to do with your office.

Please don't do anything further in this area without consultation.

Thanks,  
Mike

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

**From:** Roehrkasse, Brian  
**Sent:** Wednesday, March 29, 2006 9:43 AM  
**To:** Elston, Michael (ODAG)  
**Cc:** Mercer, Bill (ODAG)  
**Subject:** FW: San Francisco Press Release  
**Importance:** High

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

**From:** Smith, Kimberly A  
**Sent:** Wednesday, March 29, 2006 9:29 AM  
**To:** Roehrkasse, Brian  
**Cc:** Wade, Drew; Lesch, Jaclyn  
**Subject:** San Francisco Press Release  
**Importance:** High

Brian-  
Attached is the San Francisco Press release.

---

FROM LUKE MACAULAY (USAO PIO):

Kim,

We did issue a release. We kept it very factual and based it almost entirely upon what was posted on the USSC's website ([www.ussc.gov](http://www.ussc.gov)).

United States Attorney Kevin V. Ryan  
Northern District of California

FOR IMMEDIATE RELEASE  
CONTACT: Luke Macaulay  
March 24, 2006  
(415) 436-6757

[WWW.USDOJ.GOV/USAO/CAN](http://www.usdoj.gov/USAO/CAN) <<http://www.usdoj.gov/USAO/CAN>>  
[Luke.Macaulay@usdoj.gov](mailto:Luke.Macaulay@usdoj.gov)

SENTENCING COMMISSION ANNOUNCES STRICTER PENALTIES  
FOR STEROID OFFENSES

Today, the United States Sentencing Commission enacted a temporary emergency amendment to increase the penalties for offenses involving anabolic steroids. The amendment to the sentencing guidelines provides stiffer penalties for steroids related offenses, and adds sentencing enhancements for individuals using masking agents to prevent the detection of steroids and for those who are distributing steroids to athletes. Finally, the amendment also provides a further sentencing enhancement for a defendant who used his or her position as a coach to influence an athlete to use an anabolic steroid.

U.S. Attorney Kevin V. Ryan stated, "We are pleased that the Sentencing Commission has taken this action to impose penalties for steroid offenses that reflect the seriousness of the crimes. Previous penalties required 50 steroid pills to equal one pill of another Schedule III drug, such as Vicodin. With this temporary amendment, steroids will carry the same penalties as other Schedule III drugs, and penalties will be enhanced for using masking agents, for a coach distributing steroids to his athletes, and for distributing steroids to athletes. We are hopeful that these enhanced penalties will help deter anabolic steroid trafficking and abuse."

According to the Commission, these sentencing enhancements address congressional concern with distribution of anabolic steroids to athletes, particularly the impact that steroids distribution and steroids use has on the integrity of sport, either because of the unfair advantage gained by the use of steroids or because of the concealment of such use.

The Commission notes in its 2006 Steroids Report that research has revealed that steroids are now considered potentially addictive, with documented withdrawal symptoms, and are capable of being more widely distributed than before through the use of the Internet and involve international sources.

In 2004, Congress passed the Anabolic Steroid Control Act, which directed the Commission to "review the Federal sentencing guidelines with respect to offenses involving anabolic steroids" and "consider amending the...guidelines to provide for increased penalties with respect to offenses involving anabolic steroids in a manner that reflects the seriousness of such offenses and the need to deter anabolic steroid trafficking and use...."

Further Information:

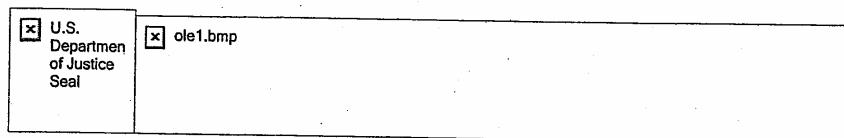
The text of the emergency amendment to the steroids sentencing guidelines is available at [www.uscc.gov](http://www.uscc.gov) <outbind://56/www.uscc.gov> .

Further information about the BALCO prosecution is available at: [http://www.usdoj.gov/usao/can/press/html/2005\\_10\\_18\\_balco\\_sentencing.htm](http://www.usdoj.gov/usao/can/press/html/2005_10_18_balco_sentencing.htm)

All press inquiries to the U.S. Attorney's Office should be directed to Luke Macaulay at (415) 436-6757 or by email at [Luke.Macaulay@usdoj.gov](mailto:Luke.Macaulay@usdoj.gov).

###

We did issue a release. We kept it very factual and based it almost entirely upon what was posted on the USSC's website (www.ussc.gov).



**United States Attorney Kevin V. Ryan  
Northern District of California**

FOR IMMEDIATE RELEASE  
March 24, 2006  
WWW.USDOJ.GOV/USAO/CAN

CONTACT: Luke Macaulay  
(415) 436-6757  
Luke.Macaulay@usdoj.gov

**SENTENCING COMMISSION ANNOUNCES STRICTER PENALTIES  
FOR STEROID OFFENSES**

Today, the United States Sentencing Commission enacted a temporary emergency amendment to increase the penalties for offenses involving anabolic steroids. The amendment to the sentencing guidelines provides stiffer penalties for steroids related offenses, and adds sentencing enhancements for individuals using masking agents to prevent the detection of steroids and for those who are distributing steroids to athletes. Finally, the amendment also provides a further sentencing enhancement for a defendant who used his or her position as a coach to influence an athlete to use an anabolic steroid.

U.S. Attorney Kevin V. Ryan stated, "We are pleased that the Sentencing Commission has taken this action to impose penalties for steroid offenses that reflect the seriousness of the crimes. Previous penalties required 50 steroid pills to equal one pill of another Schedule III drug, such as Vicodin. With this temporary amendment, steroids will carry the same penalties as other Schedule III drugs, and penalties will be enhanced for using masking agents, for a coach distributing steroids to his athletes, and for distributing steroids to athletes. We are hopeful that these enhanced penalties will help deter anabolic steroid trafficking and abuse."

According to the Commission, these sentencing enhancements address congressional concern with distribution of anabolic steroids to athletes, particularly the impact that steroids distribution and steroids use has on the integrity of sport, either because of the unfair advantage gained by the use of steroids or because of the concealment of such use.

The Commission notes in its 2006 Steroids Report that research has revealed that steroids are now considered potentially addictive, with documented withdrawal symptoms, and are capable of being more widely distributed than before through the use of the Internet and involve international sources.

In 2004, Congress passed the Anabolic Steroid Control Act, which directed the Commission to "review the Federal sentencing guidelines with respect to offenses involving anabolic steroids" and "consider amending the...guidelines to provide for increased penalties with respect to offenses involving anabolic steroids in a manner that reflects the seriousness of such offenses and the need to deter anabolic steroid trafficking and use...."

ASG00000109

**Further Information:**

The text of the emergency amendment to the steroids sentencing guidelines is available at [www.ussc.gov](http://www.ussc.gov).

Further information about the BALCO prosecution is available at:  
[http://www.usdoj.gov/usao/can/press/html/2005\\_10\\_18\\_balco\\_sentencing.htm](http://www.usdoj.gov/usao/can/press/html/2005_10_18_balco_sentencing.htm)

All press inquiries to the U.S. Attorney's Office should be directed to Luke Macaulay at (415) 436-6757 or by email at [Luke.Macaulay@usdoj.gov](mailto:Luke.Macaulay@usdoj.gov).

###

ASG000000110



**US SENTENCING GUIDELINES**

**SECTION 2D1.1(C), NOTES F & G  
SCHEDULE III DRUGS**

**PRIOR TO 03/27/06**

**NON-STEROIDS:**

1 PILL = 1 UNIT =

0.5 MILLILITER = 1 UNIT =  
(INJECTABLE LIQUID)

**STEROIDS:**

50 PILLS  
(1/50 RATIO)

10 MILLILITERS  
(1/20 RATIO)

**AFTER 03/27/06**

**NON-STEROIDS:**

1 PILL = 1 UNIT =

0.5 MILLILITER = 1 UNIT =  
(INJECTABLE LIQUID)

**STEROIDS:**

1 PILL  
(1/1 RATIO)

0.5 MILLILITERS  
(1/1 RATIO)

**ADDITIONAL NEW GUIDELINE LANGUAGE:**

**2D1.1(c)(F) – Notes to Drug Quantity Table** – For an anabolic steroid that is not a pill, capsule, tablet, or liquid form (e.g., patch, topical cream, aerosol), the court shall determine the base offense level using a reasonable estimate of the anabolic steroid used in the offense. In making a reasonable estimate, the court shall consider that each 25 mg of anabolic steroid is one “unit.”

**ADDITIONAL NEW GUIDELINE ENHANCEMENTS:**

**+2 LEVELS** – 2D1.1(b)(6) – Steroid Distribution Involved the Use of a MASKING AGENT

**+2 LEVELS** – 2D1.1(b)(7) – Defendant Distributed Steroids to an ATHLETE

**ADDITIONAL NEW APPLICATION NOTES:**

**2D1.1 Application Note Commentary – MASKING AGENT** – a substance that, when taken before, after, or in conjunction with an anabolic steroid, prevents the detection of the anabolic steroid in an individual's body.

**2D1.1 Application Note Commentary – ATHLETE** – an individual who participates in an athletic activity conducted by (i) an intercollegiate athletic association or interscholastic athletic association; (ii) a professional athletic association; or (iii) an amateur athletic association.

**2D1.1 Application Note Commentary – ABUSE OF POSITION OF TRUST** – an adjustment ordinarily would apply under 3B1.3 in the case of a defendant who used his position as a coach to influence an athlete to use an anabolic steroid.

ASG00000111

**Mercer, William W**

---

**From:** Margolis, David  
**Sent:** Saturday, April 01, 2006 8:29 AM  
**To:** Elston, Michael (ODAG)  
**Cc:** Mercer, Bill (ODAG)  
**Subject:** Re: San Francisco Press Release

UFB!

-----sent from Blackberry wireless device-----

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

**From:** Elston, Michael (ODAG)  
**To:** Margolis, David  
**CC:** Mercer, Bill (ODAG)  
**Sent:** Fri Mar 31 22:17:02 2006  
**Subject:** FW: San Francisco Press Release

David:

For your NDCA file. I have not received a response.

Mike

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

**From:** Elston, Michael (ODAG)  
**Sent:** Wednesday, March 29, 2006 12:55 PM  
**To:** Ryan, Kevin (USACAN)  
**Cc:** Mercer, Bill (ODAG); Roehrkasse, Brian  
**Subject:** FW: San Francisco Press Release  
**Importance:** High

Kevin:

Not sure that this was particularly helpful. I have already quashed DEA's effort to issue a press release on this subject at this time -- it is my judgment, as the Department's ex officio Commissioner, that this kind of thing actually harms our ability to ensure that the emergency amendment will become the permanent amendment. After our conversations, I am fairly surprised that you would not consult with me or anyone else in Main Justice before issuing a press release on something that has nothing to do with your office.

Please don't do anything further in this area without consultation.

Thanks,  
Mike

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

**From:** Roehrkasse, Brian  
**Sent:** Wednesday, March 29, 2006 9:43 AM  
**To:** Elston, Michael (ODAG)  
**Cc:** Mercer, Bill (ODAG)  
**Subject:** FW: San Francisco Press Release  
**Importance:** High

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

**From:** Smith, Kimberly A  
**Sent:** Wednesday, March 29, 2006 9:29 AM  
**To:** Roehrkasse, Brian  
**Cc:** Wade, Drew; Lesch, Jaclyn  
**Subject:** San Francisco Press Release  
**Importance:** High

Brian-  
Attached is the San Francisco Press release.

FROM LUKE MACAULAY (USAO PIO):

Kim,

We did issue a release. We kept it very factual and based it almost entirely upon what was posted on the USSC's website ([www.ussc.gov](http://www.ussc.gov)).

United States Attorney Kevin V. Ryan  
Northern District of California

FOR IMMEDIATE RELEASE  
CONTACT: Luke Macaulay  
March 24, 2006  
(415) 436-6757

[WWW.USDOJ.GOV/USAO/CAN](http://WWW.USDOJ.GOV/USAO/CAN) <<http://www.usdoj.gov/USAO/CAN>>  
[Luke.Macaulay@usdoj.gov](mailto:Luke.Macaulay@usdoj.gov)

SENTENCING COMMISSION ANNOUNCES STRICTER PENALTIES  
FOR STEROID OFFENSES

Today, the United States Sentencing Commission enacted a temporary emergency amendment to increase the penalties for offenses involving anabolic steroids. The amendment to the sentencing guidelines provides stiffer penalties for steroids related offenses, and adds sentencing enhancements for individuals using masking agents to prevent the detection of steroids and for those who are distributing steroids to athletes. Finally, the amendment also provides a further sentencing enhancement for a defendant who used his or her position as a coach to influence an athlete to use an anabolic steroid.

U.S. Attorney Kevin V. Ryan stated, "We are pleased that the Sentencing Commission has taken this action to impose penalties for steroid offenses that reflect the seriousness of the crimes. Previous penalties required 50 steroid pills to equal one pill of another Schedule III drug, such as Vicodin. With this temporary amendment, steroids will carry the same penalties as other Schedule III drugs, and penalties will be enhanced for using masking agents, for a coach distributing steroids to his athletes, and for distributing steroids to athletes. We are hopeful that these enhanced penalties will help deter anabolic steroid trafficking and abuse."

According to the Commission, these sentencing enhancements address congressional concern with distribution of anabolic steroids to athletes, particularly the impact that steroids distribution and steroids use has on the integrity of sport, either because of the unfair advantage gained by the use of steroids or because of the concealment of such use.

The Commission notes in its 2006 Steroids Report that research has revealed that steroids are now considered potentially addictive, with documented withdrawal symptoms, and are capable of being more widely distributed than before through the use of the Internet and involve international sources.

In 2004, Congress passed the Anabolic Steroid Control Act, which directed the Commission to "review the Federal sentencing guidelines with respect to offenses involving anabolic steroids" and "consider amending the...guidelines to provide for increased penalties with respect to offenses involving anabolic steroids in a manner that reflects the seriousness of such offenses and the need to deter anabolic steroid trafficking and use...."

Further Information:

The text of the emergency amendment to the steroids sentencing guidelines is available at [www.ussc.gov](http://www.ussc.gov) <outbind://56/www.ussc.gov> .

Further information about the BALCO prosecution is available at:  
[http://www.usdoj.gov/usao/can/press/html/2005\\_10\\_18\\_balco\\_sentencing.htm](http://www.usdoj.gov/usao/can/press/html/2005_10_18_balco_sentencing.htm)

All press inquiries to the U.S. Attorney's Office should be directed to Luke Macaulay at (415) 436-6757 or by email at [Luke.Macaulay@usdoj.gov](mailto:Luke.Macaulay@usdoj.gov).

###

**Mercer, William W**

---

**From:** Otis, Lee L  
**Sent:** Tuesday, April 04, 2006 9:01 PM  
**To:** Mercer, Bill (ODAG); Mercer, Bill (USAMT)  
**Cc:** Elston, Michael (ODAG)  
**Subject:** FW: Catch and release

**Importance:** High

**Attachments:** 0501817.wpd; criminal alien - AG letter (final).pdf



0501817.wpd (19 KB)  
criminal alien - AG letter (final).pdf

Here is the Issa letter and the original draft response that the U.S. Attorney's office prepared but that wasn't sent.

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

**From:** Seidel, Rebecca  
**Sent:** Monday, April 03, 2006 5:18 PM  
**To:** Bounds, Ryan W (OLP)  
**Cc:** Otis, Lee L; Rybka, Timothy A; Voris, Natalie (USAEO)  
**Subject:** FW: Catch and release  
**Importance:** High

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

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

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

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

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

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

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

Natalie,

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

See emails on this subject below.  
Dave

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

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

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

-----  
Sent from my BlackBerry Wireless Device

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

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

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

nv

---

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

See below. I think EOUSA has something too?

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

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

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

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

Please forward what you can asap?

---

From: Smith, David L. (USAEO)

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

Rebecca,

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

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

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

Thanks

Dave

---

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

Lee,

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

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

Dave

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

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

From: Seidel, Rebecca  
Sent: Tuesday, October 25, 2005 12:14 PM  
To: Voris, Natalie (USABO)  
Cc: Cohn, Jonathan (CIV); Callier, Sandra M; Bounds, Ryan W (OLP);  
Scott-Finan, Nancy  
Subject: FW: CA Republican delegation letter - prosecution of Criminal  
aliens

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

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



Congress of the United States

Washington, DC 20515

October 20, 2005

The Honorable Alberto Gonzales  
Attorney General  
United States Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530

Dear Attorney General Gonzales:

We write to request a meeting with you to discuss our frustration with the current policies within the Administration related to the prosecution of criminal aliens. To date, many illegal aliens, who deserve jail time, fall instead into the current practice of "catch and release." The recidivism rate among criminal aliens is high, and your Department's lack of action aggravates rather than remedies this problem.

The Border Patrol recently arrested illegal alien, Alfredo Gonzales Garcia, near the border in San Diego. Even though Mr. Garcia had at least two prior arrests for selling drugs and was incarcerated on two separate occasions for these offenses, the U.S. Attorney's Office in San Diego declined to prosecute him. Prior to that event, the U.S. Attorney's Office chose not to prosecute Antonio Amparo-Lopez, a human smuggler and illegal alien with multiple prior convictions. In each instance, under the Immigration and Nationality Act, they were both eligible, upon conviction, for a two-year prison sentence, at minimum.

The U.S. Attorney in San Diego has stated that the office will not prosecute a criminal alien unless they have previously been convicted of two felonies in the district. This lax prosecutorial standard virtually guarantees that both of these individuals will be arrested on U.S. soil in the future for committing further serious crimes.

There is one simple reason why "catch and release" cannot continue: it endangers our citizens. It is the responsibility of the Department of Justice to punish dangerous criminals who violate federal laws, and this includes criminal aliens. When we meet, at the very least we encourage you to be prepared to discuss the current policies used by the U.S. Attorneys to determine when to prosecute criminal aliens, including providing us with a copy of the prosecution guidelines that are applied to such cases in the Southern District of California.

Again, we would like to meet to discuss the disparity between crimes committed and prosecutions conducted at your earliest convenience. Please contact us at 202-225-3906 to schedule this meeting.

Sincerely,



Ed Royce

PRINTED ON RECYCLED PAPER

ASG000000119

Ken Calvert  
John T. Dobbie  
By M.D.  
Etha T. Dobbie  
Dana Roberts  
L. M. Nemes  
Jan Jung  
Richard Bombo  
Bill Thomas

Ray Kaganovich  
Buck Weston  
Wayne  
Wally Horgan  
Jimmy  
Kathy "Mike" Cunningham

Image Not  
Available

**U.S. Department of Justice**

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, DC 20530-0001

The Honorable Darrell Issa  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Issa:

This is in response to your October 20, 2005 letter, which was co-signed by 18 House colleagues from California, to the Attorney General inquiring about the prosecution of aliens in the Southern District of California. We are sending an identical letter to each House member that co-signed your letter. This also responds to the October 13, 2005 letter you sent to Carol Lam, the United States Attorney for the Southern District of California on the same topic. We apologize for any inconvenience our delay in responding may have caused you or your colleagues.

The Department of Justice very much appreciates and shares your concern with criminal aliens in this country who jeopardize the safety and well-being of the public. There are, as you know, approximately one million illegal aliens who are apprehended each year along our border with Mexico. As a result, the United States Attorneys' Offices along the Southwest Border (including the Districts of Southern Texas, Western Texas, New Mexico, Arizona and Southern California) face a great challenge in enforcing the criminal immigration and narcotics laws along that border.

Enforcing the immigration laws is a joint effort. The cooperation and resources of not only the United States Attorneys' Offices, but that of the U.S. Customs and Border Protection, Immigration and Customs Enforcement, the Bureau of Prisons, the United States Detention Trustee and many other federal agencies are needed to apprehend, detain, prosecute and imprison these criminal aliens.

The characterization in your October 20<sup>th</sup> letter of the Department's prosecution policies relating to criminal aliens as "catch and release" is inaccurate. Because it is not, at the present time, literally possible to prosecute and incarcerate every alien who enters this country illegally, priorities must be set as to which cases must be prosecuted first. Such prosecution policies are set by the individual United States Attorneys' Offices in their individual districts. Such policies may be the product of joint discussion and mutual agreement by both the United States Attorneys Office and the principal investigative or apprehending agency, such as the Border Patrol.

ASG000000121

The Honorable Darrell Issa  
Page Two

One size does not fit all. Almost 68 percent of all immigration prosecutions nationally from all 94 United States Attorneys Offices in Fiscal Year 2005 were handled by just the five Southwest border districts. Thus, priorities set to meet the crush of cases along the Southwest border may be ill suited in districts that experience far less illegal immigration.

Understandably, the Department does not and should not publicize the specifics of each District's prosecution guidelines, in this area or in any other area of criminal prosecution. Were such guidelines made public in all their specificity, alien smugglers, criminal organizations and individual aliens would conform their conduct as much as possible to avoid prosecution. It is, however, important for the public to know what the general priorities are when considering what cases will be prosecuted.

In particular, your letters questioned the record of the United States Attorney's Office in the Southern District of California (SDCA) in prosecuting criminal aliens. I want to assure you that United States Attorney Lam and her staff are committed to protecting the residents of their District, and the District's record of prosecuting criminal aliens clearly demonstrates that fact. In making charging decisions, SDCA, like all Department of Justice components, adheres to the Principles of Federal Prosecution outlined in the United States Attorney's Manual. SDCA prosecution policies are based on the premise that illegal aliens with the most serious criminal histories should have priority for prosecution. SDCA has directed its resources to bringing many felony (as opposed to misdemeanor) charges against illegal aliens with substantial criminal histories so that it can seek longer prison sentences against those who present the greatest threat to public safety.

To focus its available resources on this target group of criminal aliens, SDCA employs prosecution guidelines for illegal re-entry offenses under 8 U.S.C. § 1326 which categorize criminal aliens into essentially four categories: (a) violent/major felons (which includes aliens with convictions for national security or terrorism offenses, murder, rape, forcible sex offenses and other violent crimes), (b) recidivist felons, (c) repeat immigration violators on supervised release, and (d) alien smugglers (guides) who otherwise do not meet the guidelines for smuggling prosecution under 8 U.S.C. § 1324.

The SDCA has a strong record of prosecuting criminal aliens generally and in particular alien smugglers. At the close of Fiscal Year 2005, SDCA had 385 alien smuggling cases pending against 454 defendants, which is the highest annual number of pending cases that office has ever had. SDCA also closed 470 alien smuggling cases that year (again its highest ever annual total) convicting 560 defendants of charges under 8 U.S.C. § 1324. Moreover, despite the fact that both the SDCA and the Department of Justice as a whole have numerous criminal priorities in addition to criminal aliens,<sup>1/</sup> from Fiscal Year 2000 through Fiscal Year 2005, well *over half of*

---

<sup>1/</sup>Additional Department of Justice and SDCA priorities include: counter-terrorism cases; firearms prosecutions; gang prosecutions; crimes against children (child pornography and sexual

ASG000000122

The Honorable Darrell Issa  
Page Three

*all criminal cases* filed by SDCA were cases filed under just three statutes, the primary criminal alien statutes, 8 U.S.C. §§1324, 1325 and 1326.<sup>2</sup>

Your letters also made specific reference to the non-prosecution by SDCA of Alfredo Garcia-Gonzalez, who was apprehended by the U.S. Border Patrol on October 12, 2005. As an initial matter, the SDCA was never presented this case for prosecution.<sup>3</sup> Thus, there was no decision by SDCA not to prosecute him. Nevertheless, it appears that the case was not presented to SDCA by the apprehending agency because it did not meet the prosecution guidelines jointly established by SDCA and the United States Border Protection in December 2004. These guidelines specifically contemplate meritorious exceptions for cases that should be prosecuted despite otherwise falling outside the guideline range. We are not in a position to second guess the decision by the apprehending agency not to present this case for prosecution, but we note that there are approximately 100,000 illegal aliens apprehended each year in the Southern District of California alone, and many of the criminal aliens prosecuted by SDCA have committed smuggling crimes that endanger the smuggled aliens far more severely than did Garcia-Gonzalez, or have a greater criminal record than Garcia-Gonzalez.

The SDCA and the apprehending agencies, including U.S. Border Protection and Immigration and Customs Enforcement, are aggressively apprehending and prosecuting criminal aliens and alien smugglers, and they are doing the best possible job in prioritizing the crush of illegal aliens entering this country from Mexico.

---

abuse); corporate fraud; health care fraud; bankruptcy fraud; computer hacking and intellectual property theft; human trafficking (involuntary servitude, prostitution cases involving smuggled aliens); civil rights prosecutions; counterfeiting; and passport and visa fraud.

<sup>2</sup>SDCA filed a total of 20,481 criminal cases from FY 2000 through and including FY 2005. Of that number 10,482 were illegal alien cases filed under 8 U.S.C. §§1325, 1325 or 1326.

<sup>3</sup>Had the SSCA been presented the case and declined it, we would not be in a position to share the specific reasons for that declination. As you know, all Department attorneys are asked to render unbiased, professional judgments about the merits of potential criminal and civil law enforcement cases. If their deliberations were made subject to Congressional challenge and scrutiny, we would face a grave danger that they would be chilled from providing the candid and independent analysis essential to just and effective law enforcement or, just as troubling, that they might err on the side of prosecution simply to avoid public second-guessing. This in turn would undermine public and judicial confidence in our law enforcement processes.

ASG00000123

The Honorable Darrell Issa  
Page Four

We hope that the information above has helped to alleviate your concerns in this matter. Please do not hesitate to contact the Department of Justice if we can be of assistance in other matters.

Sincerely,

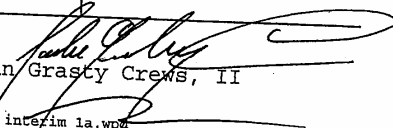
William E. Moschella  
Assistant Attorney General

ASG000000124

# Memorandum

Subject	Date
Interim Report Regarding Southwest Border Project	April 27, 2006

To William W. Mercer  
Principal Associate Deputy  
Attorney General

From   
John Grasty Crews, II

swbf interim la.wps

Michael Battle  
Director  
Executive Office for United  
States Attorney's

Natalie Voris  
Associate Counsel to the Director  
Executive Office for United  
States Attorney's

This interim report responds to the tasking of the Executive Office of United States Attorney's (EOUSA) by the Office of the Deputy Attorney General (ODAG) to prepare a report regarding the five Southwest Border (SWB) United States Attorney's Offices (USAO's)<sup>1</sup>. This tasking arose following a February 2005 Evaluation and Review Staff (EARS) inspection of the United States Attorney's Office for the Southern District of California (SDCA).

The EARS team found that the USAO/SDCA was responsible for a high volume of immigration and drug cases generated from the border. [Pg 2, 15 February 2005 Memorandum from Robert T. Monk (Team Leader) to Christopher K. Barnes, Assistant Director, EARS/EOUSA]. According to the EARS team this caseload has created difficulties in addressing some of the special criminal programs and initiatives and also frustration among some

<sup>1</sup> There are five USAO's along the Southwest Border. Those five districts are (1) Southern District of Texas (SDTX); (2) Western District of Texas (WDTX); District of New Mexico (DNM); District of Arizona (DAZ); and the Southern District of California (SDCA).

ASG00000125

federal investigative agencies. [Id]. The caseload was found to be manageable because the USAO restricted intake of border crimes cases. [Id].

The EARS team noted that EOUSA Data Analysis reports showed that the SDCA handled significantly fewer criminal immigration cases per AUSA work year than were handled by other SWB USAOs. [Id]. The SDCA contended that the EOUSA data was not reliable because of a lack of consistency in the manner in which the immigration data is reported and because of differences between SDCA and other SWB districts. [Id]. Assistant EARS team leader Ken Melson directed a separate memorandum to then EOUSA Director Mary Beth Buchanan recommending that EOUSA assess the handling of border case in the five SWB USAOs to develop common baselines and criteria for comparing statistical data relevant to the handling of border cases and to develop appropriate standards for the disposition of border cases. [Id].

EOUSA was later tasked with "assessing the handling of border cases in the five Southwest Border USAOs to develop common baselines and criteria for comparing statistical data relevant to the handling of border cases and to develop appropriate standards for the disposition of border cases." The term border cases was not defined.<sup>2</sup>

There are differences between the five SWB USAOs which need to be identified when comparing the districts. One illustration of this is the varying intake or "threshold" benchmarks used by the SWB districts. A memorandum regarding this issue was prepared in the fall of 2005.

---

<sup>2</sup> A definition will need to be assigned to the term. Does this term include narcotics cases generated at the international ports of entry (POEs) and by the Border Patrol and other federal agencies engaged in interdiction activities along the border? Similarly, does the term include any immigration cases prosecuted by the SWB USAO's?



That memorandum is attached hereto as Tab 1. A separate memorandum addressed the general issue of immigration prosecution policy. That memorandum is attached hereto as Tab 2.

SDCA is essentially a one office district. While the district maintains a small branch office in El Centro, California, for all practical purposes all of the work is done in San Diego.

DAZ has two minor branch offices in Yuma and Flagstaff. There are no resident district judges in either of those two divisional offices. The bulk of the district's work is conducted either in the Phoenix headquarters office or in the Tucson branch office. The bulk of the border generated work is prosecuted by the Tucson branch office.

DNM is comprised of a headquarters office in Albuquerque and a single staff branch office in Las Cruces. The Las Cruces branch office prosecutes the bulk of the border related cases.

WDTX is headquartered in San Antonio, Texas. The district operates staffed branch offices in Austin, Waco, Del Rio, Pecos/Alpine, Midland, and El Paso. The Del Rio, Pecos/Alpine, and El Paso branch offices are responsible for the bulk of the border generated cases.

SDTX is headquartered in Houston, Texas. The district operates staffed branch offices in Victoria, Corpus Christi, Brownsville, McAllen, and Laredo. The Brownsville, McAllen, Laredo, and to some extent Corpus Christi offices are responsible for the bulk of the border generated cases.

USA-5 statistics are not maintained by branch office. There is substantial variance between the codes assigned to branch office operation between the various SWB districts. In

ASG000000127

particular, SDCA maintains multiple USA-5 codes that are specific discrete subunits within the office.

LIONS data is easily available by district, but less so by branch office. EOUSA does not maintain information on the number of AUSAs and support staff assigned to particular branch offices.<sup>3</sup> In some districts full time staff who are not federal employees but rather receive salaries from High Intensity Drug Trafficking Area (HIDTA) grant money are used to increase the size of the office workforce. In other districts other types of contract employees are also used to bolster the district capabilities.<sup>4</sup> One district (SDTX) has begun record all misdemeanors prosecuted in their LIONS data, others SWB districts do not.

I have not contacted the respective United States Attorneys (USAs) and their staff to gather information relating to (1) staffing levels of the various districts and divisional branch offices; (2) intake guidelines and criteria by district and/or divisional offices<sup>5</sup>; and (3) operating procedures relating to the intake guidelines (what they take in, what happens to it once they got it. I will need specific guidance on how to comply with our ODAG tasking to “develop common

---

<sup>3</sup> Because the weight of the border cases falls more heavily on some divisional offices, or units in the case of San Diego, than others the use of district wide data alone can give an incomplete picture of the impact of border generated cases. To better illustrate the point, the headquarters offices of SDTX (Houston), WDTX (San Antonio), and DNM (Albuquerque) are not impacted by border cases to the same degree as their respective divisional offices.

<sup>4</sup> Unless that information is obtained relying solely on FTE allocations will give an incomplete picture of the workload distribution.

<sup>5</sup> This issue is generally addressed in Tab 1, however no attempt has been made to update the information. Narcotics thresholds were not addressed.

baselines and criteria for comparing statistical data relevant to the handling of border cases” and to “develop appropriate standards for the disposition of border cases.”<sup>6</sup>

DISTRICT INFORMATION

Southern District of Texas

The boundaries and divisions of the Southern District of Texas are set by statute. [28 U.S.C. § 124(b)].

	<u>Population</u> <sup>7</sup>	<u>Square Miles</u>
Brownsville Division	392,056	1,503
McAllen Division	718,080	2,793
Galveston Division	609,192	3,495
Houston Division	4,876,332	11,026
Victoria Division	174,789	5,726
Corpus Christi Division	547,464	9,625
Laredo Division	244,478	8,092
Totals	<b>7,562,381</b>	<b>32,635</b>

There are twenty (20) district judges in the Southern District of Texas, and fourteen (14) magistrate judges. The breakdown by division is Houston, eleven (11) district judges and five (05) magistrate judges; Victoria, one (01) district judge and one (01) magistrate judge; Corpus

---

<sup>6</sup> No attempt is made in this memorandum to assign a specific “weight”, “value” or otherwise assign qualitative differences between types of cases, “border” or otherwise.

<sup>7</sup> Population figures were obtained from the U.S. Census Bureau and are 2004 estimates of population extrapolated from the 2000 census. Land mass data was also obtained from this source.

Christi, two (02) district judges and two (02) magistrate judges; Laredo, two (02) district judges and two (02) magistrate judges; McAllen, two (02) district judges and two (02) magistrate judges; and Brownsville, two (02) district judges and two (02) magistrate judges.

An FY 06 executive summary prepared by EOUSA shows that on March 4, 2006, SDTX have an overall vacancy rate of 9.98%, compared to the national average of 9.4%.<sup>8</sup> The districts AUSA FTE vacancy rate was 9.11%, compared to a national AUSA FTE vacancy rate of 7.97%. The district's support staff vacancy rate was 10.90%, compared to a national support staff vacancy rate of 10.71%. From FY 2000 to FY 2006 the SDTX direct funding allocation grew by 30.6%, and the USA appropriation grew by 33.9%. In FY 2000 SDTX used 212.74 Direct FTE and in FY 2006 it is projected to use 234.06 FTE, a 10% change over the last six years. From FY 2000 to FY 2005 the SDTX immigration caseload grew by 184.5%.

Attached as Tab 4, please find selected pages from the EOUSA data management information maintained on our intranet site. Tab 4 contains information specific to the Southern District of Texas as a whole. Tab 4-A is pages 13-15 of the Form "A" data, which is specific to immigration coded offenses. Tab 4-B is pages 31-33 of the Form "A" data, which is specific to non OCDETF drug cases. Tab 4-C is pages 46-48 of the Form "A" data, which is specific to violent crime offenses.

In FY 03, SDTX filed 2,291 immigration cases. In FY 04 SDTX filed 3,783 immigration cases, a 29.5% increase. In FY 05 SDTX filed 4,418 immigration cases, a 16.8% increase.

In FY 03 SDTX filed 1,323 non OCDETF drug cases. In FY 04 SDTX filed 1,241 non

---

<sup>8</sup> A separate comparison chart was compiled by EOUSA to compare the SWB USAOs to USAOs of similar size. That chart is attached hereto as Tab 3.