JORDAN RULE OF LAW PROGRAM

19TH QUARTERLY REPORT

APRIL – JUNE 2013

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ACRONYMS

ABA	American Bar Association
AU	Administrative Units
CDFJ	ROLP Grantee/NGO Center for Defending the Freedom of Journalists
CJ	Chief of Justice
CoP	Chief of Party
EoJ	Execution of Judgments
FJP	Future Judges Program
JC	Judicial Council
JIJ	Judicial Institute of Jordan
JIU	Judicial Inspections Unit
Mizan	Automated case file management system tailor-made for Jordan's courts and supporting departments. Mizan V2, the enhanced version will replace Mizan V 1.
MoJ	Ministry of Justice
ROLP	Rule of Law Project
TO	Technical Office
USAID	United States Agency for International Development

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Executive Summary

This quarter the project developed strategic plans to maximize results during the last four months leading up to project closeout. ROLP continued to increase support for Jordan's judiciary on several fronts, developing valuable activities that showcase ROLP's unwavering commitment to enhancing the transparency, sustainability and effectiveness of Jordan's judiciary.

The project initiated and finalized several key communications tools that will promote transparency in the Judicial Council (JC). The project assisted with reviewing and printing the *2012 JC Annual Report*, developed and sent a summary report to the King, and is currently working on an English translation. The project also facilitated the printing and distribution of the Cassation Court's first Quarterly Judgment Gazette, and the second and third editions of the Gazette are in development. The project also procured and delivered a series of legal texts to the Cassation Court's library, and launched the English version of the JC website. These new communication tools demonstrate the judiciary's commitment to civil society engagement, accountability and transparency.

The project conducted a highly anticipated anti-corruption-themed study tour to the U.S this quarter in late June. Ten Jordanian judges and prosecutors studied various models of prosecution-centered anti-corruption initiatives at various locations in the U.S. Participants engaged with twenty-four professionals representing seventeen distinct legal institutions over the course of 10 days. As a result of the insight and knowledge gained from the study tour, the Jordanian judiciary is now better positioned to form concrete ideas on how to move forward with anti-corruption strategies and develop more sophisticated anti-corruption strategies in Jordan.

In order to improve the public's access to justice in Jordan, and to lay the groundwork to nurture confidence and respect for the judiciary, ROLP hired a local consultant to conduct an assessment on *access to justice* in Jordan. A final report providing recommendations for improvements and activities will be ready early next quarter.

Initiation, follow-up, and the completion of various procurements and contracts took center stage this past quarter. The project achieved substantial progress in improving the execution of civil and criminal judgments in the pilot project courts of Zarqa, West Amman, and their corresponding public prosecution offices. Addressing workspace challenges, ROLP finalized delivery of furniture and IT equipment to the Zarqa Court. Additionally, Zarqa court staff maintained momentum and efficiency, retroactively entering a total of 700 previous case judgments in the database during the month of June. Renovations and construction for the West Amman Court-Civil EoJ department began in May and are proceeding successfully and ahead of schedule with completion slated for mid-July. The project finalized contracting arrangements for the Amman Attorney General and West Amman prosecution office upgrades, and work will begin during July. ROLP and home office staff performed a thorough expenditure review, and as a result, approximately $100,000 USD will be available for next quarter in support of further supplemental prosecution office upgrades. This further programming and material support expenditure will be planned and finalized in conjunction with USAID and the MoJ.

To foster ownership and sustainability, ROLP continued to support the MoJ's IT needs by assessing the electronic linkages to various public and governmental entities, the public prosecution offices, and the MoJ itself. The project contracted a service provider and is currently developing the scope of work for this activity. ROLP, along with the MoJ technical IT staff, also continued to assess the Judiciary's overall IT and automation status and needs. The project

completed a draft assessment report this quarter and will follow up next quarter with a report review workshop for MoJ in order to develop and finalize a long-term strategic IT enhancement plan.

OBJECTIVE 1: PROMOTE AN INDEPENDENT AND EMPOWERED JUDICIARY WHILE INCREASING ITS TRANSPARENCY AND ACCOUNTABILITY

ROLP sustained efforts to provide the judiciary with the building blocks to create a system rooted in the principles of independence, transparency and accountability. The Judicial Council and its Administrative Units (AU) are continuing to develop, mature, and strengthen. This is a welcome development on the path towards judicial independence. With ROLP support, the judiciary has actively embraced the practice of planning and reporting. ROLP-facilitated provision of and timely access to appropriately resourced legal libraries and updated information on cases and decisions continues to enhance the work and research capabilities of judges, lawyers, and prosecutors. The various measures and communication tools adopted as a result of ROLP activities has set the stage to empower the Judicial Council and the judiciary in general to be more transparent in their work and procedures, and more independent in their decision making.

1.1 JUDICIAL COUNCIL 2012 ANNUAL REPORT

The project developed and finalized content for the *2012 JC Annual Report* this past quarter. The *Report*—which fosters public awareness, transparency, and accountability—will be printed and distributed to 1500 relevant stakeholders. A *Report Summary* was also created and sent to the King. The *2012 JC Annual Report* captures the JC's accomplishments and future endeavors. An English translation of the *Report* is currently in the pipeline and will be ready early next quarter.

1.2 CASSATION COURT'S QUARTERLY JUDGMENT GAZETTE

The project printed two thousand copies of the first edition of the Cassation Court's Quarterly Judgment Gazette this past quarter and distributed them to judges, courts, and various other institutions throughout Jordan by the AU. ROLP and the AU are currently compiling judgments and working on the upcoming 2nd and 3rd editions. The quarterly Gazette facilitates access to high court decisions and promotes public confidence in the judiciary system while strengthening the development of Jordan's appellate jurisprudence.

1.3 JUDICIAL COUNCIL WEBSITE - ENGLISH TRANSLATION

ROLP reviewed, edited, and finalized the English version of the original JC website and uploaded and launched the translated content. JC's bilingual website will help extend JC's outreach and communication efforts both internally and externally, increasing the visibility of its core objectives and key functions.

1.4 CASSATION COURT LEGAL LIBRARY

ROLP procured and delivered 320 legal texts to the Cassation Court's Law Library. The new legal texts will further enrich the court's library and provide judges with additional tools to enhance their legal research capacities, and, like the Cassation Court's Judgment Gazette, will promote the development of Jordan's appellate jurisprudence.

1.5 GRANT PROGRAM - JUDICIAL COUNCIL AND THE COMMUNICATIONS/MEDIA UNIT

Grant Program / JC Media and Communications Unit. This grant program, focused on developing the communication and media unit of the JC, has been managed and implemented by the *Center for Defending the Freedom of Journalists (CDFJ).* This quarter, grantee activities included the submission of a draft of the administration's hierarchy and the training of the Media Unit's 3 staff members. The staff training coincided with the allocation of new office space at the Cassation Court for the Media Unit, and involved techniques in judicial news monitoring, report writing as well as other tutorials on effective communication. The training provides an excellent opportunity for the staff to maximize their communication skills and improve the relationship and understanding between the media and judicial institutions. This effort will ultimately build public confidence and promote greater transparency in Jordan's judicial processes.

1.6 JUDICIAL INSPECTIONS UNIT (JIU)

Strengthening the judiciary is the key objective of the Judicial Inspections Unit (JIU). The JIU is nominally under the purview of the Ministry of Justice, but operationally it has been moving closer to the JC. The JIU consists of judges assigned by the JC to evaluate and inspect the work of judges, public prosecutors and support staff from the Conciliation, First Instance, and Appellate Courts. JIU's primary tasks are to review and monitor judicial performance and judgments and offer recommendations to correct identified shortcomings. In support of the JIU, ROLP provided material support this quarter. This collaboration was a direct result of the successful engagement between international consultant Bill Davis and the JIU during Davis' workshop in March. Responding to a request from the Chief Judicial Inspector, ROLP completed a supplemental furniture and equipment procurement in support of staff expansion. ROLP also continued to set up electronic data linkages between the JIU and the *Mizan* (automated case-file management system) database, providing judicial inspectors with access to the casework of the judges being monitored.

OBJECTIVE 2: EXPAND ACCESS TO JUSTICE, RULE OF LAW, AND PUBLIC AWARENESS OF THE RULE OF LAW

Increasing access to justice and a positive public perception of the courts as the appropriate venue for dispute resolution are key measures of progress for ROLP. To this effect, the project is developing an *Access to Justice* assessment and report that will examine the public perception of Jordan's justice sector. This assessment is especially important considering that a key factor in the viability of a justice system is public trust and awareness of the integrity and effectiveness of the judiciary. Feedback from justice-sector stakeholders and the general public will provide valuable insight on how best to move forward to expand public confidence and access to justice and the rule of law.

2.1 ACCESS TO JUSTICE REPORT

Led by Ms. Hadeel Abdel Azziz, Executive Director of the Justice Center for Legal Aid (JCLA), the project completed an overall system-wide access to justice assessment in Jordan last quarter. The study aims to assess public awareness of judicial functions and to assess access to court services, information, and legal counsel. The project will develop an overall framework and strategy to improve the public's access to justice in Jordan as a result of the assessment. The

project will submit an executive summary and a report in Arabic in early July. ROLP Senior Legal Specialist, Essa Maymoun, served as a liaison and provided support for this activity.

2.2 MEDIA FREEDOM DEFENDERS FORUM

In addition to the grant program noted in item 1.5 above, the CDFJ requested ROLP's participation to provide cost support for a May 18-19 forum entitled *Media Freedom Defenders in the Arab World.* Accordingly, five judges nominated by the Chief Justice participated.

OBJECTIVE 3: ENHANCE JUDICIAL PERFORMANCE TO REDUCE DELAYS AND INCREASE PUBLIC CONFIDENCE

Prompt, fair, and effective delivery of services are essential factors in promoting a reputation of credibility and viability in any judicial system. In response to challenges that hamper the efficiency of courts and undermine their credibility, ROLP continued to spearhead efforts to enhance judicial performance, reduce delays, and increase public confidence. Progress continued in the West Amman and Zarqa pilot project courts as procurements to the Zarqa Court were finalized and the build-out renovation plans for the West Amman Court proceeded smoothly with an expected early completion date. West Amman's new and improved space will include a queuing system and a waiting area, contributing to increased efficiency and enhanced public confidence. Across town, the project completed a thorough review of the Amman Appeals Court operations this quarter. ROLP developed a draft report highlighting the challenges that prevent a better functioning of the Court and offering recommendations for improvements and plans for material support.

ROLP continued with considerable efforts to support prosecution development. The completed U.S. study tour and forthcoming anti-corruption workshops and trainings will provide Jordanian prosecution leadership with greater exposure to and understanding of prosecution led anti-corruption efforts. More effective enforcement, investigation, and prosecution of public corruption will help chart a path towards increased and sustained public confidence in the judiciary and in government as a whole.

With ROLP support, Jordanian women continued to blaze a trail in Jordan's judiciary. Forty-five conciliation court judges were recently appointed, and of these, 33 (73%) are women. This strong showing of women advancing in the judiciary is evidence of the progress towards gender equality and equal opportunity for women in the Kingdom's judiciary. ROLP continued to work with the American Bar Association and provided trainings in gender sensitivity and anti-corruption strategies for the incoming class of future judges.

3.1 OPERATIONS ASSESSMENT OF AMMAN APPEALS COURT

Local consultant Nancy Fashho conducted an operations assessment of the Amman Appeals Court. The activity aims to build on the positive impact gained by ROLP's successful Year 3 and 4 support of the creation of the Cassation Court Technical Office. The assessment will address the status of the Amman Appeals Court, its case load and procedures, define shortcomings, and propose recommendations to improve the efficiency and effectiveness of the Court. Ms. Fasho met with the Chief Judge and the Chief of Staff at the Amman Appeals Court. She then reviewed the information and gathered data on the Court's current infrastructure, organizational structure and job descriptions. Ms. Fasho developed and distributed a training needs assessment survey to the staff, and in collaboration with ROLP IT staff, assessed and determined the Court's

IT equipment needs. The project will move forward with the recommended material support in July. In spite of a lengthy MoJ court employee strike that slowed the consultancy process, Ms. Fasho submitted an initial draft report this quarter. ROLP's legal team reviewed the preliminary draft and provided feedback and suggestions. The project will submit the final draft in July.

3.2 EXECUTION OF JUDGMENTS - CIVIL AND CRIMINAL

In support of a more efficient and viable judgment execution process, ROLP continued to provide relevant solutions and support to Jordan's courts.[1]

In consultation with the West Amman and Zarqa court staff and judgment execution judges, the project prepared for an initial draft of the judgment execution operations manual. The manual comes on the heels of the Judgment Execution Report Review workshop that took place last quarter. Workshops to finalize process improvements are scheduled for next quarter.

In addition to the judgment execution operations manual, the project improved work efficiency by providing workspace solutions to the Zarqa and West Amman pilot courts. ROLP delivered and finalized furniture and IT equipment procurements to judges' offices, departments, and the registrar at the Zarqa Court. ROLP also assisted the Zarqa Court in the data entry of 3,390 old cases judgments, thereby updating its database and significantly reducing its backlog.

ROLP started the renovation process of the civil judgment execution department at the West Amman Court. Construction of a 160m extension began in June and is ongoing. Renovation will be completed by mid-July, ahead of schedule. The new space will include a queuing system and a waiting area. These new additions will substantially increase efficiency, improve the delivery of services, and relieve any discomfort and pressure felt by court users and staff. Once the renovations are finished, smaller procurements for furniture and other items will follow.

ROLP assessed the electronic linkages to various public and governmental entities, the public prosecution offices, and MoJ. Evaluations were finalized. In June the project selected Omicron as the service provider and is currently gathering information to develop a scope of work for the 3 month-long activity.

3.3 PROSECUTION FOCUSED ACTIVITIES

The ROLP CoP met with the Amman Attorney General late this quarter to discuss shared goals and collaborative efforts. In addition to the material support slated for next quarter, discussions focused primarily on upcoming workshops and trainings aimed at improving the investigative and prosecutorial skills of judges and prosecutors and achieve greater specializations, particularly in the handling of anti-corruption cases. Topics identified included human trafficking, investigative skills, financial crimes, anti-corruption, and crime scene management and forensics. The project fine-tuned plans for next quarter in order to accommodate changes in dates and the availability of training consultants.

[1] The English translation of the extensive Execution of Judgments Assessment and Report will be provided with the next ROLP Quarterly Report.

Anti-Corruption-Themed U.S Study Tour

Much of ROLP's efforts this past quarter went to preparing the groundwork for a June 11 - 21 anti-corruption-themed study tour to the U.S. for Jordan's prosecution leadership. The study tour was organized and spearheaded by ROLP's CoP and international anti-corruption prosecution consultant Emery Adoradio. As part of the 10-day study tour, ten Jordanian judges and prosecutors exchanged ideas with U.S. legal professionals in 17 different federal, state, and local offices that employ various anti-corruption initiative models. Study tour participants met with the following offices :

1) U.S. Attorney's Office, New Jersey District, Newark, New Jersey

2) U.S Attorney's Office, Southern District of New York - Public Corruption Unit (Manhattan)

3) U.S Attorney's Office, Eastern District of New York - Public Integrity Section (Brooklyn)

4) Office of the District Attorney, New York County (Manhattan)

a) Public Integrity Unit
b) Official Corruption Unit

5) Maryland State Prosecutor's Office, Towson, Baltimore County, Maryland

6) State Attorney's Office for Montgomery County, Rockville, Maryland

7) Montgomery County Inspector General's Office, Rockville, Maryland

8) United States Department of Justice, Washington, D.C.

a) Regional Director for Africa and Middle East Office of Overseas Prosecutorial Development (OPDAT), Washington D.C.

b) Public Integrity Section

c) Fraud Section

d) Office of the Inspector General

e) Office of Professional Responsibility

f) Human Rights and Special Prosecution Section

9) United States Department of Justice - Office of Professional Responsibility

10) Federal Bureau of Investigations - Public Corruption Unit, FBI, Washington D.C

11) United States Supreme Court, Washington D.C.

Overall, the study tour experience was productive and maximized time and resources. All of the sessions involved presentations and discussions with key representatives of the respective participating host offices. The members of the Jordanian delegation demonstrated strong interest and interjected throughout with numerous remarks and questions. A key result of the study tour was that Jordanian decision makers were exposed to various models of prosecution centered anti-corruption efforts. This exposure reinforced prior anti-corruption training and fostered even greater understanding of prosecution-led enforcement strategies, investigation, and approaches to effectively combat public corruption. As a lead on the study tour activity, ROLP CoP Robert Dean said, "Everything we were presented with can in some way apply to Jordan. It is selecting what specifically to apply and how to apply it that needs to be addressed. Jordan's prosecution leadership has the necessary building blocks to move forward with a more specialized

prosecutorial process." ROLP CoP and Mr. Adoradio have prepared a detailed report of the study tour.[2]

Crime Scene Management Protocols
The ROLP CoP prepared a draft of standard crime scene protocol guidelines for prosecutors in Jordan to review and consider during the summer. The protocols/guidelines will be finalized next quarter with inputs from prosecutors and investigators. Once an agreement has been reached, the project will prepare a written set of guidelines. Design, printing and distribution is planned along with regional familiarization workshops during September and October.

Prosecution Office Enhancement Project
ROLP, after planning and consultation with MoJ and prosecution leadership, will provide material support, redesign, upgrades and renovation to the Amman Attorney General's Office and the West Amman and Aqaba prosecution offices. Contracting arrangements have been finalized and renovation work will start early next quarter (July). Completion is planned for mid-September.

Consistent with available funding, ROLP is also planning to submit a supplemental plan early next quarter to enhance several more prosecution offices (3-4 targeted offices for approximately $100,000 USD) in addition to the aforementioned three offices. This supplemental procurement process is expected to start in early August.

Judicial Institute of Jordan (JIJ)
The MoJ requested ROLP support to furnish a new office and also requested some furniture alterations and equipment for the JIJ which will be provided next quarter.

3.4 FUTURE JUDGES PROGRAM (FJP) IN COOPERATION WITH THE AMERICAN BAR ASSOCIATION (ABA)

ROLP continued to work with the American Bar Association (ABA) on the delivery of interim training for the next class of future judges. An anti-corruption session, led by expert consultant/trainer Emery Adoradio along with ROLP CoP, Robert Dean, was presented on April 6 to a group of 70 future judge trainees.

Collaborating with the ABA project, ROLP also provided logistical funding support for another training of the incoming class of the FJP. On May 6, the project facilitated a *Gender Sensitive Trials* workshop which was attended by 70 participants.

ROLP also continued to provide English language training courses to FJP participants: 36 judges, 2 anti-corruption commission staff and 30 University of Jordan law school students attended the June training course.

3.5 COMPUTERIZATION

Mizan Enhancements. *Optimiza* completed the *Mizan* database upgrade. In addition, court staff received trainings on the database's new features. ROLP will continue to support further training and knowledge transfer of the MoJ IT staff on the recent upgrades to the *Mizan* system. *Optimiza* completed this training in May.

[2] See attachment 1.

Database Handover to MoJ. The project is organizing training and equipment procurement as part of the handover to MoJ, which will be completed during the summer.

IT Needs Assessment Report. ROLP continued to assess the Judiciary's overall IT and automation status and needs. ROLP completed the first draft report and is currently developing an executive summary, conclusion, proposed recommendations and action plan. A report review workshop for MoJ will take place next quarter in order to develop a strategic plan for IT enhancement.

Control of Access Programming. Upon MoJ request, ROLP provided and finalized further system software enhancements to manage and control access to the *Mizan* system.

4. PLANNING AND REPORTING/ADMINISTRATION

The *Quarterly Performance Monitoring and Evaluation Report* for this quarter is complete and is being submitted concurrently with this Report as an attachment.[3]

The project has prepared a project closeout plan that will be submitted to USAID for review and feedback during the month of July.

[3] Attachment 2

Anti-Corruption Study Tour – June 2013

Models of Prosecution Based Anti-Corruption Efforts in the United States – A Report on the USAID funded Study Tour – *12 June through 20 June 2013* – Implemented by the ROLP Project (Tetra Tech-DPK)

Submitted By:

Robert L. Dean – Chief of Party – ROLP

Emery Adoradio – Anti-Corruption Prosecution Consultant to ROLP

July 2013

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1. Introduction – Goals and Objectives
2. Preparation
3. On-Site Visits
    1. New York Region
        i. Federal – United States Attorney for New Jersey
        ii. Federal – United States Attorney - Southern District of New York
        iii. Federal - United States Attorney - Eastern District of new York
        iv. County – New York County District Attorney's Office (Manhattan)
            1. Official Corruption Unit (OCU)
            2. Public Integrity Unit (PIU)
            3. Courtroom Activity
    2. Washington, DC/Maryland Region
        i. State – Maryland State Prosecutor's Office
        ii. County – Montgomery County, Maryland - State's Attorney's Office
        iii. County – Montgomery County, Maryland - Inspector General's Office
        iv. Federal – United States Department of Justice (DOJ) - Main Justice
            1. DOJ – Office of Overseas Prosecutorial Development, Assistance and Training
            2. DOJ – Public Integrity Section
            3. DOJ – Criminal Fraud Section
            4. DOJ – Office of the Inspector General
            5. DOJ – Office of Professional Responsibility
            6. FBI – Public Corruption Unit
            7. DOJ – Human Rights and Special Prosecutions Section
            8. Tour of United States Supreme Court
4. Comments, Observations, and Conclusion

Attachments

1. Introduction

The work plan (Year 5) for the ROLP program in 2013 called for an emphasis on prosecution development with particular attention to be paid to enhancing the anti-corruption efforts of investigation and prosecution. Much work needs to be done to reach the goal of a truly independent and highly effective anti-corruption prosecutorial program that the Judicial Council has set for the prosecutors and judiciary. Accordingly, ROLP has expended considerable effort in supporting this objective. Initial steps in enhancing the anti-corruption investigative skills came in December 2012 when fifty prosecutors attended a day-long training program led by an American assistant Inspector General from Washington, DC. This training had a focus on financial crimes. Her case examples drew upon a number of public corruption investigations. In March and April, Mr. Adoradio, an American prosecutor from Minnesota with a specialization in anti-corruption investigations, spent two weeks in Amman as a consultant/trainer conducting an anti-corruption assessment and practical training sessions for fifty Jordanian prosecutors.

In consultation with USAID, ROLP also planned a study tour to the United States in an effort to expose the Jordanian judiciary (including prosecutors) to various models of prosecution based anti-corruption efforts in the United States at the federal, state, and local levels. Without a doubt, the New York offices represent prosecution based efforts which are nationally recognized as being at the forefront of anti-corruption efforts in the US. Maryland offices provide a look at the efforts at the state and county level which resulted from a wave of public corruption at the highest political levels.

ROLP's goal was to have the Jordanian delegation visit the American offices which would serve as models and inspiration to the Jordanian leadership as they chart a path towards tough yet fair and effective anti-corruption efforts. Ultimately, the prosecutors of Jordan will become key players in the vigorous investigation and prosecution of public corruption in Jordan as well as in its prevention. Ultimately, the key milestones will be to minimize public corruption and, when detected, to swiftly punish and hold offenders accountable.

Looking back, we conclude that the study tour experience was busy and productive. Every session of the study tour involved not only well-prepared and impressive presentations by each of our hosts, but each session prompted questions from the delegation leading to spirited discussions. The group consistently interjected with commentary and questions throughout. What follows is a summary of the on-site visits and the presentation and ensuing discussions. [1]

2. Preparation

Soon after the selection of the study tour participants *(attachment 1),* an organizational and orientation meeting was conducted on Sunday April 7, 2013 for the participants. A background of the American judicial and prosecutorial system was presented by Mr. Dean and Mr. Adoradio and an overview of the offices to be visited was presented. Information necessary for the travel arrangements, ticketing, and visa applications was discussed and collected as needed. *(attachment 2).*

[1] Assistant Attorney General Rami al-Salah of the Amman Attorney General's Office attended the study tour and has been tasked with preparing a report from the perspective of the participants.

After the various host offices in New York and Washington, DC had confirmed their interest and availability to host the group, a memorandum was prepared by Mr. Dean and Mr. Adoradio to brief the hosts on the objectives and expectations of the study tour. *(attachment 3).*

Upon everyone's arrival in New York City on Tuesday evening, June 11, the group met at the Paramount Hotel for a final briefing and distribution of the updated agenda *(attachment 4).* [2]

3. On-site visits.

Wednesday June 12

United States Attorney's Office – New Jersey – Newark, New Jersey.

10:15-11:15 - The group was greeted by Assistant US Attorney (AUSA) **Bohdan Vitvitsky** who spent approximately one hour speaking to the group on the overall structure of the federal judiciary into 94 federal districts throughout the country and the corresponding organization of the 94 US Attorney offices (USAO). (attachment 5). He discussed the role of the Department of Justice and the USAOs generally and gave a historical background of the development of the federal judiciary and federal prosecutors. He discussed the process of presidential appointment and Senate confirmation for the chief federal prosecutor for each federal district. He noted that many of the assistant federal prosecutors are on a career track and develop specializations. He spent some time explaining the federal-state jurisdictional split. He noted the overlap of jurisdiction and pointed out that federal prosecutors get involved in cases with a more national or federal connection. This includes cases involving the use of interstate mails, wires, and the banking industry. Of particular interest was the fact that federal judges serve for life unless impeached, which is very rare. He emphasized that this insures independence of the judiciary. He also pointed out that the chief federal prosecutor, appointed by the President with the confirmation of the Senate, serves at the pleasure of the sitting president. Hence, no life tenure for the US Attorney.

There next ensued a discussion with the group on the allocation of power in the federal judiciary and one point discussed with great interest was the fact that federal judges have no involvement in the selection process of the chief federal prosecutor and the assistant prosecutors. A number of questions were asked about how issues of overlapping jurisdiction and conflicts between state and federal prosecutors are resolved. In addition, there was discussion of civil jurisdiction and how conflicts between state and federal authorities were resolved in those types of cases.

11:15-12:30 – AUSA **Zahid Quraishi** - Next to address the group was AUSA **Zahid Quraishi** who is a member of the Special Prosecutions Division. He discussed the volume of public corruption cases handled by his unit and explained the structure of the unit. The US Attorney's Office for New Jersey has obtained over 400 convictions for corruption during the past decade. He

[2] We would be remiss not to acknowledge with gratitude the extraordinary efforts of ROLP staff Fadia Batarseh, Lamees Al-Helou, and Essa Maymoun as well as Tetra Tech-DPK Home Office project officer Arum Lansel, and assistant project officer Jessica Akpan. They prepared, coordinated, organized, and planned so that all the moving parts could come together for a successful activity. And Ms. Akpan's cool and calm presence during the entire study tour was greatly appreciated by all.

discussed the unit's screening, selection, and case investigation process, which is worked usually, but not exclusively, through the FBI. Even with extensive investigations, some cases are not prosecuted due to insufficient evidence. Cases normally originate through citizen complaints or tips to the FBI or the USAO. Suspicious financial activities are often reported by banks. In bribery cases in particular, the investigator/prosecutor need to determine (1) what has been given to the public official and (2) what has the giver received in return. In this regard, he noted the importance of developing cooperating witnesses, those involved in some sort of criminal activity yet electing to work with investigators to develop cases against more serious offenders. **AUSA Quraishi** emphasized that these sorts of witnesses who will be looked at carefully by the judges and jury, need to be corroborated by other evidence such as witnesses, documents and records, or electronic interceptions. Next, he discussed several significant cases. One was a case involving corrupt police who set up protection rackets. Another was a case involving a fraudulently obtained loan by a police officer. Documentation through bank records and other financial institution documentation was deemed to be essential in these cases. He pointed out that loan fraud and tax related crimes often are the cases that get developed once an investigation starts.

12:30-1:00 – AUSA **Barbara Ward** – **Ms. Ward** is an asset forfeiture specialist and discussed with the group the role of asset forfeiture. There is a Financial Obligations Unit or some equivalent in all USAOs, the purpose of which is to collect debts owed to the United States. This would include restitution to victims and any type of civil judgment. She discussed the use of asset forfeiture to compensate victims. She noted how the federal forfeiture laws are complex and seem "a mess." She discussed civil forfeiture which is a civil action but based on criminal conduct not yet resulting in a conviction. Asset forfeiture can be used to compensate victims but a restitution order is necessary. Remission is when the court orders a return of assets to a crime victim.

1:00-2:05 – **Paul Fishman** – United States Attorney for New Jersey – At this point, lunch was delivered to the group in the USAO conference room during which a discussion session was conducted by **Mr. Fishman**. We were indeed honored to be joined by the chief federal prosecutor. He delighted the group with a discussion of the history of the development of the United States Attorney Office and the Department of Justice and the role of the Attorney General of the United States. He then noted the absolute importance of team work and joint investigations with the investigative authorities (usually the FBI) and the key decision point in determining sufficiency to proceed with the indictment of a case. Case development via a team approach was emphasized. He cautioned against starting a case unless you reach a point of near certainty as to criminality and the ability to prove it. **Mr. Fishman** highlighted the importance of the prosecutor's independence and the use of discretion. With regard to the work distribution in his office, he stated that 15% of his office handles civil matters (civil lawsuits involving the US) and 10% of his office handles political corruption. He pointed out several recent cases. One implicated the mayor of Trenton (capital city of New Jersey) in a bribery scheme. Another involved a USAID contract fraud. A third involved police in Camden, NJ (second largest city in New Jersey) who stole from drug dealers. He also discussed other types of fraud cases his office handles such as:

- Health Care fraud which often involves overcharging. One case he discussed involved medical labs providing kickback payment to doctors for blood-tests which over a period of time amounted to $200,000,000.
- Economic Crimes: Bank fraud, mortgage fraud, securities fraud

- Gangs and violent crimes and Crimes involving the mafia.
- Drugs and narcotics
- National security unit – Terrorism
- Asset capturing as discuss previously by **Ms. Ward**.

Finally, **Mr. Fishman** pointed out how his office is involved with the public in outreach programs and that it is very important for prosecutors to interact with the community to build trust and to enhance public awareness.

2:15-4:00 – AUSA **Bohdan Vitvitsky** and federal **Judge Jose Linares** - The group assembled in the courtroom of **Judge Jose Linares** for a presentation conducted in a question and answer format with questioning by AUSA **Vitvitsky** (as well as members of the group) and answers by the judge.[3] He was initially appointed to the state court by the governor of New Jersey but soon thereafter in 2002 was appointed by President Bush to the federal bench. He discussed with the group his background and experience and the training he received. He emphasized the importance of judicial independence. He discussed pre-trial and on-going trial publicity issues and the concept of open trials as opposed to closed trials which do not occur in the US. He discussed sentencing and preparing for the sentencing and he ended his comments to the group with an interesting aside, noting that he is the only federal judge who has been called upon to interpret Shari'a law in deciding a civil case. (See *National Group for Communications and Computers v. Lucent Technologies, 331, F. Supp 2d 290 (2004)*). The group found this quite interesting. The judge then introduced Federal Probation Officer Susan Smalley.

4:00-4:45 – **Susan Smalley** – **Ms. Smalley**, a federal probation officer assigned to Judge Linares, discussed her role in preparing a pre-sentencing report on individuals convicted of crimes who are awaiting sentencing. In that vein, she distributed to the group a copy of a sentencing grid (guidelines) and a Presentence Investigation Report (attachments 6-7). She discussed plea agreements. This led to an extended discussion of the sentencing guidelines and sentencing options available to federal judges.

Thursday June 13

United States Attorney's Office for the Southern District of New York (SDNY) (Manhattan)

10:00 – 12:00 - AUSA **Brendan McGuire** – To start the day, the group met with **Mr. McGuire** who is the Chief of the Public Corruption Unit (PCU) in the SDNY. His office is unique in that the focus of this particular federal prosecution office is international. This is due to the international character of New York as a financial capital. **Mr. McGuire** has a background in terrorism cases but for the past three years has been chief of the PCU. The USAO SDNY is the largest federal prosecution office in the country, and with 250 AUSAs is a leader within the DOJ for creative and innovative prosecutions. 180 of these federal prosecutors are assigned to criminal units and 60-70 are assigned to civil cases defending the US government in civil claims. The PCU has 10 prosecutors. The other units with a criminal focus are violent gangs, terrorism, organized crime, securities fraud, and a unit dealing with miscellaneous smaller offenses.

[3] Judge Linares was born in Cuba and came to the US with his family as a child.

The PCU has several in-house investigators who assist and support the investigations, but the cases are usually investigated by a "team" consisting of a prosecutor and FBI agents assigned to the case. There are 40 FBI agents who work in public corruption cases in the SDNY. **Mr. McGuire** also noted that on a local level, New York City also has its own Department of Investigation that is similar to the FBI. This city-based investigative force deals with cases involving city agencies and officials. The types of cases handled by the USAO often involve elected New York state officials. It appears that the state government is rife with corruption in New York. He remarked that bribery and embezzlement are the biggest problems here.

Mr. McGuire remarked that the public seems to be more upset at federal misconduct as opposed to local and state official misconduct. The PCU will also handle lower level cases involving government officials at public agencies including police, municipal workers, fire fighters and department of motor vehicle officials. Another significant area of work is in fraudulent government contracts. He mentioned a recent case involving a very large fraud by a contractor with New York City that fabricated "consulting services" for huge monetary payoffs for no work done. He discussed the asset forfeiture and restitution process and indicated that five AUSAs are assigned to that unit. The group discussed with **Mr. McGuire** the importance of forensic accounting for investigative support, integrity/virtue testing as a tool for deterrence, and the recurring issue of resolving overlapping jurisdiction with the local authorities.

United States Attorney's Office for the Eastern District of New York (EDNY) (Brooklyn)

2:00-4:45 – The group was met by Senior AUSA **Robert Capers** of the Public Integrity Unit (PIU) of the USAO – EDNY. He was joined by AUSAs **Anthony Capozollo** and **Lon Winn** of the PIU and **Brian Morris** of the asset forfeiture unit, each of whom discussed their respective specialized areas and provided case studies. Initially, **Mr. Capers** provided an overview of the USAO EDNY and its organizational structure. He then turned the floor over to his colleagues who discussed certain case studies.

Mr. Capozollo discussed a recent case involving corrupt union officials who were paid off ("hush money") to ignore underpayments made by a trucking company. There is extensive federal legislation governing trucking contract practices. In this case, contract provisions to pay union rates were being ignored. He explained how an anonymous call to the Federal Department of Labor led to follow up investigations which started with an examination of bank records of the owner of the trucking company and the union shop steward who was receiving the illegal "hush money." This hush money was paid into the account of a corporation owned by the union official who then withdrew that money. The actual crime was the payment of money to the shop steward in excess of the contractual wages. In investigating this case, **Mr. Capozollo** also used information from the New York City Business Integrity Commission which regulates "corrupt" businesses such as trucking and garbage hauling which are historically often subject to corrupt practices. The investigative steps used included (1) questioning the company owner in an effort to "flip him" as a cooperating witness, (2) a search warrant to locate corporate records, (3) examining applications for permits to do business from the Business Integrity Commission (which in this case revealed false answers), and (3) an exhaustive document search. Often in such cases, the strongest prosecutions will be in false answers to permit applications.

The group then discussed with **Mr. Capozollo** embezzlements and the tools of investigation. Such embezzlements are often found in pension funds and in the health care industry. Bank records are an essential first step.

The group was next addressed by **Mr. Morris** who is an asset forfeiture expert. He discussed the financial sanction to prevent criminals from profiting from their crimes. Most crimes have some sort of forfeiture component involving the proceeds of a crime. There is a broad definition of "proceeds of a crime" which also include not only the direct proceeds of the crime, but any property that is indirectly obtained due to the crime. The broadest forfeiture law relates to terrorism where all assets of a defendant are subject to forfeiture. Generally, the types of assets are very broad, including cash, bank accounts, boats, cars, stocks, houses, etc.

Mr. Morris discussed the steps involved in asset forfeiture that are (1) seizure of the asset so as to give possession to the prosecutor and then (2) adjudication as to the title. Real property will involve a seizure lien and then adjudication followed by a forced sale with the proceeds going to the government. He then provided an example involving a "Ponzi" scheme.[4] The proceeds of the "Ponzi" scheme were forfeited and were to be sequestered into a forfeiture fund for victim restitution. The potential recipients had to have had "clean hands" and not have been part of the scheme in order to qualify for a restitution award. This provoked a very spirited discussion on the theory of forfeiture of assets, restitution, and victim compensation. With regard to a straw purchaser (those enlisted by the criminal to put the ill-gotten gains to a legitimate use), the law puts the burden on the intermediary to produce a legitimate claim that the proceeds were not from the defendant.

Next, **Ms. Lon Winn** addressed the group. She discussed a case of a public employee of a public university (a university president at a state institution) who essentially exploited foreign scholarship students from China. Such exploitation involved forced labor and embezzlement. The challenge in this case was to get the "victims" to cooperate.

Friday June 14

New York County District Attorney's Office (Manhattan) (NYCDA)

10:00-12:00 –Official Corruption Unit (OCU)

The group was met by three individuals of the OCU. They were Chief of OCU **Luke Rettler**, Deputy Chief **Julio Cuevos,** and Investigator **Christine Ard.**

Mr. Rettler welcomed the group and gave an overview of the entire NYCDA's office which consists of 400 prosecutors. The Investigation Division is composed of specialized units, two of which focus on aspects of public corruption. The OCU handles allegations of corruption involving

[4] Ponzi schemes essentially involve a fraudulent practice where people are enticed and duped to invest in a business with the promise of high yields which are paid for by subsequent investors, not from profits of the operation.

uniformed services. The other corruption related unit is the Public Integrity Unit (PIU) which involves lawyers, public officials, and judges. The OCU's case load is 95% police related and the most common offenses are perjury and false reports. There are 4 prosecutors assigned to this unit backed by four investigators and three investigative analysts. The unit was established in 1990 in order to have an independent body look at complaints of police misconduct. The effort was aimed to build greater public trust and confidence in New York's police. The Police Department itself also has an Internal Affairs Unit (IAU) which investigates police misconduct and assesses administrative sanctions for such misconduct. Not surprisingly, there is overlapping responsibilities and extensive interaction between the police department's IAU and prosecutor's OCU. He noted that often the OCU wants to "dig deeper" than the IAU and that the IAU often tends to minimize police misconduct issues. The normal mix of cases includes the following: (1) drug "rips" where police steal drugs or other property from offenders; (2) bribery; (3) kickbacks; (4) protection/extortion rackets from criminal enterprises; (5) police robberies; and (5) police burglaries.

Mr. Cueves next described some of the cases that his unit has handled. One involved a police officer who was planning a burglary and theft of $800,000 in cash supposedly concealed in the home of an unwitting occupant. An informant (who had been charged with illegal towing) provided police IAU of this and the OCU proceeded with the investigation. The investigative steps involved recording conversations between the suspect police officer and the "cooperating" informant relating to the planning of the break-in and theft. Under OCU control, the informant staged a break-in and called the suspect policeman for assistance. When the suspect arrived, he was arrested and charged with attempted burglary. He was convicted and sentenced, jailed for a year, and dismissed from the department. As an aside, pointing out overlapping federal and local jurisdiction**, Mr. Cueves** noted that the USAO had previously taken this case but gave it back to the local prosecutor when they discovered that the participants were not who they originally thought they were. There next took place an animated discussion about entrapment, crime creation by prosecutors and investigators, and the legal and moral aspects of this defense. **Mr. Cueves** noted the high importance of corroborating "cooperating witnesses."

Mr. Cueves then discussed a case involving a police officer who was given the responsibility to locate and purchase a horse farm for retired police horses. He did so, made bids and tenders, and then awarded the contract for managing the farm to his girlfriend.

Another case reviewed was a police brutality/excessive force case. The incident was captured on videotape. Notwithstanding the obvious brutality and unreasonable use of force during the encounter (which the group viewed), the jury acquitted. An explanation for the acquittal was that during the time between the incident and the trial the victim disappeared and hence was not available to testify at trial, and the charged officer had had a stroke and attended court in a wheel chair.

Another issue discussed involved the perceived difference between "small lies versus big lies." For instance, police may lie about certain circumstances regarding the investigation, such as testifying as a first-hand witness as to what they said they saw (really seen by a partner who could not attend court) or did in a case. This is known as an "accommodation perjury". Compare this "fudging" testimony to actually falsifying a crime. This issue often arises in a situation where illegal police conduct and/or unjustified stops and searches during which they discover

drugs or contraband. The crime actually was committed, but the police lie about the circumstances of the discovery, creating false justifications.

There then took place a discussion of investigative techniques and those most frequently used in these types of cases. These are witnesses, criminal cooperating informants, cooperating witnesses, wiretaps, surveillance, controlled calls, undercover operations, and integrity testing. The issue of the "blue wall of silence" was discussed. This is referred to in situations where police lie or refuse to testify truthfully against fellow officers. Finally, the group discussed with **Mr. Cueves** the range of dispositions available in these sorts of cases. They range from jail, probation, acquittal, resignation from the department, reduced rank, and administrative penalties such as docked pay, demotion, and transfers.

2:00 – 4:45 – Rackets Bureau - Public Integrity Unit (PIU)

The group was met by **Dan Cort**, Chief of the PIU. The mandate of this unit is to investigate and prosecute public servants of all levels. He noted that the DA's office is organized into three Divisions: (1) Trial Division (handling routine street crime such as drugs, burglaries, sex assaults); (2) Investigative Division under which the PIU, (part of the Rackets Bureau) is organized; and (3) Appeals. The Rackets Bureau of the Investigations Division is divided into three units, (1) the Organized Crime and Terrorism Unit; (2) Labor Investigations; and (3) the PIU. All prosecutors within the Rackets Bureau can be assigned to a case of the PIU. A prosecutor normally has 6 to 8 years of experience prior to an assignment to the Rackets Bureau. The PIU focuses on all levels of corruption with most cases involving bribes, campaign finance crimes, ethic laws implicating criminal violations, and false filings (which are the easiest to prove). The PIU gets many of its cases from the New York City Department of Investigation (as mentioned earlier, similar to the FBI), the Inspector General's Office specializing in city agencies who will then refer the case to the DA's office (as the IG has no prosecutorial authority). Some cases are spin-off cases developed from other cases. A common form of corruption involves corrupt inspectors who are crooked for a variety of reasons. Some of the investigations are complex and last a year or so. The prosecutors are all actively engaged in the investigations and are familiar with all aspects of the case which makes for better trial presentation.

Charging was discussed and the level of proof need for an indictment was covered. Although only probable cause is needed for an indictment, conviction requires proof beyond a reasonable doubt which is closer to the standard most prosecutors use to indict. For investigative support the PIU has financial analysts and paralegals as well as the agents from the Department of Investigations.

Investigative methods were discussed. This included document subpoenas which is the most common and a very useful tool, particularly for bank and phone records. It is a good enforcement mechanism and such subpoenas must be obeyed. Physical surveillance is quite useful and use of undercover police is very effective. Wiretaps, although difficult to obtain due to legal requirements, are very useful as well as other electronic interceptions. The group also discussed with **Mr. Cort** standards for case selection and the ethical duties of prosecutors for revealing exculpatory evidence.

3:15- 3:45 – **Mr. Cort** took the group to the Arraignment courtroom of County Court where persons recently arrested are brought before a judge for a release/bail determination. The group observed several arraignments.

3:45- 4:30 – **Mr. Cort** took the group up to a trial courtroom where they observed part of a criminal assault trial being conducted before a jury in County Court. The group observed the direct and cross-examination of a police officer witness.

Monday June 17

Maryland State Prosecutor's Office (Towson, Baltimore County, Maryland) (SPO)

10:00 – 1:00 – State Prosecutor **Emmet Davitt** – Chief Investigator **Jim Kabasesis –** Assistant State Prosecutor **Nicole Norris.**

After a weekend break which involved a Sunday bus trip south to Baltimore from New York, the group started off the week with a visit to the Maryland State Prosecutor's Office, a unique office established in the 1970s in the wake of a series of high level political corruption scandals in the state of Maryland. State Prosecutor **Emmet Davitt** greeted the group and provided a brief overview of the office, its history, and its current structure. He introduced his Chief Investigator **Jim Kabasesis** who provided the group with a historical look at the SPO as he has been with the office since its inception in 1978. The scandals provoking the creation of the SPO in Maryland included governors, high-ranking county executives, an elected prosecutor, and even a Vice-President of the United States. In response to this, the Maryland Legislature created a unique independent prosecution office with state-wide jurisdiction to deal with political corruption and election law fraud. The legislature reflected the public demands for "cleaning up" its government and the demand for a totally independent prosecutor's office to target political corruption.

The SPO is small. There is a staff of 12. Three are prosecutors who are supported by investigators and an administrative staff. On staff is a computer forensics expert.

Mr. Davitt then explained that the SPO has a very narrow and specific mandate to deal with political corruption and election fraud cases. The selection process is designed to maintain its integrity and independence. The SPO law in Maryland (attachment 8) provides for the selection mechanism for the Special Prosecutor. There is a selection commission which is composed of the President of the Maryland State Senate, the Maryland Attorney General, the Leader of the Maryland House of Delegates, and a representative of the Maryland State's Attorney's Association. The Commission then selects up to three candidates and from that list the governor makes the final selection, which is then subject to state senate confirmation. The term is a renewable 6 year term. The Governor cannot replace the State Prosecutor. Only the Commission can replace the State Prosecutor and only for cause such as the commission of a crime.

The SPO screens a large volume of calls and complaints from throughout the state, many of which are determined to be unfounded. The complaints and investigations are kept totally confidential until formal charging. The office maintains a no contact policy with the press due to the sensitive nature of the cases. Complaints of this nature can be very damaging to reputations

so the office is extremely careful about leaks. Some complaints can be motivated by spite and "sore losers." Nevertheless, the SPO tries to make filing a complaint as easy as possible. This includes inviting complaints by telephone, written complaints, e-mails, and face-to-face. The first question asked is whether the SPO should be involved at all and whether the allegation fits the statutory mandate. Also, the following questions need to be answered: (1) Is the action complained of a crime? (2) Is it within the statute of limitations? (3) Should this be a federal matter? (4) Can the allegations be proven? (5) How can the evidence be obtained? (6) Who shall the case be assigned to? The Special Prosecutor himself will make the final determination as to whether to proceed with an investigation.

Mr. Davitt next reviewed the key aspects of a typical investigation which he set forth as follows:

1. Obtain records
    a. Financial and business records as appropriate – via subpoena
    b. Court order for secrecy/non-disclosure.
2. Execution of search warrants – often search warrants are for computers which are taken back to the lab for forensic evaluation. The SPO has a computer forensics lab.
3. The investigations are prosecutor directed.
4. The use of the grand jury as an investigative tool was discussed. This can be used to protect a witness and as "encouragement" to unwilling witnesses as the grand jury can compel testimony.

Mr. Davitt also took time to explain the role of discretion in his job, the importance of his independence, how he handles anonymous tips, and the importance of the investigative support he gets from time to time from the Maryland State Police, especially in conducting arrests and in executing search warrants.

He noted that his office has recently handled both high profile cases and others that can be regarded as petty.

The relationship with the local elected Maryland prosecutors (each county has an elected chief prosecutor known as a State's Attorney for that particular county). The SPO needs to interact with the county State's Attorneys as well as the federal prosecutors for Maryland.

Mr. Davitt discussed a very recent case where the County Executive (Mr. Leopold) for Anne Arundel County was prosecuted, convicted, and jailed for misconduct in office. The county executive is the highest level elected official at the county level. The initial complaint involved his using county employees and his staff to work for his election and to carry out other non-work related tasks.

Mr. Davitt also discussed a recent election process case where his office prosecuted a campaign operative in a gubernatorial campaign who attempted to suppress the minority vote in a high minority jurisdiction by using a "robo call." The crime was to fraudulently take action to discourage voters form voting. The case has "free speech" implications. The defendant claimed it was merely a "dirty trick" and not a crime. He was convicted of failing to provide the necessary authority line on the message. Although the crime was a low-level one, it had significant impact when the verdict and sentencing were handed down.

Another case discussed was the prosecution and conviction of the Mayor of Baltimore who had a boyfriend who was a developer who contracted with the city. The Mayor received gift cards

which were supposed to be used to buy toys for poor children but which she used the cards for her personal use.

The SPO handles its own appeals. As mentioned, media relations are embargoed during an investigation and after charge and trial the SPO will issue press releases.

Tuesday June 18

Montgomery County State's Attorney's Office (Rockville, Maryland)

10:15 – 1:45 – State's Attorney for Montgomery County **John McCarthy** – **Judge Michael Mason** (Circuit Court for Montgomery County), and Assistant States Attorney **Robert Hill**

Montgomery County State's Attorney **John McCarthy** greeted the group at the Montgomery County Judicial Center and took the group to the Grand Jury Room. **Mr. McCarthy** had met the group the previous evening for dinner. He then gave a presentation on the organization of the office and some background on his jurisdiction over Montgomery County which is Maryland's largest. He described it as a very diverse community of over one million inhabitants. He explained the units of the office and the fact that his post is an elected position and that he is answerable only to the voters of the county. He emphasized that as an elected official he is completely independent from the judiciary and other branches of government.

The group then visited Judge **Michael Mason** in his chambers and courtroom which are located in the Judicial Center. **Judge Mason** is the most senior judge (of 20 judges) of the Montgomery County Circuit Court. He is a former prosecutor and defense attorney in private practice. He described his overall duties as a trial judge and answered a host of questions from the group about his day to day activities as a judge. He handles a variety of civil and criminal cases and on the day of the visit he was in the midst of **domestic violence case**. The group toured the courtroom and the jury room where jurors deliberate.

The group then returned to the Grand Jury Room where Assistant State's Attorney **Robert Hill** of the Special Prosecutions Division (SPD) provided an overview of this unit and discussed certain types of cases as examples.

Mr. Hill explained that the SPD has five prosecutors and two investigators and they handle cases involving corruption, financial exploitation of the elderly, police misconduct cases, and large financial frauds which routinely involve embezzlements. During the presentation he noted the wide variety of models of judicial selection that exists among the various states in the US. He pointed out that there are a variety of different systems involving a mix of elections, appointments by governors and legislatures. He pointed out that one of the most important factors in preventing official corruption is the independence of the participants of the judicial system, most notably the prosecutors and the judiciary.

With regard to overlapping federal and local jurisdiction as to responsibility for certain cases, such decisions will be left to a case-by-case determination between the leadership of the respective offices. He remarked that large scale banking fraud cases and the more complex cases are often referred for federal prosecution. This is due to the resources available to the federal prosecutors.

In response to a question regarding specialized training, Mr. Hill noted that there is regular in-house training provided within the state's attorney's office as well as training offered by the state-wide Maryland prosecutors association and the National District Attorney Association.

Montgomery County Inspector General's Office (Rockville, Maryland)

3:00-4:45 – **Edward Blansitt** – Chief Inspector General for Montgomery County

Mr. Blansitt, the Chief Inspector General for Montgomery County met with the group. He explained that his office was established in 1997 by the Montgomery County Council to prevent and detect fraud, waste and abuse in the county government and to make recommendations to enhance the economy and efficiency of the county funded operations and to increase the legal, fiscal, and ethical accountability of county agencies. He distributed a hand-out (attachment 9) to the group that covered the range of issues dealt with by the IG's office. He also gave an overview of the various types of IG's in the federal, state, and local jurisdictions throughout the country.

Mr. Blansitt reviewed the activities of his office that can be classified into **investigations and audits**. He noted that all reports of his actions must be made public. He stressed that his office is independent yet he regularly reports to the county council. He has power to issue subpoenas and to collect documents and records. The types of issues his office normally confronts are:

> (1) contract or procurement fraud; (2) theft of county funds or property; (3) secret profits, kickbacks, or commissions; (4) worker's compensation or expense claims fraud; (5) fraudulent travel/reimbursement claims or falsification of financial records; (6) undisclosed conflicts of interest; (7) significant waste of county funds, abuse of county position; (8) serious misconduct; (9) computer misuse or crimes; (10) whistle blower reprisals; and (11) offer, payment, or acceptance of bribes.

Necessarily, he needs to communicate and coordinate with the Montgomery County State's Attorney, the Maryland State Prosecutor, and the federal authorities as needed.

His office receives complaints via a number of sources which include complaints from: employees and taxpayers; from hotlines via the internet or telephone; newspaper articles; letters to the county government; and from an advisory group. The advisory group is comprised of citizens selected by the Inspector General and this group meets regularly to provide input to the IG.

The IG must regularly prepare an annual report and a four-year work plan. He provided a detailed flow-chart of the complaint intake and work product processing which was included in the hand-out he distributed.

He concluded his presentation by discussing a few of his office's recent activities that included:

1. Review of county motor vehicle fleet management leading to recommendations to enhance economy.
2. Investigation of misuse of credit cards leading to significant reimbursements stemming from questionable transactions.

3. Investigation of County contract breach leading to a more extensive investigation of the county's contract administrator which revealed waste and misuse of county funds. A " whistleblower" was also protected from retaliation.
4. Investigation into a possible violation of ethics laws by a county council member.

Wednesday June 19

United States Department of Justice – Main Justice

9:30-10:30 – **Robert Bowman**, Regional Director for Africa and Middle East, Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT)

Mr. Bowman, OPDAT Regional Director for Africa and Middle East, met with the group. He began the meeting by explaining the work of his office. OPDAT provides training to prosecutors and judicial personnel in other countries to develop and sustain effective criminal justice institutions. He stressed that OPDAT recognizes that international cooperation in the investigation and prosecution of criminals and organized crime groups is central to countering international crime, and that effective rule of law promotes stability and support for basic human rights.

Mr. Bowman explained the role of Resident Legal Advisors (RLAs) and noted that OPDAT has placed RLAs in many countries around the world, including several the Middle East. RLAs (and Interim Legal Advisors - ILAs) provide advice and technical assistance to host governments in establishing fair and transparent justice sector institutions and practices. Part of the assistance of RLAs is to draft, review and comment on legislation and criminal enforcement policy. He noted that ILAs have provided assistance in money laundering, transnational crime, corruption, and trafficking in both narcotics and people. He also pointed out that a RLA in the Gulf region will be conducting corruption training in the near future.

Mr. Bowman's comments about OPDAT's RLA program prompted a number of questions from the delegation, including: How does the RLA determine the focus of his or her work? (through dialogue with host-country ministries of justice and justice sector personnel); And, how does an RLA get assigned? (through request from USAID or US State Department).

After explaining the work of OPDAT, **Mr. Bowman** turned his comments to charging decisions and specifically issues of proof in public corruption cases. He began his comments by addressing the differences between direct and circumstantial evidence. Examples of the former include the use of cooperating witnesses (often accomplices to the crime), insiders, and informants; confessions; and intercepted communications. He noted that prosecutors abroad rely heavily on confessions and direct proof in criminal cases. **Mr. Bowman** stressed that in public corruption cases such evidence may be difficult to develop given the sophistication of targets and the nuances of bribery and kickback schemes. Hence, he noted, the importance of circumstantial evidence. His comments led to a very lively discussion between **Mr. Bowman** and the group on the role of circumstantial evidence. The group asked a number of questions about the quality of

circumstantial proof and whether it has the same evidentiary value as direct proof. A number in the group stated that circumstantial evidence is weak and alone cannot support a conviction in a corruption case. Others disagreed. **Mr. Bowman** provided several illustrations of circumstantial proof in a corruption case and read the standard federal jury instruction (stating that such proof is no weaker than direct proof). **Mr. Bowman** ended his comments by noting that the development of circumstantial evidence (through financial records and the like) requires expertise and resources. In this regard**, Mr. Bowman**'s comments to the group echoed themes touched on throughout the study tour.

10:45-12-15 – **Eric Olshan** – Trial Attorney, Public Integrity Section

Next, **Mr. Olshan**, a trial attorney with the Public Integrity Section (PIS) met with the group. **Mr. Olshan** began the meeting by explaining the work of PIS. The section oversees federal efforts to combat corruption through the prosecution of elected and appointed public officials at all levels of government. **Mr. Olshan** noted that PIS has exclusive jurisdiction over allegations of criminal misconduct on the part of federal judges and also supervises the nationwide investigation and prosecution of election crimes. He also pointed out that PIS attorneys prosecute selected cases against federal, state, and local officials, and are available as a source of advice and expertise to other federal prosecutors and investigators. **Mr. Olshan** noted that PIS is required to provide the US Congress with an annual report of its work. This prompted a question from the delegation regarding who controls PIS's budget.

A question was asked by a member of the delegation about how PIS decides a case is worth pursuing. The question provided an opportunity for **Mr. Olshan** to stress that what is really at stake in a public corruption case is not the amount of money stolen but government integrity.

Before turning to case examples, **Mr. Olshan** noted the various challenges unique to public corruption cases, most especially in the area of proving intent on the part of bad actors. He stressed that proactive investigative techniques such as the use of undercover officers, intercepted communications and insiders are all critical to the success of these cases.

Mr. Olshan described several cases he prosecuted. One involved US military corruption in Kuwait. US troops deployed to Iraq required large amounts of bottled water given the state of Iraq's infrastructure at the time. A Kuwaiti contractor began bribing a US Army major and other military officers working in Kuwait in order to win the bottled water contract. The bribery occurred over a fairly lengthy period of time and all bribes were paid in cash. This presented difficulties for the corrupt officers in getting the illicit funds out of the country. Some were careless enough to wire funds from their bank accounts. These transactions provided strong circumstantial evidence of bribery given the large amounts of money wired versus the relatively low salaries of the officers. Others were more cautious. Several carried large amounts of currency out of the country in duffel bags. **Mr. Olshan** described the importance of a Kuwaiti informant (who was bribing the officers) in the case. The informant provided evidence leading to the seizure of a duffel bag in the US that tested positive (through canine sniffing) for currency and which contained the informant's business card. The presence of the business card in the duffel bag provided important corroboration for the informant's statements, critical given his complicity in the scheme.

Mr. Olshan described a second case involving contract fraud committed by US military officers in South Korea. The case had an interesting twist. Although government prosecutors were able to successfully apprehend and prosecute the US military personnel, the South Korean businessman was out of jurisdictional reach. However, the businessman's greed led to his undoing. After prosecutors lured him to Texas on the pretense that he would be paid further money on the contract, he was arrested and thereafter prosecuted.

Members of the group asked several questions following the case examples. These included questions about obtaining foreign bank records and whether **Mr. Olshan** has encountered difficulties in freezing money in foreign bank accounts. **Mr. Olshan** noted the importance of a specialized unit within DOJ for handling asset-tracing and recovery. His comment in this regard dovetailed with remarks by other American prosecutors during the study tour about the importance of specialization in prosecution offices.

2:00-3:00 – **Albert Stieglitz** – Assistant Chief, Fraud Section

Mr. Stieglitz, an Assistant Chief in the Fraud Section, met with the group. **Mr. Stieglitz** began the meeting by explaining the work of the Fraud Section. The Fraud Section investigates and prosecutes complex white collar crime cases throughout the US. **Mr. Stieglitz** noted that the Fraud Section has extensive experience with sophisticated fraud schemes and in handling complex and multi-district litigation. He noted further that the Section responds to shifting law enforcement priorities, citing mortgage fraud and large-scale "Ponzi" schemes as examples.

Mr. Stieglitz noted the involvement of the Fraud Section with the Deep Water Horizon Task Force (a law enforcement follow-on to the BP oil spill in the Gulf of Mexico). As part of his comments he explained the importance of deferred prosecution agreements (DPAs) and non-prosecution agreements (NPAs) in the prosecution of companies. He noted the benefits of such agreements in furthering justice, including the recovery of illicit profits and the imposition of substantial fines without harming the ability of prosecutors to go after individual bad actors within companies. His comments generated several questions by the group about how the rights of shareholders are protected by such agreements, and how recovered assets are distributed to shareholder victims. **Mr. Stieglitz** noted that these are difficult and complex issues, which must be handled on a case-by-case basis.

Mr. Stieglitz briefly described several cases prosecuted by the Fraud Section. These included the LIBOR (London Interbank Offered Rate) manipulation case and the massive Provident Capital investment fraud case. A member of the delegation asked **Mr. Stieglitz** about the difficulties of presenting complex financial transactions to lay juries. He noted the importance of simplifying the evidence for the jury in order to be an effective advocate.

3:30-4:30 – **Scott Barden** – Assistant Special Agent in Charge, Office of the Inspector General

Mr. Barden, Assistant Special Agent in Charge, Office of the Inspector General (OIG), met with the group. He explained OIG's structure, jurisdiction and statutory framework. As background, **Mr. Barden** commented on events that gave rise to the OIG Act (1978) involving actual, and apparent, conflicts of interest during the Watergate era. OIG is a statutorily created independent agency aimed at detecting and deterring waste, fraud, abuse, and misconduct in DOJ programs and personnel. OIG has three branches: audit, inspections, and investigative. The

agency also holds the mission of promoting economy and efficiency in DOJ programs. He noted that the Inspector General is appointed by the President subject to Senate confirmation, and reports to the Attorney General and Congress. The OIG also investigates alleged violations of criminal and civil laws by DOJ employees and also audits and inspects DOJ programs. The jurisdiction of OIG includes over 12,000 employees spread out across multiple DOJ agencies including the FBI, ATF, US Attorney offices, and others. He remarked that until 1998 OIG could not investigate the FBI and certain other law enforcement agencies. DOJ resisted such oversight on the grounds that OIG would be exposed to sensitive material.

Mr. Barden also noted that OIG has the responsibility of overseeing the inspection of federal prisons. In fact, he noted, over half of the work of OIG involves prison issues. In this regard he provided a recent example of a recommendation by OIG that all federal prison employees be subject to searches prior to reporting at work. OIG made the recommendation as part of an effort to reduce contraband in federal prisons. He also remarked on an effort, met with some resistance on the part of the US Marshals Service, to review the financial records of the federal witness protection program.

It was clear from the group that their prior exposure to the work of an IG's office - as occurred during the meeting with the Montgomery County (Maryland) IG - had familiarized the group with the responsibilities of such an agency. This meeting complimented the Maryland meeting by showing the broad jurisdiction of a federal IG and one focused on a single department within the US, namely, DOJ.

Thursday June 20

10:30-11:00 -Library of Congress – Visit

The delegation enjoyed an informal tour of the Thomas Jefferson Building of the Library of Congress, taking special note of the Main Reading Room and the building's Beaux-Art architecture.

11:00-12:00 – Supreme Court of the United States

The delegation was led on an excellent and informative tour of the Supreme Court by an official court guide. The tour included visits to various areas of the building. In the setting of the majestic and richly-appointed conference rooms and courtroom, the guide explained and answered various questions about the court's history, the qualifications of justices, the court's jurisdiction and its docket size, the appeals process, and the finality of the Court's decisions.

Department of Justice (Continued)

2:00-3:00 – **Lyn Hardy** – Assistant Counsel, Office of Professional Responsibility (OPR)

Ms. Hardy, Assistant Counsel in OPR met with the group. She explained that her office reports directly to the Attorney General and is responsible for investigating allegations of misconduct involving DOJ attorneys. Such misconduct may relate to the exercise of their authority to investigate, litigate or provide legal advice. She stressed that the mission of OPR is to ensure

that DOJ attorneys perform their duties in accordance with the highest professional standards. She described the office's history, born out of the Watergate crisis, which gave rise to the Ethics in Government Act requiring financial disclosure statements by key US government officials. She also provided materials to the group. (*Attachment 10 (a) – (d))*

Ms. Hardy described several high-profile investigations. One included the investigation into the firing of eight United States Attorneys during Roberto Gonzalez's tenure as Attorney General. A second investigation, still awaiting completion, involves the prosecution of US Senator Ted Stephens. Several allegations of prosecutorial misconduct arose in the case, including whether federal prosecutors intentionally withheld exculpatory material from the defense.

Several members of the delegation asked questions about the process available to a DOJ attorney who wishes to appeal an OPR finding.

3:15-4:15 – **Kathleen Barrio** – Special Agent, Public Corruption Unit, Federal Bureau of Investigation

Ms. Barrio, Special Agent, Public Corruption Unit (PCU), Federal Bureau of Investigation (FBI) met with the group. **Ms. Barrio** described the work and organizational structure of the PCU and employed a PowerPoint presentation in that effort. She noted that the FBI breaks down public corruption into various areas: executive, legislative, judicial, law enforcement, regulatory, contract, and electoral corruption.

Ms. Barrio summarized the panoply of investigative techniques employed by the FBI in public corruption cases. These include: open source (internet, social media), public documents, interviews, consensual monitoring, financial records, electronic surveillance, search warrants, use of undercover agents, physical surveillance, polygraphs, grand jury subpoena, phone records (PEN registers, "trap and trace"), wiretaps, and US "mail covers."

4:30-5:00 – **David Rich, Ph.D.** – Senior Historian, Human Rights and Special Prosecutions Section

Dr. Rich, – Senior Historian, Human Rights and Special Prosecutions Section (HRSP) met briefly with the group. He explained that HRSP investigates and prosecutes human rights violators for genocide, torture, war crimes, and the recruitment or use of child soldiers. Several brochures describing HRSP's work were distributed to the group (*attachments 11- 12).*

Dr. Rich explained HRSP's jurisdiction. While it does not have jurisdiction to prosecute these crimes in foreign countries, should a violator travel into the US and make a false statement in a visa application (regarding criminal background), HRSP will have authority to arrest and initiate a prosecution that may eventually be turned over to a court of competent foreign or international jurisdiction.

After giving an overview of the work of HRSP, **Dr. Rich** explained to the delegation his primary reason for requesting a meeting with the group. HRSP is keenly interested in receiving any information or reports regarding war crimes committed during the current Syrian conflict. Such information, or leads to such information, might be learned from Syrian refugees now residing in the Kingdom of Jordan. After explaining this, it became clear why the meeting had been added at the request of DOJ.

Several comments and questions were made and asked by delegation members. These included comments regarding US withdrawal (under certain circumstances) from the jurisdiction of the International Court of Justice and questions about statute of limitations in war crimes prosecuted by HRSP.

The meeting with **Dr. Rich** provided a fitting and appropriate end to the study tour. The US government, through its HRSP representative, was seeking Jordanian assistance. Indeed, the study tour provided an opportunity for productive dialogue between US prosecutors and Jordanians counterparts, each having something to offer the other.

4. Comments, Observations, and Conclusion

The study tour exposed the Jordanian judges and prosecutors to an array of well-established, time-tested, and successful prosecution based anti-corruption organizations at the federal, state, and local levels in the United States. It was a robust and wide-ranging sampling of what prosecutors can do in the fight against public corruption and how prosecutors can play a crucial role in deterring such criminal activity and in acting swiftly and decisively when such criminal activity is suspected.

Jordan's legal environment, of course, differs from that which exists in the United States. Nevertheless, sound investigative techniques and practices are universal and can be shared world-wide. The offices visited from New York to Maryland to Washington, D.C., shared their experiences and insights and engaged in productive dialogue with the group. It is now up to the judicial and prosecutorial leadership in Jordan to apply the lessons learned and determine what is right for the Kingdom.

Several key themes and concepts that are essential to successful anti-corruption efforts repeatedly emerged from many of the offices visited. They are, in no particular order of importance:

- Judicial Independence
- Prosecutorial independence
- Specialization
- Career track prosecutors
- Special attention to police corruption and misconduct
- Asset capturing/Asset forfeiture
- Acting on reports and complaints
- Investigative teamwork with companion investigative agencies
- Extensive use of "cooperating witnesses"
- Corroboration of evidence from "cooperating witnesses"
- Value of circumstantial evidence in public corruption cases
- Importance of financial records and other forms of documentary evidence
- Use of electronic monitoring and intercepts
- Surveillance capacities
- Undercover police and "plants"
- Forensic capabilities (forensic accounting and forensic computer inspection capacity)

- Community and public outreach

Not all of these areas readily fit into the current Jordanian judicial environment nor into the legal framework of Jordan's prosecution service. **Judicial independence** is an emerging concept in Jordan and it was recognized, but not specifically defined, in the recent amendments to Jordan's Constitution.[5] At this point, the contours of Judicial Independence in Jordan await development. The concept of **prosecutorial independence** which is so crucial to the American system**,** is not in the forefront in Jordan as prosecutors are deemed to be part of the judiciary and they carry the title of judge. Although there is some sentiment for developing a **career track for prosecutors**, until this happens, the goals of **specialization,** especially in the area of anti-corruption, will remain elusive. American prosecution offices clearly enjoy a significant amount of independence as well as prosecutorial career promotion. A deep talent pool of experienced dedicated prosecutors is essential towards realizing specialized units of prosecutors who can lead thorough and professional investigations, particularly in the challenging anti-corruption arena.

Police corruption is obviously a high priority in the American models. In Jordan, police corruption and misconduct are within the jurisdiction of special police courts and are outside the bailiwick of public prosecutors. Some thought should be given by Jordan's decision-makers as to whether the prosecution of police misconduct and corruption exclusively in police courts engenders public confidence. Much interaction between the public and the government is through interaction with the police. When there is police misconduct or criminal conduct, offenders should be subject to the same criminal justice system as other citizens.

Jordan's prosecutors need to assess whether they are using all the tools necessary to combat public corruption, both at the investigative and trial stages. They need to determine if they are making good use of **police and forensic investigative capacities**. In addition, they need to determine whether they are making sufficient use of investigative techniques such as the use of **cooperating witnesses** and in developing **corroborative evidence** through other witnesses, **document retrieval**, **forensic analysis of documents and computers, electronic eavesdropping, surveillance, and undercover work.** In addition, the legal and technical aspects of **asset-tracing** and **asset recovery** require specialization and a strong legal framework.

Using the various models presented during the study tour as points of reference, the judicial and prosecution leadership in Jordan may wish to chart a path of increasing prosecutorial independence and encouraging a cadre of career prosecutors who would form the nucleus of specialization, particularly in the area of anti-corruption efforts. With that framework, the fight against public corruption can advance.

[5] The 1952 text of Article 27 of Jordan's Constitution stated in pertinent part as follows: *The Judicial Power shall be exercised by the courts of law in their varying types and degrees.* The 2011 Amendment simply added in the words "is independent" as follows: "*The Judicial Power <u>is independent</u> and shall be exercised by the courts of law in their varying types and degrees."*

Attachments

1. List of Participants
2. Study Tour Orientation Meeting – April 7 - Agenda
3. Memorandum to Host Offices
4. Final Agenda
5. Schematic Diagram –
   Federal Judicial System
6. Federal Sentencing Table
7. Federal Presentence Investigation Report
8. Maryland Law – Office of the State Prosecutor (Ann. Code Md. Sec. 14-102, et seq.
9. Office of the Inspector General – Montgomery County – Hand out.
10. United States Department of Justice – Office of Professional Responsibility
    a. Power point slides
    b. Memorandum – Policies and Procedures
    c. Federal Regulation – Title 28
    d. Memorandum – Judith B. Wish
11. ICITAP Brochure
12. Human Rights and Special Prosecutions Section - Brochure

Models of Prosecution Based Anti-Corruption Efforts in the United States – A Report on the USAID funded Study Tour – *12 June through 20 June 2013* – Implemented by the ROLP Project (Tetra Tech-DPK)

Submitted By:

Robert L. Dean – Chief of Party – ROLP

Emery Adoradio – Anti-Corruption Prosecution Consultant to ROLP

July 2013

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1. Introduction – Goals and Objectives
2. Preparation
3. On-Site Visits
    1. New York Region
        i. Federal – United States Attorney for New Jersey
        ii. Federal – United States Attorney - Southern District of New York
        iii. Federal - United States Attorney - Eastern District of new York
        iv. County – New York County District Attorney's Office (Manhattan)
            1. Official Corruption Unit (OCU)
            2. Public Integrity Unit (PIU)
            3. Courtroom Activity
    2. Washington, DC/Maryland Region
        i. State – Maryland State Prosecutor's Office
        ii. County – Montgomery County, Maryland - State's Attorney's Office
        iii. County – Montgomery County, Maryland - Inspector General's Office
        iv. Federal – United States Department of Justice (DOJ) - Main Justice
            1. DOJ – Office of Overseas Prosecutorial Development, Assistance and Training
            2. DOJ – Public Integrity Section
            3. DOJ – Criminal Fraud Section
            4. DOJ – Office of the Inspector General
            5. DOJ – Office of Professional Responsibility
            6. FBI – Public Corruption Unit
            7. DOJ – Human Rights and Special Prosecutions Section
            8. Tour of United States Supreme Court
4. Comments, Observations, and Conclusion

Attachments

1. Introduction

The work plan (Year 5) for the ROLP program in 2013 called for an emphasis on prosecution development with particular attention to be paid to enhancing the anti-corruption efforts of investigation and prosecution. Much work needs to be done to reach the goal of a truly independent and highly effective anti-corruption prosecutorial program that the Judicial Council has set for the prosecutors and judiciary. Accordingly, ROLP has expended considerable effort in supporting this objective. Initial steps in enhancing the anti-corruption investigative skills came in December 2012 when fifty prosecutors attended a day-long training program led by an American assistant Inspector General from Washington, DC. This training had a focus on financial crimes. Her case examples drew upon a number of public corruption investigations. In March and April, Mr. Adoradio, an American prosecutor from Minnesota with a specialization in anti-corruption investigations, spent two weeks in Amman as a consultant/trainer conducting an anti-corruption assessment and practical training sessions for fifty Jordanian prosecutors.

In consultation with USAID, ROLP also planned a study tour to the United States in an effort to expose the Jordanian judiciary (including prosecutors) to various models of prosecution based anti-corruption efforts in the United States at the federal, state, and local levels. Without a doubt, the New York offices represent prosecution based efforts which are nationally recognized as being at the forefront of anti-corruption efforts in the US. Maryland offices provide a look at the efforts at the state and county level which resulted from a wave of public corruption at the highest political levels.

ROLP's goal was to have the Jordanian delegation visit the American offices which would serve as models and inspiration to the Jordanian leadership as they chart a path towards tough yet fair and effective anti-corruption efforts. Ultimately, the prosecutors of Jordan will become key players in the vigorous investigation and prosecution of public corruption in Jordan as well as in its prevention. Ultimately, the key milestones will be to minimize public corruption and, when detected, to swiftly punish and hold offenders accountable.

Looking back, we conclude that the study tour experience was busy and productive. Every session of the study tour involved not only well-prepared and impressive presentations by each of our hosts, but each session prompted questions from the delegation leading to spirited discussions. The group consistently interjected with commentary and questions throughout. What follows is a summary of the on-site visits and the presentation and ensuing discussions. [1]

2. Preparation

Soon after the selection of the study tour participants *(attachment 1),* an organizational and orientation meeting was conducted on Sunday April 7, 2013 for the participants. A background of the American judicial and prosecutorial system was presented by Mr. Dean and Mr. Adoradio and an overview of the offices to be visited was presented. Information necessary for the travel arrangements, ticketing, and visa applications was discussed and collected as needed. *(attachment 2).*

[1] Assistant Attorney General Rami al-Salah of the Amman Attorney General's Office attended the study tour and has been tasked with preparing a report from the perspective of the participants.

After the various host offices in New York and Washington, DC had confirmed their interest and availability to host the group, a memorandum was prepared by Mr. Dean and Mr. Adoradio to brief the hosts on the objectives and expectations of the study tour. *(attachment 3).*

Upon everyone's arrival in New York City on Tuesday evening, June 11, the group met at the Paramount Hotel for a final briefing and distribution of the updated agenda *(attachment 4).* [2]

3. On-site visits.

Wednesday June 12

United States Attorney's Office – New Jersey – Newark, New Jersey.

10:15-11:15 - The group was greeted by Assistant US Attorney (AUSA) **Bohdan Vitvitsky** who spent approximately one hour speaking to the group on the overall structure of the federal judiciary into 94 federal districts throughout the country and the corresponding organization of the 94 US Attorney offices (USAO). (attachment 5). He discussed the role of the Department of Justice and the USAOs generally and gave a historical background of the development of the federal judiciary and federal prosecutors. He discussed the process of presidential appointment and Senate confirmation for the chief federal prosecutor for each federal district. He noted that many of the assistant federal prosecutors are on a career track and develop specializations. He spent some time explaining the federal-state jurisdictional split. He noted the overlap of jurisdiction and pointed out that federal prosecutors get involved in cases with a more national or federal connection. This includes cases involving the use of interstate mails, wires, and the banking industry. Of particular interest was the fact that federal judges serve for life unless impeached, which is very rare. He emphasized that this insures independence of the judiciary. He also pointed out that the chief federal prosecutor, appointed by the President with the confirmation of the Senate, serves at the pleasure of the sitting president. Hence, no life tenure for the US Attorney.

There next ensued a discussion with the group on the allocation of power in the federal judiciary and one point discussed with great interest was the fact that federal judges have no involvement in the selection process of the chief federal prosecutor and the assistant prosecutors. A number of questions were asked about how issues of overlapping jurisdiction and conflicts between state and federal prosecutors are resolved. In addition, there was discussion of civil jurisdiction and how conflicts between state and federal authorities were resolved in those types of cases.

11:15-12:30 – AUSA **Zahid Quraishi** - Next to address the group was AUSA **Zahid Quraishi** who is a member of the Special Prosecutions Division. He discussed the volume of public corruption cases handled by his unit and explained the structure of the unit. The US Attorney's Office for New Jersey has obtained over 400 convictions for corruption during the past decade. He

[2] We would be remiss not to acknowledge with gratitude the extraordinary efforts of ROLP staff Fadia Batarseh, Lamees Al-Helou, and Essa Maymoun as well as Tetra Tech-DPK Home Office project officer Arum Lansel, and assistant project officer Jessica Akpan. They prepared, coordinated, organized, and planned so that all the moving parts could come together for a successful activity. And Ms. Akpan's cool and calm presence during the entire study tour was greatly appreciated by all.

discussed the unit's screening, selection, and case investigation process, which is worked usually, but not exclusively, through the FBI. Even with extensive investigations, some cases are not prosecuted due to insufficient evidence. Cases normally originate through citizen complaints or tips to the FBI or the USAO. Suspicious financial activities are often reported by banks. In bribery cases in particular, the investigator/prosecutor need to determine (1) what has been given to the public official and (2) what has the giver received in return. In this regard, he noted the importance of developing cooperating witnesses, those involved in some sort of criminal activity yet electing to work with investigators to develop cases against more serious offenders. **AUSA Quraishi** emphasized that these sorts of witnesses who will be looked at carefully by the judges and jury, need to be corroborated by other evidence such as witnesses, documents and records, or electronic interceptions. Next, he discussed several significant cases. One was a case involving corrupt police who set up protection rackets. Another was a case involving a fraudulently obtained loan by a police officer. Documentation through bank records and other financial institution documentation was deemed to be essential in these cases. He pointed out that loan fraud and tax related crimes often are the cases that get developed once an investigation starts.

12:30-1:00 – AUSA **Barbara Ward – Ms. Ward** is an asset forfeiture specialist and discussed with the group the role of asset forfeiture. There is a Financial Obligations Unit or some equivalent in all USAOs, the purpose of which is to collect debts owed to the United States. This would include restitution to victims and any type of civil judgment. She discussed the use of asset forfeiture to compensate victims. She noted how the federal forfeiture laws are complex and seem "a mess." She discussed civil forfeiture which is a civil action but based on criminal conduct not yet resulting in a conviction. Asset forfeiture can be used to compensate victims but a restitution order is necessary. Remission is when the court orders a return of assets to a crime victim.

1:00-2:05 – **Paul Fishman** – United States Attorney for New Jersey – At this point, lunch was delivered to the group in the USAO conference room during which a discussion session was conducted by **Mr. Fishman**. We were indeed honored to be joined by the chief federal prosecutor. He delighted the group with a discussion of the history of the development of the United States Attorney Office and the Department of Justice and the role of the Attorney General of the United States. He then noted the absolute importance of team work and joint investigations with the investigative authorities (usually the FBI) and the key decision point in determining sufficiency to proceed with the indictment of a case. Case development via a team approach was emphasized. He cautioned against starting a case unless you reach a point of near certainty as to criminality and the ability to prove it. **Mr. Fishman** highlighted the importance of the prosecutor's independence and the use of discretion. With regard to the work distribution in his office, he stated that 15% of his office handles civil matters (civil lawsuits involving the US) and 10% of his office handles political corruption. He pointed out several recent cases. One implicated the mayor of Trenton (capital city of New Jersey) in a bribery scheme. Another involved a USAID contract fraud. A third involved police in Camden, NJ (second largest city in New Jersey) who stole from drug dealers. He also discussed other types of fraud cases his office handles such as:

- Health Care fraud which often involves overcharging. One case he discussed involved medical labs providing kickback payment to doctors for blood-tests which over a period of time amounted to $200,000,000.
- Economic Crimes: Bank fraud, mortgage fraud, securities fraud

- Gangs and violent crimes and Crimes involving the mafia.
- Drugs and narcotics
- National security unit – Terrorism
- Asset capturing as discuss previously by **Ms. Ward**.

Finally, **Mr. Fishman** pointed out how his office is involved with the public in outreach programs and that it is very important for prosecutors to interact with the community to build trust and to enhance public awareness.

2:15-4:00 – AUSA **Bohdan Vitvitsky** and federal **Judge Jose Linares** - The group assembled in the courtroom of **Judge Jose Linares** for a presentation conducted in a question and answer format with questioning by AUSA **Vitvitsky** (as well as members of the group) and answers by the judge.[3] He was initially appointed to the state court by the governor of New Jersey but soon thereafter in 2002 was appointed by President Bush to the federal bench. He discussed with the group his background and experience and the training he received. He emphasized the importance of judicial independence. He discussed pre-trial and on-going trial publicity issues and the concept of open trials as opposed to closed trials which do not occur in the US. He discussed sentencing and preparing for the sentencing and he ended his comments to the group with an interesting aside, noting that he is the only federal judge who has been called upon to interpret Shari'a law in deciding a civil case. (See *National Group for Communications and Computers v. Lucent Technologies, 331, F. Supp 2d 290 (2004)*). The group found this quite interesting. The judge then introduced Federal Probation Officer Susan Smalley.

4:00-4:45 – **Susan Smalley – Ms. Smalley**, a federal probation officer assigned to Judge Linares, discussed her role in preparing a pre-sentencing report on individuals convicted of crimes who are awaiting sentencing. In that vein, she distributed to the group a copy of a sentencing grid (guidelines) and a Presentence Investigation Report (attachments 6-7). She discussed plea agreements. This led to an extended discussion of the sentencing guidelines and sentencing options available to federal judges.

Thursday June 13

United States Attorney's Office for the Southern District of New York (SDNY) (Manhattan)

10:00 – 12:00 - AUSA **Brendan McGuire** – To start the day, the group met with **Mr. McGuire** who is the Chief of the Public Corruption Unit (PCU) in the SDNY. His office is unique in that the focus of this particular federal prosecution office is international. This is due to the international character of New York as a financial capital. **Mr. McGuire** has a background in terrorism cases but for the past three years has been chief of the PCU. The USAO SDNY is the largest federal prosecution office in the country, and with 250 AUSAs is a leader within the DOJ for creative and innovative prosecutions. 180 of these federal prosecutors are assigned to criminal units and 60-70 are assigned to civil cases defending the US government in civil claims. The PCU has 10 prosecutors. The other units with a criminal focus are violent gangs, terrorism, organized crime, securities fraud, and a unit dealing with miscellaneous smaller offenses.

[3] Judge Linares was born in Cuba and came to the US with his family as a child.

The PCU has several in-house investigators who assist and support the investigations, but the cases are usually investigated by a "team" consisting of a prosecutor and FBI agents assigned to the case. There are 40 FBI agents who work in public corruption cases in the SDNY. **Mr. McGuire** also noted that on a local level, New York City also has its own Department of Investigation that is similar to the FBI. This city-based investigative force deals with cases involving city agencies and officials. The types of cases handled by the USAO often involve elected New York state officials. It appears that the state government is rife with corruption in New York. He remarked that bribery and embezzlement are the biggest problems here.

Mr. McGuire remarked that the public seems to be more upset at federal misconduct as opposed to local and state official misconduct. The PCU will also handle lower level cases involving government officials at public agencies including police, municipal workers, fire fighters and department of motor vehicle officials. Another significant area of work is in fraudulent government contracts. He mentioned a recent case involving a very large fraud by a contractor with New York City that fabricated "consulting services" for huge monetary payoffs for no work done. He discussed the asset forfeiture and restitution process and indicated that five AUSAs are assigned to that unit. The group discussed with **Mr. McGuire** the importance of forensic accounting for investigative support, integrity/virtue testing as a tool for deterrence, and the recurring issue of resolving overlapping jurisdiction with the local authorities.

United States Attorney's Office for the Eastern District of New York (EDNY) (Brooklyn)

2:00-4:45 – The group was met by Senior AUSA **Robert Capers** of the Public Integrity Unit (PIU) of the USAO – EDNY. He was joined by AUSAs **Anthony Capozollo** and **Lon Winn** of the PIU and **Brian Morris** of the asset forfeiture unit, each of whom discussed their respective specialized areas and provided case studies. Initially, **Mr. Capers** provided an overview of the USAO EDNY and its organizational structure. He then turned the floor over to his colleagues who discussed certain case studies.

Mr. Capozollo discussed a recent case involving corrupt union officials who were paid off ("hush money") to ignore underpayments made by a trucking company. There is extensive federal legislation governing trucking contract practices. In this case, contract provisions to pay union rates were being ignored. He explained how an anonymous call to the Federal Department of Labor led to follow up investigations which started with an examination of bank records of the owner of the trucking company and the union shop steward who was receiving the illegal "hush money." This hush money was paid into the account of a corporation owned by the union official who then withdrew that money. The actual crime was the payment of money to the shop steward in excess of the contractual wages. In investigating this case, **Mr. Capozollo** also used information from the New York City Business Integrity Commission which regulates "corrupt" businesses such as trucking and garbage hauling which are historically often subject to corrupt practices. The investigative steps used included (1) questioning the company owner in an effort to "flip him" as a cooperating witness, (2) a search warrant to locate corporate records, (3) examining applications for permits to do business from the Business Integrity Commission (which in this case revealed false answers), and (3) an exhaustive document search. Often in such cases, the strongest prosecutions will be in false answers to permit applications.

The group then discussed with **Mr. Capozollo** embezzlements and the tools of investigation. Such embezzlements are often found in pension funds and in the health care industry. Bank records are an essential first step.

The group was next addressed by **Mr. Morris** who is an asset forfeiture expert. He discussed the financial sanction to prevent criminals from profiting from their crimes. Most crimes have some sort of forfeiture component involving the proceeds of a crime. There is a broad definition of "proceeds of a crime" which also include not only the direct proceeds of the crime, but any property that is indirectly obtained due to the crime. The broadest forfeiture law relates to terrorism where all assets of a defendant are subject to forfeiture. Generally, the types of assets are very broad, including cash, bank accounts, boats, cars, stocks, houses, etc.

Mr. Morris discussed the steps involved in asset forfeiture that are (1) seizure of the asset so as to give possession to the prosecutor and then (2) adjudication as to the title. Real property will involve a seizure lien and then adjudication followed by a forced sale with the proceeds going to the government. He then provided an example involving a "Ponzi" scheme.[4] The proceeds of the "Ponzi" scheme were forfeited and were to be sequestered into a forfeiture fund for victim restitution. The potential recipients had to have had "clean hands" and not have been part of the scheme in order to qualify for a restitution award. This provoked a very spirited discussion on the theory of forfeiture of assets, restitution, and victim compensation. With regard to a straw purchaser (those enlisted by the criminal to put the ill-gotten gains to a legitimate use), the law puts the burden on the intermediary to produce a legitimate claim that the proceeds were not from the defendant.

Next, **Ms. Lon Winn** addressed the group. She discussed a case of a public employee of a public university (a university president at a state institution) who essentially exploited foreign scholarship students from China. Such exploitation involved forced labor and embezzlement. The challenge in this case was to get the "victims" to cooperate.

Friday June 14

New York County District Attorney's Office (Manhattan) (NYCDA)

10:00-12:00 –Official Corruption Unit (OCU)

The group was met by three individuals of the OCU. They were Chief of OCU **Luke Rettler**, Deputy Chief **Julio Cuevos,** and Investigator **Christine Ard.**

Mr. Rettler welcomed the group and gave an overview of the entire NYCDA's office which consists of 400 prosecutors. The Investigation Division is composed of specialized units, two of which focus on aspects of public corruption. The OCU handles allegations of corruption involving

[4] Ponzi schemes essentially involve a fraudulent practice where people are enticed and duped to invest in a business with the promise of high yields which are paid for by subsequent investors, not from profits of the operation.

uniformed services. The other corruption related unit is the Public Integrity Unit (PIU) which involves lawyers, public officials, and judges. The OCU's case load is 95% police related and the most common offenses are perjury and false reports. There are 4 prosecutors assigned to this unit backed by four investigators and three investigative analysts. The unit was established in 1990 in order to have an independent body look at complaints of police misconduct. The effort was aimed to build greater public trust and confidence in New York's police. The Police Department itself also has an Internal Affairs Unit (IAU) which investigates police misconduct and assesses administrative sanctions for such misconduct. Not surprisingly, there is overlapping responsibilities and extensive interaction between the police department's IAU and prosecutor's OCU. He noted that often the OCU wants to "dig deeper" than the IAU and that the IAU often tends to minimize police misconduct issues. The normal mix of cases includes the following: (1) drug "rips" where police steal drugs or other property from offenders; (2) bribery; (3) kickbacks; (4) protection/extortion rackets from criminal enterprises; (5) police robberies; and (5) police burglaries.

Mr. Cueves next described some of the cases that his unit has handled. One involved a police officer who was planning a burglary and theft of $800,000 in cash supposedly concealed in the home of an unwitting occupant. An informant (who had been charged with illegal towing) provided police IAU of this and the OCU proceeded with the investigation. The investigative steps involved recording conversations between the suspect police officer and the "cooperating" informant relating to the planning of the break-in and theft. Under OCU control, the informant staged a break-in and called the suspect policeman for assistance. When the suspect arrived, he was arrested and charged with attempted burglary. He was convicted and sentenced, jailed for a year, and dismissed from the department. As an aside, pointing out overlapping federal and local jurisdiction, **Mr. Cueves** noted that the USAO had previously taken this case but gave it back to the local prosecutor when they discovered that the participants were not who they originally thought they were. There next took place an animated discussion about entrapment, crime creation by prosecutors and investigators, and the legal and moral aspects of this defense. **Mr. Cueves** noted the high importance of corroborating "cooperating witnesses."

Mr. Cueves then discussed a case involving a police officer who was given the responsibility to locate and purchase a horse farm for retired police horses. He did so, made bids and tenders, and then awarded the contract for managing the farm to his girlfriend.

Another case reviewed was a police brutality/excessive force case. The incident was captured on videotape. Notwithstanding the obvious brutality and unreasonable use of force during the encounter (which the group viewed), the jury acquitted. An explanation for the acquittal was that during the time between the incident and the trial the victim disappeared and hence was not available to testify at trial, and the charged officer had had a stroke and attended court in a wheel chair.

Another issue discussed involved the perceived difference between "small lies versus big lies." For instance, police may lie about certain circumstances regarding the investigation, such as testifying as a first-hand witness as to what they said they saw (really seen by a partner who could not attend court) or did in a case. This is known as an "accommodation perjury". Compare this "fudging" testimony to actually falsifying a crime. This issue often arises in a situation where illegal police conduct and/or unjustified stops and searches during which they discover

drugs or contraband. The crime actually was committed, but the police lie about the circumstances of the discovery, creating false justifications.

There then took place a discussion of investigative techniques and those most frequently used in these types of cases. These are witnesses, criminal cooperating informants, cooperating witnesses, wiretaps, surveillance, controlled calls, undercover operations, and integrity testing. The issue of the "blue wall of silence" was discussed. This is referred to in situations where police lie or refuse to testify truthfully against fellow officers. Finally, the group discussed with **Mr. Cueves** the range of dispositions available in these sorts of cases. They range from jail, probation, acquittal, resignation from the department, reduced rank, and administrative penalties such as docked pay, demotion, and transfers.

2:00 – 4:45 – Rackets Bureau - Public Integrity Unit (PIU)

The group was met by **Dan Cort**, Chief of the PIU. The mandate of this unit is to investigate and prosecute public servants of all levels. He noted that the DA's office is organized into three Divisions: (1) Trial Division (handling routine street crime such as drugs, burglaries, sex assaults); (2) Investigative Division under which the PIU, (part of the Rackets Bureau) is organized; and (3) Appeals. The Rackets Bureau of the Investigations Division is divided into three units, (1) the Organized Crime and Terrorism Unit; (2) Labor Investigations; and (3) the PIU. All prosecutors within the Rackets Bureau can be assigned to a case of the PIU. A prosecutor normally has 6 to 8 years of experience prior to an assignment to the Rackets Bureau. The PIU focuses on all levels of corruption with most cases involving bribes, campaign finance crimes, ethic laws implicating criminal violations, and false filings (which are the easiest to prove). The PIU gets many of its cases from the New York City Department of Investigation (as mentioned earlier, similar to the FBI), the Inspector General's Office specializing in city agencies who will then refer the case to the DA's office (as the IG has no prosecutorial authority). Some cases are spin-off cases developed from other cases. A common form of corruption involves corrupt inspectors who are crooked for a variety of reasons. Some of the investigations are complex and last a year or so. The prosecutors are all actively engaged in the investigations and are familiar with all aspects of the case which makes for better trial presentation.

Charging was discussed and the level of proof need for an indictment was covered. Although only probable cause is needed for an indictment, conviction requires proof beyond a reasonable doubt which is closer to the standard most prosecutors use to indict. For investigative support the PIU has financial analysts and paralegals as well as the agents from the Department of Investigations.

Investigative methods were discussed. This included document subpoenas which is the most common and a very useful tool, particularly for bank and phone records. It is a good enforcement mechanism and such subpoenas must be obeyed. Physical surveillance is quite useful and use of undercover police is very effective. Wiretaps, although difficult to obtain due to legal requirements, are very useful as well as other electronic interceptions. The group also discussed with **Mr. Cort** standards for case selection and the ethical duties of prosecutors for revealing exculpatory evidence.

3:15- 3:45 – **Mr. Cort** took the group to the Arraignment courtroom of County Court where persons recently arrested are brought before a judge for a release/bail determination. The group observed several arraignments.

3:45- 4:30 – **Mr. Cort** took the group up to a trial courtroom where they observed part of a criminal assault trial being conducted before a jury in County Court. The group observed the direct and cross-examination of a police officer witness.

Monday June 17

Maryland State Prosecutor's Office (Towson, Baltimore County, Maryland) (SPO)

10:00 – 1:00 – State Prosecutor **Emmet Davitt** – Chief Investigator **Jim Kabasesis** – Assistant State Prosecutor **Nicole Norris.**

After a weekend break which involved a Sunday bus trip south to Baltimore from New York, the group started off the week with a visit to the Maryland State Prosecutor's Office, a unique office established in the 1970s in the wake of a series of high level political corruption scandals in the state of Maryland. State Prosecutor **Emmet Davitt** greeted the group and provided a brief overview of the office, its history, and its current structure. He introduced his Chief Investigator **Jim Kabasesis** who provided the group with a historical look at the SPO as he has been with the office since its inception in 1978. The scandals provoking the creation of the SPO in Maryland included governors, high-ranking county executives, an elected prosecutor, and even a Vice-President of the United States. In response to this, the Maryland Legislature created a unique independent prosecution office with state-wide jurisdiction to deal with political corruption and election law fraud. The legislature reflected the public demands for "cleaning up" its government and the demand for a totally independent prosecutor's office to target political corruption.

The SPO is small. There is a staff of 12. Three are prosecutors who are supported by investigators and an administrative staff. On staff is a computer forensics expert.

Mr. Davitt then explained that the SPO has a very narrow and specific mandate to deal with political corruption and election fraud cases. The selection process is designed to maintain its integrity and independence. The SPO law in Maryland (attachment 8) provides for the selection mechanism for the Special Prosecutor. There is a selection commission which is composed of the President of the Maryland State Senate, the Maryland Attorney General, the Leader of the Maryland House of Delegates, and a representative of the Maryland State's Attorney's Association. The Commission then selects up to three candidates and from that list the governor makes the final selection, which is then subject to state senate confirmation. The term is a renewable 6 year term. The Governor cannot replace the State Prosecutor. Only the Commission can replace the State Prosecutor and only for cause such as the commission of a crime.

The SPO screens a large volume of calls and complaints from throughout the state, many of which are determined to be unfounded. The complaints and investigations are kept totally confidential until formal charging. The office maintains a no contact policy with the press due to the sensitive nature of the cases. Complaints of this nature can be very damaging to reputations

so the office is extremely careful about leaks. Some complaints can be motivated by spite and "sore losers." Nevertheless, the SPO tries to make filing a complaint as easy as possible. This includes inviting complaints by telephone, written complaints, e-mails, and face-to-face. The first question asked is whether the SPO should be involved at all and whether the allegation fits the statutory mandate. Also, the following questions need to be answered: (1) Is the action complained of a crime? (2) Is it within the statute of limitations? (3) Should this be a federal matter? (4) Can the allegations be proven? (5) How can the evidence be obtained? (6) Who shall the case be assigned to? The Special Prosecutor himself will make the final determination as to whether to proceed with an investigation.

Mr. Davitt next reviewed the key aspects of a typical investigation which he set forth as follows:

1. Obtain records
    a. Financial and business records as appropriate – via subpoena
    b. Court order for secrecy/non-disclosure.
2. Execution of search warrants – often search warrants are for computers which are taken back to the lab for forensic evaluation. The SPO has a computer forensics lab.
3. The investigations are prosecutor directed.
4. The use of the grand jury as an investigative tool was discussed. This can be used to protect a witness and as "encouragement" to unwilling witnesses as the grand jury can compel testimony.

Mr. Davitt also took time to explain the role of discretion in his job, the importance of his independence, how he handles anonymous tips, and the importance of the investigative support he gets from time to time from the Maryland State Police, especially in conducting arrests and in executing search warrants.

He noted that his office has recently handled both high profile cases and others that can be regarded as petty.

The relationship with the local elected Maryland prosecutors (each county has an elected chief prosecutor known as a State's Attorney for that particular county). The SPO needs to interact with the county State's Attorneys as well as the federal prosecutors for Maryland.

Mr. Davitt discussed a very recent case where the County Executive (Mr. Leopold) for Anne Arundel County was prosecuted, convicted, and jailed for misconduct in office. The county executive is the highest level elected official at the county level. The initial complaint involved his using county employees and his staff to work for his election and to carry out other non-work related tasks.

Mr. Davitt also discussed a recent election process case where his office prosecuted a campaign operative in a gubernatorial campaign who attempted to suppress the minority vote in a high minority jurisdiction by using a "robo call." The crime was to fraudulently take action to discourage voters form voting. The case has "free speech" implications. The defendant claimed it was merely a "dirty trick" and not a crime. He was convicted of failing to provide the necessary authority line on the message. Although the crime was a low-level one, it had significant impact when the verdict and sentencing were handed down.

Another case discussed was the prosecution and conviction of the Mayor of Baltimore who had a boyfriend who was a developer who contracted with the city. The Mayor received gift cards

which were supposed to be used to buy toys for poor children but which she used the cards for her personal use.

The SPO handles its own appeals. As mentioned, media relations are embargoed during an investigation and after charge and trial the SPO will issue press releases.

Tuesday June 18

Montgomery County State's Attorney's Office (Rockville, Maryland)

10:15 – 1:45 – State's Attorney for Montgomery County **John McCarthy – Judge Michael Mason** (Circuit Court for Montgomery County), and Assistant States Attorney **Robert Hill**

Montgomery County State's Attorney **John McCarthy** greeted the group at the Montgomery County Judicial Center and took the group to the Grand Jury Room. **Mr. McCarthy** had met the group the previous evening for dinner. He then gave a presentation on the organization of the office and some background on his jurisdiction over Montgomery County which is Maryland's largest. He described it as a very diverse community of over one million inhabitants. He explained the units of the office and the fact that his post is an elected position and that he is answerable only to the voters of the county. He emphasized that as an elected official he is completely independent from the judiciary and other branches of government.

The group then visited Judge **Michael Mason** in his chambers and courtroom which are located in the Judicial Center. **Judge Mason** is the most senior judge (of 20 judges) of the Montgomery County Circuit Court. He is a former prosecutor and defense attorney in private practice. He described his overall duties as a trial judge and answered a host of questions from the group about his day to day activities as a judge. He handles a variety of civil and criminal cases and on the day of the visit he was in the midst of **domestic violence case**. The group toured the courtroom and the jury room where jurors deliberate.

The group then returned to the Grand Jury Room where Assistant State's Attorney **Robert Hill** of the Special Prosecutions Division (SPD) provided an overview of this unit and discussed certain types of cases as examples.

Mr. Hill explained that the SPD has five prosecutors and two investigators and they handle cases involving corruption, financial exploitation of the elderly, police misconduct cases, and large financial frauds which routinely involve embezzlements. During the presentation he noted the wide variety of models of judicial selection that exists among the various states in the US. He pointed out that there are a variety of different systems involving a mix of elections, appointments by governors and legislatures. He pointed out that one of the most important factors in preventing official corruption is the independence of the participants of the judicial system, most notably the prosecutors and the judiciary.

With regard to overlapping federal and local jurisdiction as to responsibility for certain cases, such decisions will be left to a case-by-case determination between the leadership of the respective offices. He remarked that large scale banking fraud cases and the more complex cases are often referred for federal prosecution. This is due to the resources available to the federal prosecutors.

In response to a question regarding specialized training, Mr. Hill noted that there is regular in-house training provided within the state's attorney's office as well as training offered by the state-wide Maryland prosecutors association and the National District Attorney Association.

Montgomery County Inspector General's Office (Rockville, Maryland)

3:00-4:45 – **Edward Blansitt** – Chief Inspector General for Montgomery County

Mr. Blansitt, the Chief Inspector General for Montgomery County met with the group. He explained that his office was established in 1997 by the Montgomery County Council to prevent and detect fraud, waste and abuse in the county government and to make recommendations to enhance the economy and efficiency of the county funded operations and to increase the legal, fiscal, and ethical accountability of county agencies. He distributed a hand-out (attachment 9) to the group that covered the range of issues dealt with by the IG's office. He also gave an overview of the various types of IG's in the federal, state, and local jurisdictions throughout the country.

Mr. Blansitt reviewed the activities of his office that can be classified into **investigations and audits**. He noted that all reports of his actions must be made public. He stressed that his office is independent yet he regularly reports to the county council. He has power to issue subpoenas and to collect documents and records. The types of issues his office normally confronts are:

> (1) contract or procurement fraud; (2) theft of county funds or property; (3) secret profits, kickbacks, or commissions; (4) worker's compensation or expense claims fraud; (5) fraudulent travel/reimbursement claims or falsification of financial records; (6) undisclosed conflicts of interest; (7) significant waste of county funds, abuse of county position; (8) serious misconduct; (9) computer misuse or crimes; (10) whistle blower reprisals; and (11) offer, payment, or acceptance of bribes.

Necessarily, he needs to communicate and coordinate with the Montgomery County State's Attorney, the Maryland State Prosecutor, and the federal authorities as needed.

His office receives complaints via a number of sources which include complaints from: employees and taxpayers; from hotlines via the internet or telephone; newspaper articles; letters to the county government; and from an advisory group. The advisory group is comprised of citizens selected by the Inspector General and this group meets regularly to provide input to the IG.

The IG must regularly prepare an annual report and a four-year work plan. He provided a detailed flow-chart of the complaint intake and work product processing which was included in the hand-out he distributed.

He concluded his presentation by discussing a few of his office's recent activities that included:

1. Review of county motor vehicle fleet management leading to recommendations to enhance economy.
2. Investigation of misuse of credit cards leading to significant reimbursements stemming from questionable transactions.

3. Investigation of County contract breach leading to a more extensive investigation of the county's contract administrator which revealed waste and misuse of county funds. A " whistleblower" was also protected from retaliation.
4. Investigation into a possible violation of ethics laws by a county council member.

Wednesday June 19

United States Department of Justice – Main Justice

9:30-10:30 – **Robert Bowman**, Regional Director for Africa and Middle East, Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT)

Mr. Bowman, OPDAT Regional Director for Africa and Middle East, met with the group. He began the meeting by explaining the work of his office. OPDAT provides training to prosecutors and judicial personnel in other countries to develop and sustain effective criminal justice institutions. He stressed that OPDAT recognizes that international cooperation in the investigation and prosecution of criminals and organized crime groups is central to countering international crime, and that effective rule of law promotes stability and support for basic human rights.

Mr. Bowman explained the role of Resident Legal Advisors (RLAs) and noted that OPDAT has placed RLAs in many countries around the world, including several the Middle East. RLAs (and Interim Legal Advisors - ILAs) provide advice and technical assistance to host governments in establishing fair and transparent justice sector institutions and practices. Part of the assistance of RLAs is to draft, review and comment on legislation and criminal enforcement policy. He noted that ILAs have provided assistance in money laundering, transnational crime, corruption, and trafficking in both narcotics and people. He also pointed out that a RLA in the Gulf region will be conducting corruption training in the near future.

Mr. Bowman's comments about OPDAT's RLA program prompted a number of questions from the delegation, including: How does the RLA determine the focus of his or her work? (through dialogue with host-country ministries of justice and justice sector personnel); And, how does an RLA get assigned? (through request from USAID or US State Department).

After explaining the work of OPDAT, **Mr. Bowman** turned his comments to charging decisions and specifically issues of proof in public corruption cases. He began his comments by addressing the differences between direct and circumstantial evidence. Examples of the former include the use of cooperating witnesses (often accomplices to the crime), insiders, and informants; confessions; and intercepted communications. He noted that prosecutors abroad rely heavily on confessions and direct proof in criminal cases. **Mr. Bowman** stressed that in public corruption cases such evidence may be difficult to develop given the sophistication of targets and the nuances of bribery and kickback schemes. Hence, he noted, the importance of circumstantial evidence. His comments led to a very lively discussion between **Mr. Bowman** and the group on the role of circumstantial evidence. The group asked a number of questions about the quality of

circumstantial proof and whether it has the same evidentiary value as direct proof. A number in the group stated that circumstantial evidence is weak and alone cannot support a conviction in a corruption case. Others disagreed. **Mr. Bowman** provided several illustrations of circumstantial proof in a corruption case and read the standard federal jury instruction (stating that such proof is no weaker than direct proof). **Mr. Bowman** ended his comments by noting that the development of circumstantial evidence (through financial records and the like) requires expertise and resources. In this regard, **Mr. Bowman**'s comments to the group echoed themes touched on throughout the study tour.

10:45-12-15 – **Eric Olshan** – Trial Attorney, Public Integrity Section

Next, **Mr. Olshan**, a trial attorney with the Public Integrity Section (PIS) met with the group. **Mr. Olshan** began the meeting by explaining the work of PIS. The section oversees federal efforts to combat corruption through the prosecution of elected and appointed public officials at all levels of government. **Mr. Olshan** noted that PIS has exclusive jurisdiction over allegations of criminal misconduct on the part of federal judges and also supervises the nationwide investigation and prosecution of election crimes. He also pointed out that PIS attorneys prosecute selected cases against federal, state, and local officials, and are available as a source of advice and expertise to other federal prosecutors and investigators. **Mr. Olshan** noted that PIS is required to provide the US Congress with an annual report of its work. This prompted a question from the delegation regarding who controls PIS's budget.

A question was asked by a member of the delegation about how PIS decides a case is worth pursuing. The question provided an opportunity for **Mr. Olshan** to stress that what is really at stake in a public corruption case is not the amount of money stolen but government integrity.

Before turning to case examples, **Mr. Olshan** noted the various challenges unique to public corruption cases, most especially in the area of proving intent on the part of bad actors. He stressed that proactive investigative techniques such as the use of undercover officers, intercepted communications and insiders are all critical to the success of these cases.

Mr. Olshan described several cases he prosecuted. One involved US military corruption in Kuwait. US troops deployed to Iraq required large amounts of bottled water given the state of Iraq's infrastructure at the time. A Kuwaiti contractor began bribing a US Army major and other military officers working in Kuwait in order to win the bottled water contract. The bribery occurred over a fairly lengthy period of time and all bribes were paid in cash. This presented difficulties for the corrupt officers in getting the illicit funds out of the country. Some were careless enough to wire funds from their bank accounts. These transactions provided strong circumstantial evidence of bribery given the large amounts of money wired versus the relatively low salaries of the officers. Others were more cautious. Several carried large amounts of currency out of the country in duffel bags. **Mr. Olshan** described the importance of a Kuwaiti informant (who was bribing the officers) in the case. The informant provided evidence leading to the seizure of a duffel bag in the US that tested positive (through canine sniffing) for currency and which contained the informant's business card. The presence of the business card in the duffel bag provided important corroboration for the informant's statements, critical given his complicity in the scheme.

Mr. Olshan described a second case involving contract fraud committed by US military officers in South Korea. The case had an interesting twist. Although government prosecutors were able to successfully apprehend and prosecute the US military personnel, the South Korean businessman was out of jurisdictional reach. However, the businessman's greed led to his undoing. After prosecutors lured him to Texas on the pretense that he would be paid further money on the contract, he was arrested and thereafter prosecuted.

Members of the group asked several questions following the case examples. These included questions about obtaining foreign bank records and whether **Mr. Olshan** has encountered difficulties in freezing money in foreign bank accounts. **Mr. Olshan** noted the importance of a specialized unit within DOJ for handling asset-tracing and recovery. His comment in this regard dovetailed with remarks by other American prosecutors during the study tour about the importance of specialization in prosecution offices.

2:00-3:00 – **Albert Stieglitz** – Assistant Chief, Fraud Section

Mr. Stieglitz, an Assistant Chief in the Fraud Section, met with the group. **Mr. Stieglitz** began the meeting by explaining the work of the Fraud Section. The Fraud Section investigates and prosecutes complex white collar crime cases throughout the US. **Mr. Stieglitz** noted that the Fraud Section has extensive experience with sophisticated fraud schemes and in handling complex and multi-district litigation. He noted further that the Section responds to shifting law enforcement priorities, citing mortgage fraud and large-scale "Ponzi" schemes as examples.

Mr. Stieglitz noted the involvement of the Fraud Section with the Deep Water Horizon Task Force (a law enforcement follow-on to the BP oil spill in the Gulf of Mexico). As part of his comments he explained the importance of deferred prosecution agreements (DPAs) and non-prosecution agreements (NPAs) in the prosecution of companies. He noted the benefits of such agreements in furthering justice, including the recovery of illicit profits and the imposition of substantial fines without harming the ability of prosecutors to go after individual bad actors within companies. His comments generated several questions by the group about how the rights of shareholders are protected by such agreements, and how recovered assets are distributed to shareholder victims. **Mr. Stieglitz** noted that these are difficult and complex issues, which must be handled on a case-by-case basis.

Mr. Stieglitz briefly described several cases prosecuted by the Fraud Section. These included the LIBOR (London Interbank Offered Rate) manipulation case and the massive Provident Capital investment fraud case. A member of the delegation asked **Mr. Stieglitz** about the difficulties of presenting complex financial transactions to lay juries. He noted the importance of simplifying the evidence for the jury in order to be an effective advocate.

3:30-4:30 – **Scott Barden** – Assistant Special Agent in Charge, Office of the Inspector General

Mr. Barden, Assistant Special Agent in Charge, Office of the Inspector General (OIG), met with the group. He explained OIG's structure, jurisdiction and statutory framework. As background, **Mr. Barden** commented on events that gave rise to the OIG Act (1978) involving actual, and apparent, conflicts of interest during the Watergate era. OIG is a statutorily created independent agency aimed at detecting and deterring waste, fraud, abuse, and misconduct in DOJ programs and personnel. OIG has three branches: audit, inspections, and investigative. The

agency also holds the mission of promoting economy and efficiency in DOJ programs. He noted that the Inspector General is appointed by the President subject to Senate confirmation, and reports to the Attorney General and Congress. The OIG also investigates alleged violations of criminal and civil laws by DOJ employees and also audits and inspects DOJ programs. The jurisdiction of OIG includes over 12,000 employees spread out across multiple DOJ agencies including the FBI, ATF, US Attorney offices, and others. He remarked that until 1998 OIG could not investigate the FBI and certain other law enforcement agencies. DOJ resisted such oversight on the grounds that OIG would be exposed to sensitive material.

Mr. Barden also noted that OIG has the responsibility of overseeing the inspection of federal prisons. In fact, he noted, over half of the work of OIG involves prison issues. In this regard he provided a recent example of a recommendation by OIG that all federal prison employees be subject to searches prior to reporting at work. OIG made the recommendation as part of an effort to reduce contraband in federal prisons. He also remarked on an effort, met with some resistance on the part of the US Marshals Service, to review the financial records of the federal witness protection program.

It was clear from the group that their prior exposure to the work of an IG's office - as occurred during the meeting with the Montgomery County (Maryland) IG - had familiarized the group with the responsibilities of such an agency. This meeting complimented the Maryland meeting by showing the broad jurisdiction of a federal IG and one focused on a single department within the US, namely, DOJ.

Thursday June 20

10:30-11:00 -Library of Congress – Visit

The delegation enjoyed an informal tour of the Thomas Jefferson Building of the Library of Congress, taking special note of the Main Reading Room and the building's Beaux-Art architecture.

11:00-12:00 – Supreme Court of the United States

The delegation was led on an excellent and informative tour of the Supreme Court by an official court guide. The tour included visits to various areas of the building. In the setting of the majestic and richly-appointed conference rooms and courtroom, the guide explained and answered various questions about the court's history, the qualifications of justices, the court's jurisdiction and its docket size, the appeals process, and the finality of the Court's decisions.

Department of Justice (Continued)

2:00-3:00 – **Lyn Hardy** – Assistant Counsel, Office of Professional Responsibility (OPR)

Ms. Hardy, Assistant Counsel in OPR met with the group. She explained that her office reports directly to the Attorney General and is responsible for investigating allegations of misconduct involving DOJ attorneys. Such misconduct may relate to the exercise of their authority to investigate, litigate or provide legal advice. She stressed that the mission of OPR is to ensure

that DOJ attorneys perform their duties in accordance with the highest professional standards. She described the office's history, born out of the Watergate crisis, which gave rise to the Ethics in Government Act requiring financial disclosure statements by key US government officials. She also provided materials to the group. (*Attachment 10 (a) – (d)*)

Ms. Hardy described several high-profile investigations. One included the investigation into the firing of eight United States Attorneys during Roberto Gonzalez's tenure as Attorney General. A second investigation, still awaiting completion, involves the prosecution of US Senator Ted Stephens. Several allegations of prosecutorial misconduct arose in the case, including whether federal prosecutors intentionally withheld exculpatory material from the defense.

Several members of the delegation asked questions about the process available to a DOJ attorney who wishes to appeal an OPR finding.

3:15-4:15 – **Kathleen Barrio** – Special Agent, Public Corruption Unit, Federal Bureau of Investigation

Ms. Barrio, Special Agent, Public Corruption Unit (PCU), Federal Bureau of Investigation (FBI) met with the group. **Ms. Barrio** described the work and organizational structure of the PCU and employed a PowerPoint presentation in that effort. She noted that the FBI breaks down public corruption into various areas: executive, legislative, judicial, law enforcement, regulatory, contract, and electoral corruption.

Ms. Barrio summarized the panoply of investigative techniques employed by the FBI in public corruption cases. These include: open source (internet, social media), public documents, interviews, consensual monitoring, financial records, electronic surveillance, search warrants, use of undercover agents, physical surveillance, polygraphs, grand jury subpoena, phone records (PEN registers, "trap and trace"), wiretaps, and US "mail covers."

4:30-5:00 – **David Rich, Ph.D.** – Senior Historian, Human Rights and Special Prosecutions Section

Dr. Rich, – Senior Historian, Human Rights and Special Prosecutions Section (HRSP) met briefly with the group. He explained that HRSP investigates and prosecutes human rights violators for genocide, torture, war crimes, and the recruitment or use of child soldiers. Several brochures describing HRSP's work were distributed to the group (*attachments 11- 12).*

Dr. Rich explained HRSP's jurisdiction. While it does not have jurisdiction to prosecute these crimes in foreign countries, should a violator travel into the US and make a false statement in a visa application (regarding criminal background), HRSP will have authority to arrest and initiate a prosecution that may eventually be turned over to a court of competent foreign or international jurisdiction.

After giving an overview of the work of HRSP, **Dr. Rich** explained to the delegation his primary reason for requesting a meeting with the group. HRSP is keenly interested in receiving any information or reports regarding war crimes committed during the current Syrian conflict. Such information, or leads to such information, might be learned from Syrian refugees now residing in the Kingdom of Jordan. After explaining this, it became clear why the meeting had been added at the request of DOJ.

Several comments and questions were made and asked by delegation members. These included comments regarding US withdrawal (under certain circumstances) from the jurisdiction of the International Court of Justice and questions about statute of limitations in war crimes prosecuted by HRSP.

The meeting with **Dr. Rich** provided a fitting and appropriate end to the study tour. The US government, through its HRSP representative, was seeking Jordanian assistance. Indeed, the study tour provided an opportunity for productive dialogue between US prosecutors and Jordanians counterparts, each having something to offer the other.

4. Comments, Observations, and Conclusion

The study tour exposed the Jordanian judges and prosecutors to an array of well-established, time-tested, and successful prosecution based anti-corruption organizations at the federal, state, and local levels in the United States. It was a robust and wide-ranging sampling of what prosecutors can do in the fight against public corruption and how prosecutors can play a crucial role in deterring such criminal activity and in acting swiftly and decisively when such criminal activity is suspected.

Jordan's legal environment, of course, differs from that which exists in the United States. Nevertheless, sound investigative techniques and practices are universal and can be shared world-wide. The offices visited from New York to Maryland to Washington, D.C., shared their experiences and insights and engaged in productive dialogue with the group. It is now up to the judicial and prosecutorial leadership in Jordan to apply the lessons learned and determine what is right for the Kingdom.

Several key themes and concepts that are essential to successful anti-corruption efforts repeatedly emerged from many of the offices visited. They are, in no particular order of importance:

- Judicial Independence
- Prosecutorial independence
- Specialization
- Career track prosecutors
- Special attention to police corruption and misconduct
- Asset capturing/Asset forfeiture
- Acting on reports and complaints
- Investigative teamwork with companion investigative agencies
- Extensive use of "cooperating witnesses"
- Corroboration of evidence from "cooperating witnesses"
- Value of circumstantial evidence in public corruption cases
- Importance of financial records and other forms of documentary evidence
- Use of electronic monitoring and intercepts
- Surveillance capacities
- Undercover police and "plants"
- Forensic capabilities (forensic accounting and forensic computer inspection capacity)

- Community and public outreach

Not all of these areas readily fit into the current Jordanian judicial environment nor into the legal framework of Jordan's prosecution service. **Judicial independence** is an emerging concept in Jordan and it was recognized, but not specifically defined, in the recent amendments to Jordan's Constitution.[5] At this point, the contours of Judicial Independence in Jordan await development. The concept of **prosecutorial independence** which is so crucial to the American system, is not in the forefront in Jordan as prosecutors are deemed to be part of the judiciary and they carry the title of judge. Although there is some sentiment for developing a **career track for prosecutors**, until this happens, the goals of **specialization,** especially in the area of anti-corruption, will remain elusive. American prosecution offices clearly enjoy a significant amount of independence as well as prosecutorial career promotion. A deep talent pool of experienced dedicated prosecutors is essential towards realizing specialized units of prosecutors who can lead thorough and professional investigations, particularly in the challenging anti-corruption arena.

Police corruption is obviously a high priority in the American models. In Jordan, police corruption and misconduct are within the jurisdiction of special police courts and are outside the bailiwick of public prosecutors. Some thought should be given by Jordan's decision-makers as to whether the prosecution of police misconduct and corruption exclusively in police courts engenders public confidence. Much interaction between the public and the government is through interaction with the police. When there is police misconduct or criminal conduct, offenders should be subject to the same criminal justice system as other citizens.

Jordan's prosecutors need to assess whether they are using all the tools necessary to combat public corruption, both at the investigative and trial stages. They need to determine if they are making good use of **police and forensic investigative capacities**. In addition, they need to determine whether they are making sufficient use of investigative techniques such as the use of **cooperating witnesses** and in developing **corroborative evidence** through other witnesses, **document retrieval, forensic analysis of documents and computers, electronic eavesdropping, surveillance, and undercover work.** In addition, the legal and technical aspects of **asset-tracing** and **asset recovery** require specialization and a strong legal framework.

Using the various models presented during the study tour as points of reference, the judicial and prosecution leadership in Jordan may wish to chart a path of increasing prosecutorial independence and encouraging a cadre of career prosecutors who would form the nucleus of specialization, particularly in the area of anti-corruption efforts. With that framework, the fight against public corruption can advance.

[5] The 1952 text of Article 27 of Jordan's Constitution stated in pertinent part as follows: *The Judicial Power shall be exercised by the courts of law in their varying types and degrees.* The 2011 Amendment simply added in the words "is independent" as follows: *"The Judicial Power <u>is independent</u> and shall be exercised by the courts of law in their varying types and degrees."*

Attachments

1. List of Participants
2. Study Tour Orientation Meeting – April 7 - Agenda
3. Memorandum to Host Offices
4. Final Agenda
5. Schematic Diagram –
   Federal Judicial System
6. Federal Sentencing Table
7. Federal Presentence Investigation Report
8. Maryland Law – Office of the State Prosecutor (Ann. Code Md. Sec. 14-102, et seq.
9. Office of the Inspector General – Montgomery County – Hand out.
10. United States Department of Justice – Office of Professional Responsibility
    a. Power point slides
    b. Memorandum – Policies and Procedures
    c. Federal Regulation – Title 28
    d. Memorandum – Judith B. Wish
11. ICITAP Brochure
12. Human Rights and Special Prosecutions Section - Brochure

Study Tour Participants Phone Numbers		
#	Name	Mobile Numbers
1	Al Kadi, Naser	415-218-9988
2	Al Louzi, Saad	415-218-8980
3	Aladwan, Khuloud	415-218-7594
4	Aldmour, Mamoun	415-218-7581
5	Alkhawaldeh, Adeeb	415-218-7327
6	Almajali, Ohood	415-218-6856
7	Assaf, Mustafa	415-218-6690
8	Rawashdeh, Amil	415-218-6052
9	Rami, Salah	415-218-5315
10	Tarawneh, Asem	415-218-5599
Tt DPK Staff & Support		
1	Adoradio, Emery	612-418-2144
2	Akpan, Jessica	571-331-6248
3	Assaf, Muhanad	415-218-5478
4	Dean, Robert	240-423-1112
5	Gorman, Mary	917-442-0372
6	Jabareen, Qais	415-218-3068
6	Lansel, Arum (in San Francisco)	727-667-0233
6	Tt DPK Main Office (in San Francisco)	415-495-7772

Study Tour Orientation Meeting

Sunday – April 7, 2013

Crown Plaza Hotel

3:30 – 5:00 PM

Bob Dean

Qais Jabareen

Emery Adoradio

1. Overview of Planned Trip – Bob Dean
    a. Objectives
    b. Summary of American Prosecutorial Breakdown.
    c. Trip Schedule

2. New York Area – Emery Adoradio

3. Baltimore/Maryland – Bob Dean

4. Washington DC – Federal – Emery Adoradio

5. Logistics/Planning - Questions/Ideas

6. Individual Responsibilities

    a. Ideas
    b. Issues

7. Visas

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Memorandum to Hosts of Study Tour

To: **Hosts of Jordanian Anti-Corruption Study Tour:** **May 2013**

New York County District Attorney's Office

Official Corruption Unit

Public Integrity Unit

United States Attorney's Office – Eastern District of NY

Unites States Attorney's Office – Southern District of NY

United States Attorney's Office – New Jersey

Maryland State Special Prosecutor's Office

Montgomery County State's Attorney's Office

Montgomery County Inspector General's Office

United States Department of Justice

Public Integrity Section

Inspector General's Office

Office of Professional Responsibility

From: **Rule of Law Project/Jordan** (ROLP – of Tetra Tech-DPK) – funded by USAID.

Robert Dean – Chief of Party (rdean@rolpjo.com)

Emery Adoradio – ROLP - Consultant/trainer (emery.adoradio@co.hennepin.mn.us)

(Senior Assistant County Attorney - Hennepin County Attorney's Office – Special Litigation Section – Minneapolis, MN.

I. Introduction:

We are very pleased and most appreciative that you have agreed to take the time to meet with a group of 10 judges/prosecutors from the Kingdom of Jordan, all of who are eagerly looking forward to their visit to

the United States. We are confident that you will find your interactions with this group to be professionally and personally very productive and enjoyable. The purpose of this memorandum is to give you a glimpse of the background on your visitors, describe the purpose of this study visit, and to suggest some areas and issues that you may wish to address. These are only suggestions so please feel free to pick and choose and add and delete as you deem appropriate. A number in the group speak English quite well but others struggle with English. We will be accompanied by English/Arabic/English interpreters so the discussion will take a bit more time than if all were equally proficient. A listing of the ten Jordanian visitors is attached to the end of this memorandum.

II. Some background as to the legal environment our guests come from

Our Jordanian guests are from a civil law tradition which differs in some areas from our adversarial system. In Jordan, the Judges and Prosecutors (including the Attorney Generals and assistant attorneys general) are all considered part of the judiciary and they are under the control of the Chief Justice and the Judicial Council. Prosecutors in Jordan are in fact judges who have been assigned to serve as prosecutors and at any point may be reassigned to the "bench" as a trial or appellate judge. There is no separate "independent" prosecution service such as we are familiar with. There are about 1000 judges in Jordan and at any given time, there are about 100 assigned as prosecutors or assistant attorneys general.

The trial judges and prosecutors are assigned to certain judicial districts and appellate areas but they are very much centrally controlled and supervised by the Judicial Council in Amman.

The Jordanian legal system is exclusively a national system. And although the courts are organized geographically, there are no local or regional laws. There is just one code of procedure and one body of substantive law. Under the civil system as it is followed in Jordan, the prosecutors are technically in charge of all criminal investigations and anything that police do prior to bringing a case to a prosecutor is considered preliminary evidence collection. This system is in a bit of flux and there seems to be a trend towards more police and prosecutor cooperation and coordination.

Courts are arranged as follows:

1. Conciliation Courts (lower level crimes/misdemeanors) – no prosecutors assigned.
2. First Instance Courts – (Felonies) – Each First Instance Court has a public prosecutor's office handling the criminal cases. A public prosecutor assigned to each case to review, investigate, and make a charging decision (indictment) which is then submitted to the respective attorney general's office for approval or further input.
3. Appeals Court – Regionally organized into three appellate districts: Northern (Irbid), Central (Amman), and Southern (Ma'an). About 80 % of the cases are in the Central/Amman Appellate District. Criminal cases handled by the respective Attorney General Office for that appellate district.
4. Cassation Court – Equivalent to the Supreme Court. Handles appeals from Jordan's three Appeals Courts. Criminal Cases are handled by the Chief Prosecutor General.

Note: There are no juries. All cases are heard by a trial judge or a panel of judges, depending upon the nature of the case and charges filed.

The prosecutors in Jordan are organized as follows:

1. Public Prosecutor – Assigned to First Instance Courts which are located throughout the Kingdom. Each first instance court has a public prosecutor office. The public prosecutors answer to the Attorney General assigned to that particular district.
2. Attorney General – Jordan has *four* Attorneys General. Each of the three appellate districts in Jordan has an Attorney General's Office with an Attorney General and his/her assistants. The Attorney General supervises his assistants as well as the public prosecutors in his/her district and is responsible for handling the cases before the Appeals Court for that district.
    a. There is a fourth Attorney General who is in charge of a Kingdom –wide High Felony Court which handles all serious violent felonies from this special court in Amman.
3. Chief Prosecutor General – Oversight over all Attorneys General and Prosecutors.
4. Chief Justice – Exercises control over the entire judiciary through the Judicial Council, including the prosecutors/attorneys general.

We have briefed the group on the American federal system and they are aware of the basics of our federal state, and local divisions with our various procedures and codes. We expect that the American system, with its overlapping codes and geographic jurisdictions, will have contrastive value to the delegation.

Corruption cases are a relative newcomer to the Jordanian legal environment. Although money laundering and financial disclosure laws exist, they do not yet have widespread familiarity among prosecutors. Nonetheless, there has been a growing interest in Jordan in combating public corruption. This is evidenced by the enactment of an Anti-corruption Commission Law in 2006 which has a team of investigators as well as five prosecutors assigned to investigate and handle complaints of public corruption. Several high-profile public corruption cases have recently taken place and there is a growing interest in developing a more robust and specialized anti-corruption prosecution effort in Jordan.

This study tour will expose the Jordanian delegation to various models and styles of prosecution based anti-corruption efforts. Among other aspects of these models, the study tour will allow the delegation to hear from prosecutors who specialize in these cases and operate within dedicated anti-corruption units.

III. Areas of Interest:

As a starting point, you may wish to consider the following areas to cover with the group:

1. Some background and history of your office/unit –
    a. When, why, and how established.

2. Jurisdictional Basis
    a. Relevant Laws and rulings providing a legal framework for you unit
3. Organization and structure of office
    a. Personnel and staffing
4. Describe the normal case flow of the cases you handle
    a. How a case gets started.
    b. Assignment
    c. Screening
        i. Determining sufficiency of the evidence to proceed to charging
    d. Investigative support and partnering with law enforcement
    e. Allocation of responsibilities.
    f. How is venue and jurisdiction determined (federal/state/local)
    g. Supervision
5. Concept of independence
    a. How to assure your office's independence and integrity
6. Outside interactions
    a. Relations with other agencies – Federal, State, and local.
    b. Relations with special or "Blue Ribbon" commissions established (by legislatures and/or executive authority) to address corruption.
7. Funding and oversight of the office.
8. Specialized training for the prosecutors.
9. Sampling/Examples of the types of cases handled
    a. Three significant cases – relatively recent.
        i. Interesting aspects of the case relevant to a prosecutor specializing in such cases.
10. Areas for improvement and strengthening and lessons learned
    a. Difficult cases - what went wrong and why
        i. Assessing the strength of the case – factors.
    b. Recovering Stolen Proceeds and Restitution
    c. Possible legislation
    d. Other changes

Participants

The group will consist of those 10 Jordanian judges listed below. All have some experience in corruption investigations, prosecutions, and trials. Six are prosecutors (one of whom is an assistant attorney general), three are trial judges, and Judge Assaf is the Head of the Judicial Inspections Unit, a very seasoned jurist and leader of the judiciary. We (Bob and Emery) will of course accompany the group which will also include Qais Jabareen (Deputy Chief of Party of the ROLP project in Amman). Qais is an experienced attorney, fluent in Arabic and English, and very familiar with American and Jordanian legal systems. Qais will be assisted by an interpreter

as well. In addition, there will be some logistic support from the Tetra Tech –DPK home office. Depending upon scheduling, the group may also be joined at times by George Kara'a of USAID in Jordan.

Mr. Mustafa ASSAF	Director - Judicial Inspection Unit
Mr. Adeeb ALKHAWALDEH	Judge - Criminal Court at Amman First Instance Court
Mr. Saad AL LOUZI	Judge - Criminal Court at Amman First Instance Court
Mr. Amil RAWASHDEH	Judge - Criminal Court at Amman First Instance Court
Mr. Asem TARAWNEH	Prosecutor - Anti- Corruption Commission – Chief of Prosecutor Unit
Mr. Mamoun ALDMOUR	Prosecutor - Prosecution Office - Al Karak
Mr. Naser AL KADI	Prosecutor - Irbid Prosecution Office - Irbid
Mrs. Ohood ALMAJALI	Prosecutor – Central Amman Prosecution Office

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Mr. Rami SALAH	Assistant General Attorney - Amman
Mrs. Khuloud ALADWAN	Prosecutor - North Amman Prosecution Office

We very much appreciate the time you are taking to spend with us. We all are looking forward to meeting with you in June. If you have any questions at all, please do not hesitate to contact us.

Thanks again,

Robert Dean and Emery Adoradio

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Agenda for the Anti-Corruption Study Tour to New York, NY, Baltimore, MD and Washington, D.C. June 11, 2013-June 21, 2013			
Time	**Activity**	**Location**	**Details**
Tuesday, June 11 – New York City			
4:15pm	Flight AA 7199 arrives to JFK airport in New York City	John F. Kennedy International Airport Jamaica, NY 11430 USA	• After arrival, please anticipate long wait times to clear customs & immigration (could take 2+ hours) • Jessica Akpan will meet you in the airport after you clear customs
5:30pm (approx.)	Bus transfer from airport to hotel	John F. Kennedy International Airport Jamaica, NY 11430 USA to Paramount Hotel 235 West 46th Street New York, NY 10036	• Golden Touch bus company will provide transportation for the entire study tour • Drop off at Paramount Hotel (approx. 1 hour) • Jessica Akpan will have your room keys and welcome packages, including mobile phones for each person
8:15pm	Meet in Hotel Lobby	Paramount Hotel 235 West 46th Street New York, NY 10036 Tel: 212 827-4176 Fax: 212 575-2196	• Meet in hotel lobby (bring your program package) • Welcome and introductions • Walk to dinner (2 blocks)
8:30pm	Dinner & Orientation	Meson Sevilla (Spanish) 344 W. 46th Street Tel: (212)-262-5890	• Group is reserved in a private party room • Overview of agenda • Objectives for sessions
Wednesday, June 12 – New York City			
7:00am – 8:30am	Breakfast	Paramount Hotel 235 West 46th Street New York, NY 10036	• Buffet breakfast at the Paramount Hotel at your leisure
8:30am	Bus transfer from hotel to United States Attorney's Office, Newark, New Jersey	Paramount Hotel 235 West 46th Street New York, NY 10036 to	• Meet in hotel lobby • Approximately 30 mins – 1 hour depending on traffic

		United States Attorney's Office 970 Broad Street, 7th Floor Newark, NJ 07102	
9:45am – 4:30pm	United States Attorney's Office – New Jersey	United States Attorney's Office 970 Broad Street, 7th Floor Newark, NJ 07102 Tel: 973-645-2700	• Group will be met downstairs by AUSA Bohdan Vitvitsky • Meetings with Special Prosecutions Division, US Attorney Paul Fishman, Federal Judge Jose Linares, Senior Probation Officer
1:00pm	Brown bag lunch meeting with US Attorney	United States Attorney's Office 970 Broad Street, 7th Floor Newark, NJ 07102 Tel: 973-645-2700	• Jessica Akpan will bring assorted sandwich lunches in for the group
9:45am – 4:30pm	United States Attorney's Office – New Jersey	United States Attorney's Office 970 Broad Street, 7th Floor Newark, NJ 07102 Tel: 973-645-2700	• Meetings with Special Prosecutions Division, US Attorney Paul Fishman, Federal Judge Jose Linares, Senior Probation Officer
4:30pm	Bus transfer back to hotel	United States Attorney's Office 970 Broad Street, 7th Floor Newark, NJ 07102 to Paramount Hotel 235 West 46th Street New York, NY 10036	• Approximately 30 mins – 1 hour depending on traffic • Group returns to the hotel • Free time before dinner
6:45pm	Dinner	Carmine's (Italian) 200 W 44th St. New York, NY 10036 Tel: 212-221-3800	• Meet in hotel lobby at 6:45pm • Walk to dinner (2 blocks) • Dinner reservation is for 7:00pm
Thursday, June 13			
7:00am – 9:00am	Breakfast	Paramount Hotel 235 West 46th Street New York, NY 10036	• Buffet breakfast at the Paramount Hotel at your leisure
9:00am	Bus transfer from hotel to United	Paramount Hotel 235 West 46th Street	• Meet in hotel lobby • Approximately 20 mins – 1 hour depending on

	States Attorney's Office – Southern District	New York, NY 10036 to United States Attorney's Office 1 St. Andrews Plaza New York, NY 10007	traffic
10:00am – 12:00pm	Meeting with Public Corruption Unit at United States Attorney's Office – Southern District of New York	United States Attorney's Office 1 St. Andrews Plaza New York, NY 10007 Tel: 212-637-2200	
12:00pm	Bus transfer from US Attorney's Office – Southern District to US Attorney's Office – Eastern District	United States Attorney's Office 1 St. Andrews Plaza New York, NY 10007 To United States Attorney's Office 271 Cadman Plaza East Brooklyn, NY 11201	• Approximately 10 – 20 minutes depending on traffic
12:30pm – 1:30pm	Lunch	TBD	
2:00pm – 4:00pm	Meeting with Public Integrity Section at United States Attorney's Office – Eastern District	United States Attorney's Office 271 Cadman Plaza East Brooklyn, NY 11201 Tel: 718-254-7000	
4:00pm	Bus transfer from US Attorney's Office – Eastern District to hotel	United States Attorney's Office 271 Cadman Plaza East Brooklyn, NY 11201 to	• Approximately 25 – 45 minutes depending on traffic • Group returns to the hotel • Free time before dinner

		Paramount Hotel 235 West 46th Street New York, NY 10036	
6:45pm	Dinner	Guy Fieri's (American) 220 W. 44th Street New York, NY 10036 Tel: 646-532-4897	• Meet in hotel lobby at 6:45pm • Walk to dinner (2 blocks) • Dinner reservation is for 7:00pm
Friday, June 14			
7:00am – 9:00am	Breakfast	Paramount Hotel 235 West 46th Street New York, NY 10036	• Buffet breakfast at the Paramount Hotel at your leisure
9:15am	Bus transfer from hotel to New York District Attorney's Office	Paramount Hotel 235 West 46th Street New York, NY 10036 to Office of the District Attorney of New York County One Hogan Place New York, NY 10013 Tel: 212-335-9000	• Approximately 20 – 35 minutes depending on traffic
10:00am – 1:00pm	Meetings and tour at New York District Attorney's Office	Office of the District Attorney of New York County One Hogan Place New York, NY 10013 Tel: 212-335-9000	• Meetings and tour with Public Integrity Unit (ADA Dan Cort), Official Corruption Unit (ADA Luke Rettler), Court Tour
1:00pm	Lunch	Peking Duck House (Chinese) 28 Mott Street New York, NY 10013 Tel: 212-227-1810	• Reservation for 15 people at 1:00pm • Food served buffet style
2:00pm – 4:00pm	Meetings and tour at New York District Attorney's Office (continued)	Office of the District Attorney of New York County One Hogan Place New York, NY 10013 Tel: 212-335-9000	• Meetings and tour with Public Integrity Unit (ADA Dan Cort), Official Corruption Unit (ADA Luke Rettler), Court Tour
4:00pm	Bus transfer back to hotel	Office of the District Attorney of New York County One Hogan Place New York, NY 10013	• Approximately 20 – 35 minutes depending on traffic • Group returns to the hotel • Free time before dinner

		to Paramount Hotel 235 West 46th Street New York, NY 10036	
6:45pm	Dinner	TGI Fridays (American) 761 7th Avenue New York, NY 10019 Tel: 212-767-8349	• Meet in hotel lobby at 6:45pm • Walk to dinner (3 blocks) • Dinner reservation is for 7:00pm
Saturday, June 15			
7:00am – 9:00am	Breakfast	Paramount Hotel 235 West 46th Street New York, NY 10036	• Buffet breakfast at the Paramount Hotel at your leisure
9:00am – 12:00pm	Walking tour of Times Square, Rockefeller Center, Central Park, etc.	Meet in hotel lobby	• Led by Emery Adoradio
12:00pm	Lunch	Angelo's (Pizza) 117 West 57th Street New York, NY 10019 Tel: 212-333-4333	• Group lunch at pizza restaurant • 2 blocks south of Central Park • Casual restaurant, no reservation required
1:00pm	Bus transfer from lunch to hotel	Angelo's (Pizza) 117 West 57th Street New York, NY 10019 to Paramount Hotel 235 West 46th Street New York, NY 10036	• Approximately 10 to 15 minutes • Rest time at hotel until afternoon sightseeing activity
3:00pm	Bus transfer from hotel to Financial District	Paramount Hotel 235 West 46th Street New York, NY 10036 to	• Approximately 20 to 30 minutes depending on traffic

		World Trade Center Site 1 Albany St. New York, NY	
3:30pm – 6:30pm	Sightseeing- 9/11 Memorial, Statue of Liberty, Ellis Island, etc.		
6:30pm	Bus transfer from Battery park to Dinner	Battery Park to Pulqueria 11 Doyers St. New York, NY 10013	• Approximately 10 to 20 minutes depending on traffic
7:00pm	Dinner	Pulqueria (Mexican) 11 Doyers St. New York, NY 10013	• Reservation for 15 people at 7pm
8:30pm (approx.)	Bus transfer from dinner back to hotel	Pulqueria 11 Doyers St. New York, NY 10013 to Paramount Hotel 235 West 46th Street New York, NY 10036	• Approximately 20 – 35 minutes depending on traffic
Sunday, June 16 – Baltimore, MD			
7:00am – 9:30am	Breakfast	Paramount Hotel 235 West 46th Street New York, NY 10036	• Buffet breakfast at the Paramount Hotel at your leisure
10:30am	Check out of Paramount hotel	Paramount Hotel 235 West 46th Street New York, NY 10036	• Bring your baggage • Meet in hotel lobby • Check out of hotel and settle any incidentals
11:00am	Bus transfer from New York City to Baltimore	Paramount Hotel 235 West 46th Street New York, NY 10036	• Approximately 3 to 4 hours depending on traffic

		to Baltimore Renaissance Harborplace 202 East Pratt Street Baltimore, MD 21202	
1:00pm (approx.)	Stop for lunch en route	Applebee's 2018 County Road 541 Westhampton, NJ (609) 265-1616	
4:00pm (approx.)	Check in to hotel	Baltimore Renaissance Harborplace 202 East Pratt Street Baltimore, MD 21202 Tel: 410-547-1200 Fax: 410-539-5780	• Check in to hotel
6:45pm	Dinner	Phillips Seafood (American) 601 E. Pratt Street Baltimore, MD 21202 Tel: 410-685-6600	• Meet in hotel lobby at 6:45pm • Walk to restaurant (5 minutes) • Dinner reservation for 16 people at 7pm
Monday, June 17 – Baltimore, MD - Washington, DC			
7:00am – 8:30am	Breakfast	Baltimore Renaissance Harborplace 202 East Pratt Street Baltimore, MD 21202	• Buffet breakfast at the hotel at your leisure
8:45am	Check out of Baltimore Hotel	Baltimore Renaissance Harborplace 202 East Pratt Street Baltimore, MD 21202	• Bring your baggage • Meet in hotel lobby • Check out of hotel and settle any incidentals
9:15am	Bus transfer from hotel to Maryland State Special Prosecutor's Office	Baltimore Renaissance Harborplace 202 East Pratt Street Baltimore, MD 21202 to 300 East Joppa Road Hampton Plaza, Suite 410 Towson, MD 21286-3152	• Approximately 20 – 40 minutes depending on traffic
10:00am – 12:30pm	Maryland State Special Prosecutor's	300 East Joppa Road Hampton Plaza, Suite 410 Towson, MD 21286	

	Office	Tel: 410.321.4067	
12:30 – 1:30pm	Lunch	Stoney River 825 Dulaney Valley Rd, STE 1157 Towson, MD 21204 Tel: 410-5835250	• Walk to restaurant
2:00pm – 3:30pm	Maryland State Special Prosecutor's Office	300 East Joppa Road Hampton Plaza, Suite 410 Towson, MD 21286 Tel: 410.321.4067	
3:30pm (approx.)	Bus transfer from Maryland State Special Prosecutor's Office to Washington, DC	300 East Joppa Road Hampton Plaza, Suite 410 Towson, MD 21286 to Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009	• Approximately 1 hour to 1 hour 45 minutes depending on traffic
5:00pm (approx.)	Check in to hotel	Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009	• Check in to the hotel • Free time until dinner
6:30pm	Bus transfer from hotel to dinner	Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009 to Maggiano's Little Italy (Italian) 5333 Wisconsin Avenue NW Washington, DC 20015	• Meet in hotel lobby • Approximately 15 to 30 minutes depending on traffic
7:00pm	Dinner	Maggiano's Little Italy (Italian) 5333 Wisconsin Avenue NW Washington, DC 20015 Tel: 202-966-5500	• Reservation for 15 people at 7pm
9:00pm	Bus transfer from	Maggiano's Little Italy (Italian)	• Approximately 15 to 30 minutes depending on

(approx..)	dinner to hotel	5333 Wisconsin Avenue NW Washington, DC 20015 to Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009	traffic
Tuesday, June 18 – Washington, DC			
7:00am – 9:00am	Breakfast	Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009	• Buffet breakfast at the hotel at your leisure
9:00am	Bus transfer from hotel to State Attorney's Office for Montgomery County	Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009 to State Attorney's Office for Montgomery County 101 Monroe St #3 Rockville, Maryland 20850	• Approximately 30 mins – 1 hour depending on traffic
10:00am	State Attorney's Office for Montgomery County	State Attorney's Office for Montgomery County 101 Monroe St #3 Rockville, Maryland 20850	• Meet at the Montgomery County Judicial Center • Briefing with State's Attorney John McCarthy • Tour courthouse • Meet Senior Judge Michael Mason
12:15pm – 1:30pm	Lunch	American Tap Room 36 Maryland Avenue Rockville, MD 20850 Tel: (301) 838-4281	• Walk to restaurant • Reservation for 15 people at 12:15pm
1:30pm – 4:30pm	Montgomery County Inspector General's Office	Montgomery County Inspector General's Office 51 Monroe St. #802 Rockville, MD 20850	• Walk to Montgomery County Inspector General's Office (2 blocks)
4:30pm (approx.)	Bus transfer back to hotel	Montgomery County Inspector General's Office 51 Monroe St. Rockville, MD 20850	• Approximately 30 mins – 1 hour depending on traffic • Free time until dinner

		to Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009	
7:00pm	Dinner	Twist Restaurant at Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009	• Dinner in private party room at our hotel • Reservation for 15 people at 7pm, Mediterranean buffet
Wednesday, June 19			
7:00am – 9:00am	Breakfast	Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009	• Buffet breakfast at the hotel at your leisure
9:00am	Bus transfer from hotel to meetings	Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009 to 1331 F Street , N.W. 5th Floor Conference Room Washington, DC 20004	• Meet in the hotel lobby • Approximately 10 to 25 minutes depending on traffic
9:30am – 10:30am	Meeting with Robert Bowman, Regional Director for Africa and Middle East, Office of Overseas Prosecutorial Development	1331 F Street , N.W. 5th Floor Conference Room Washington, DC 20004 Tel: 202-514-3253	
10:45am – 12:15pm	Meeting with Public Integrity Section	1331 F Street , N.W. 5th Floor Conference Room Washington, DC 20004 Tel: 202-514-3253	
12:30pm – 1:30pm	Lunch	Chef Geoff's 1301 Pennsylvania Avenue Northwest	• Walk to lunch location (approximately 2 blocks) • Lunch reservation for 15 people at 12:30pm with

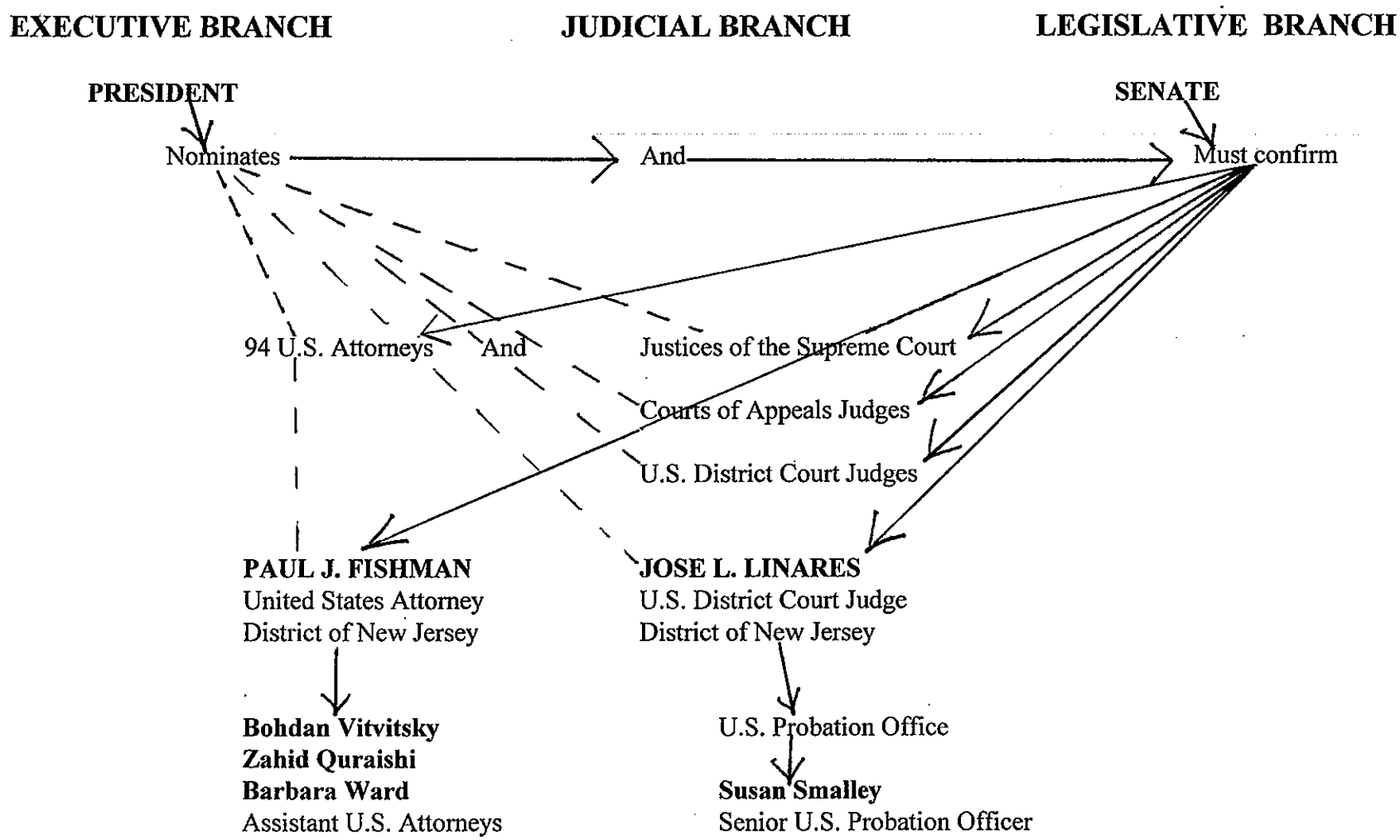
		Washington, DC 20004 Tel: (202) 464-4461	set menu
2:00pm – 3:00pm	Meeting with Fraud Section	1331 F Street , N.W. 5th Floor Conference Room Washington, DC 20004 Tel: 202-514-3253	
3:30pm – 4:30pm	Meeting with Office of the Inspector General	1331 F Street , N.W. 5th Floor Conference Room Washington, DC 20004 Tel: 202-514-3253	
4:30pm	Bus transfer back to hotel	1331 F Street , N.W. 5th Floor Conference Room Washington, DC 20004 to Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009	• Approximately 10 to 25 minutes depending on traffic • Group returns to the hotel • Free time before dinner
7:30pm	Bus transfer from hotel to dinner	Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009 to Sequoia (American) 3000 K Street NW Washington, DC 20007	• Approximately 10 to 20 minutes depending on traffic
8:00pm	Dinner	Sequoia (American) 3000 K Street NW Washington, DC 20007 Tel: 202-944-4200	• Dinner reservation for 15 people at 8pm
10:00pm (approx..)	Bus transfer from dinner to hotel	Sequoia (American) 3000 K Street NW Washington, DC	• Approximately 10 to 20 minutes depending on traffic

		to 20007Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009	
Thursday, June 20			
7:00am – 9:30am	Breakfast	Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009	• Buffet breakfast at the hotel at your leisure
10:00am	Bus transfer from hotel to United States Supreme Court	Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009 to United States Supreme Court 1 First Street, N.E. Washington, DC 20543 Tel: 202-479-2940	• Approximately 15 to 35 minutes depending on traffic
11:00am – 12:00pm	Tour of United States Supreme Court	United States Supreme Court 1 First Street, N.E. Washington, DC 20543 Tel: 202-479-2940 (Erin Huckle)	• Meet guide in front of John Marshall statue
12:00pm	Bus transfer from Supreme Court to meetings	United States Supreme Court 1 First Street, N.E. Washington, DC 20543 to 1331 F Street , N.W. 5th Floor Conference Room Washington, DC 20004	• Approximately 10 to 25 minutes depending on traffic
12:30pm – 1:30pm	Lunch	District ChopHouse & Brewery 509 7th Street NW Washington, DC 20004 Tel: 202-347-1922	• Walk to lunch location (approximately 15 minutes) • Lunch reservation for 15 people at 12:30pm with set menu
2:00pm –	Meeting with	1331 F Street , N.W.	

3:00pm	Office of Professional Responsibility	5th Floor Conference Room Washington, DC 20004	
3:15pm – 4:15pm	Meeting with Public Corruption Unit, FBI	1331 F Street , N.W. 5th Floor Conference Room Washington, DC 20004	
4:30pm – 5:00pm	Meeting with Jeffrey Richter, Ph.D, Chief Historian, Human Rights and Special Prosecution Section	1331 F St, NW. large 5th floor conference room, Washington, DC 20004	•
5:15pm	Bus transfer back to hotel	1331 F Street , N.W. 5th Floor Conference Room Washington, DC 20004 to Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009	• Approximately 10 to 25 minutes depending on traffic • Group returns to the hotel • Free time before dinner
6:30pm (approx..)	Bus transfer from hotel to dinner	Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009 to Zaytinya (Middle Eastern) 701 9th Street NW Washington, DC 20001	• Approximately 10 to 20 minutes depending on traffic
7:00pm	Dinner	Zaytinya (Middle Eastern) 701 9th Street NW Washington, DC 20001 Tel:	• Dinner reservation for 15 people at 7pm

9:00pm (approx..)	Bus transfer from dinner to hotel	Zaytinya (Middle Eastern) 701 9th Street NW Washington, DC 20001 to Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009	• Approximately 10 to 20 minutes depending on traffic
Friday, June 21			
7:00am – 8:00am	Breakfast	Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009	• Buffet breakfast at the hotel at your leisure
8:00am	Check out of hotel	Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009	• Bring all your baggage • Meet at the lobby • Check out of hotel, settle any incidentals
8:30am	Bus transfer from hotel to national mall	Carlyle Suites Hotel 1731 New Hampshire Ave N.W. Washington, DC 20009 to Intersection of 9th St. NW & Constitution Ave NW National Mall, Washington, DC	• Approximately 15 to 30 minutes depending on traffic
9:00am – 11:00am	Sightseeing	National Mall area Washington, DC	• Museums, Washington Monument, Lincoln Memorial, etc.
11:00am	Lunch	TBD	• Group lunch at nearby restaurant TBD
12:00pm	Bus transfer from national mall to JFK airport	Intersection of 9th St. NW & Constitution Ave NW National Mall, Washington, DC to John F. Kennedy International Airport Jamaica, NY 11430 USA	• Approximately 4 to 7 hours depending on traffic
5:00pm (approx.)	Quick stop for dinner en route (as time permits)	TBD	• Fast food restaurant stop due to time constraints

7:30pm (approx.)	Arrive to airport	John F. Kennedy International Airport Jamaica, NY 11430 USA	• Check in for flight • Check baggage
10:30pm	Flight AA7200 departs JFK for AMM	John F. Kennedy International Airport Jamaica, NY 11430 USA	


EXECUTIVE BRANCH
JUDICIAL BRANCH
LEGISLATIVE BRANCH
PRESIDENT
SENATE
Nominates
And
Must confirm
94 U.S. Attorneys
And
Justices of the Supreme Court
Courts of Appeals Judges
U.S. District Court Judges
PAUL J. FISHMAN
United States Attorney
District of New Jersey
JOSE L. LINARES
U.S. District Court Judge
District of New Jersey
Bohdan Vitvitsky
Zahid Quraishi
Barbara Ward
Assistant U.S. Attorneys
U.S. Probation Office
Susan Smalley
Senior U.S. Probation Officer

SENTENCING TABLE
(in months of imprisonment)

	Offense Level	Criminal History Category (Criminal History Points) I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
Zone A	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
	7	0-6	2-8	4-10	8-14	12-18	15-21
	8	0-6	4-10	6-12	10-16	15-21	18-24
	9	4-10	6-12	8-14	12-18	18-24	21-27
Zone B	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
Zone C	12	10-16	12-18	15-21	21-27	27-33	30-37
	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24	21-27	27-33	33-41	37-46
	15	18-24	21-27	24-30	30-37	37-46	41-51
	16	21-27	24-30	27-33	33-41	41-51	46-57
	17	24-30	27-33	30-37	37-46	46-57	51-63
	18	27-33	30-37	33-41	41-51	51-63	57-71
	19	30-37	33-41	37-46	46-57	57-71	63-78
	20	33-41	37-46	41-51	51-63	63-78	70-87
	21	37-46	41-51	46-57	57-71	70-87	77-96
	22	41-51	46-57	51-63	63-78	77-96	84-105
	23	46-57	51-63	57-71	70-87	84-105	92-115
	24	51-63	57-71	63-78	77-96	92-115	100-125
	25	57-71	63-78	70-87	84-105	100-125	110-137
	26	63-78	70-87	78-97	92-115	110-137	120-150
Zone D	27	70-87	78-97	87-108	100-125	120-150	130-162
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	)	
	)	
vs.	)	**PRESENTENCE INVESTIGATION REPORT**
	)	
JOE SMITH	)	**Docket No. [redacted]-001**

Prepared For: **THE HONORABLE JEROME B. SIMANDLE**
Chief United States District Judge

Prepared By: **JANE PROBATION OFFICER**
Senior United States Probation Officer
Newark, New Jersey 07101-0459
(973) 645-4240

Assistant U.S. Attorney
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970 Broad Street
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Newark, New Jersey 07102
(973) 645-2700

Defense Counsel
Jane Brown, AFPD
1002 Broad Street
Newark, New Jersey 07102
(973) 645-6347

***Sentence Date:** 09/17/2012

Offense: Count One: Conspiracy to Distribute and Possess with Intent to Distribute 5 Grams or More of Methamphetamine
21 U.S.C. § 846 [21 U.S.C. §§ 841(a)(1) & (b)(1)(B)] - 5 to 40 years imprisonment/$5,000,000 fine, a Class B felony

Arrest Date: 04/08/11

Release Status: 04/08/11: Released on a $100,000 Unsecured Appearance Bond, with co-signor

Detainers: None

Codefendants: None

Related Cases: None

Date Report Prepared: 07/19/12 **Final Report Prepared:** 08/06/12

Identifying Data:

Date of Birth:	05/02/75
Age:	37
Race:	White, Non-Hispanic origin
Sex:	Male
SSN:	141-80-5432
FBI #:	383195LD1
USM #:	63318-050
Other ID #:	NJ State Identification No. H04501537105752
PACTS #:	61013
Education:	Some college
Dependents:	None
Citizenship:	United States
Legal Address:	1234 Main Street Anywhere, NJ 01234
Aliases:	Joey S.

Restrictions on Use and Redisclosure of Presentence Investigation Report. Disclosure of this presentence investigation report to the Federal Bureau of Prisons and redisclosure by the Bureau of Prisons is authorized by the United States District Court solely to assist administering the offender's prison sentence (*i.e.*, classification, designation, programming, sentence calculation, pre-release planning, escape apprehension, prison disturbance response, sentence commutation, or pardon) and other limited purposes, including deportation proceedings and federal investigations directly related to terrorists activities. If this presentence investigation report is redisclosed by the Federal Bureau of Prisons upon completion of its sentence administration function, the report must be returned to the Federal Bureau of Prisons or destroyed. It is the policy of the federal judiciary and the Department of Justice that further redisclosure of the presentence investigation report is prohibited without the consent of the sentencing judge.

PART A. THE OFFENSE

Charge(s) and Conviction(s)

In U.S. v Booker & Fanfan, 543 U.S. 220 (2005), the Supreme Court ruled in the first part of its decision that its prior Blakely decision applies to the federal guidelines. In addressing the remedial solution, the second part of the decision invalidated only those statutes that made application of the federal guidelines mandatory, holding that the rest of the guidelines and Sentencing Reform Act were constitutionally valid and should be considered by courts, along with other factors listed in 18 U.S.C. § 3553(a), in imposing sentence. Per the subsequent Supreme Court decision in Gall v U.S., 552 S.Ct. 38 (2007), appellate courts must review all sentences for reasonableness under a deferential abuse-of-discretion standard. As only the "mandatory" statutes were invalidated, the Probation Office will apply the guidelines consistent with the remainder of the Sentencing Reform Act and the applicable edition of the U.S. Sentencing Commission Guidelines Manual.

NOTE: Paragraphs marked with an asterisk (*) represent those which have been amended or included since the initial disclosure of the presentence report.

1. On April 26, 2012, JOE SMITH appeared before the Honorable Jerome B. Simandle, Chief United States District Judge, and entered a plea of guilty to a one-count Information which charges that, on or about April 7, 2011, in Hudson County, in the District of New Jersey, and elsewhere, Smith did knowingly and intentionally conspire and agree with others to distribute and to possess with intent to distribute five grams or more of methamphetamine, a Schedule II controlled substance, contrary to Title 21, United States Code, Sections 841(a)(1) and (b)(1)(B), in violation of Title 21, United States Code, Section 846.

Status of Codefendants

2. There are no codefendants in this case.

Related Cases

3. There are no related cases.

Plea Agreement Information

4. Pursuant to the written plea agreement dated January 19, 2012, the U.S. Attorney's Office and the defendant have agreed to the following stipulations, which are non-binding upon this Court:

   1) This Office and JOE SMITH recognize that the United States Sentencing Guidelines are not binding upon the Court. This Office and JOE SMITH nevertheless agree to

the stipulations set forth herein, and agree that the Court should sentence JOE SMITH within the Guidelines range that results from the total Guidelines offense level set forth below. This Office and JOE SMITH further agree that neither party will argue for the imposition of a sentence outside the Guidelines range that results from the agreed total Guidelines offense level.

2) The version of the United States Sentencing Guidelines effective November 1, 2011 applies in this case. The applicable guideline is U.S.S.G. § 2D1.1.

3) The offense involved at least 5 grams but less than 20 grams of Methamphetamine (actual). This results in a Base Offense Level of 26. See U.S.S.G. § 2D1.1(c)(7).

4) Within the meaning of § 5C1.2(a)(2), JOE SMITH did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense.

5) Within the meaning of § 5C1.2(a)(3), the offense did not result in death or serious bodily injury to any person.

6) Within the meaning of § 5C1.2(a)(4), JOE SMITH was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the Sentencing Guidelines and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848.

7) Whether JOE SMITH meets the criterion set forth in subdivision (a)(1) of § 5C1.2 has not yet been determined.

8) As of the date of this letter, JOE SMITH has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the offense charged. Therefore, a downward adjustment of 2 levels for acceptance of responsibility is appropriate if JOE SMITH's acceptance of responsibility continues through the date of sentencing. See U.S.S.G. § 3E1.1(a).

9) As of the date of this letter, JOE SMITH has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. If JOE SMITH enters a plea pursuant to this agreement and qualifies for a 2-point reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(a), and if in addition JOE SMITH's offense level under the Guidelines prior to the operation of § 3E1.1(a) is 16 or greater, JOE SMITH will be entitled to a further 1-point reduction in his offense pursuant to U.S.S.G. § 3E1.1(b).

10) In accordance with the above, the parties agree that: (a) if the court finds, pursuant to U.S.S.G. § 5C1.2, that JOE SMITH meets the criteria in 18 U.S.C. § 3553(f)(1)-(5), JOE SMITH will be entitled to a 2-point reduction in his offense level pursuant to U.S.S.G. § 2D1.1(b)(11), with the result that the total Guidelines offense level applicable to JOE SMITH will be 21; and (b) otherwise, the total Guidelines offense level applicable to JOE SMITH will be 23 (collectively, the "agreed total Guidelines offense level").

11) The parties agree not to seek or argue for any upward or downward departure, adjustment, or variance not set forth herein. The parties further agree that a sentence within the Guidelines range that results from the agreed total Guidelines offense level is reasonable.

12) JOE SMITH knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack; or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, which challenges the sentence imposed by the sentencing court it that sentence falls within or below the Guidelines range that results from a total Guidelines offense level of 23. This Office will not file any appeal, motion or writ which challenges the sentence imposed by the sentencing court if that sentence falls within or above the Guidelines range that results from a total Guidelines offense level of 21. The parties reserve any right they may have under 18 U.S.C. § 3742 to appeal the sentencing court's determination of the criminal history category. The provisions of this paragraph are binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, if the sentencing Court accepts a stipulation, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so.

13) Both parties reserve the right to oppose or move to dismiss any appeal, collateral attack, writ, or motion barred by the preceding paragraph and to file or to oppose any appeal, collateral attack, writ or motion not barred by the preceding paragraph.

Pretrial Adjustment

5. The defendant was arrested on April 8, 2011, on which date he made his initial appearance before the Honorable Mark Falk, United States Magistrate Judge. Smith was released on a $100,000 unsecured appearance bond, co-signed by his mother who also serves as third-party custodian, and under the following conditions: Pretrial Services supervision; travel restriction to New Jersey, unless otherwise approved by Pretrial Services; surrender of passport and all travel documents, with the prohibition from obtaining new such documents; substance abuse testing/treatment, as directed by Pretrial Services, the prohibition from obstructing or tampering with substance abuse testing procedures/equipment, and prohibition from possession or use of illegal substances; mental health testing/treatment, as directed by Pretrial

Services; and, the requirement to maintain his current residence or one approved by Pretrial Services, specifically with his mother (as third-party custodian) unless otherwise approved by Pretrial Services. Smith states he has verbal approval from Pretrial Services to travel to New York.

6. The supervising Pretrial Services officer reports the defendant is in compliance with his bail conditions.

The Offense Conduct

7. The Federal Bureau of Investigation (FBI) received information that an individual residing at 159 Grand Street, apartment 3, in Jersey City, New Jersey, was receiving quantities of crystal methamphetamine (hereinafter "crystal meth") via the United States Postal Service. That individual was subsequently identified as JOE SMITH.

8. On April 7, 2011, FBI agents went to the Grand Street address and rang the doorbell of apartment 3. Smith answered the door and confirmed that he lived at the location. The agents informed Smith they were aware of illegal narcotics activity being operated from the residence and asked Smith whether he was willing to speak with agents; Smith agreed. Smith subsequently confirmed he sold narcotics he received in the mail via FedEx. Smith stated he had recently received a shipment of approximately one ounce of crystal meth from an address in Atlanta, Georgia, for which Smith paid $2,000. Smith also admitted having received a prior shipment from the same location in Atlanta, on March 18, 2011.

9. Smith told agents he contacts his supplier, identified only as "Shane," via telephone or the Internet, to specify how much crystal meth he (Smith) needs. Shane then provides an address to where Hanangan is instructed to send cash via the mail. Shane subsequently sends the drugs to Smith's home address in Jersey City. Smith identified his customers as virgin crystal meth users whom he met through a social networking website.

10. Smith subsequently gave agents consent to search his residence; law enforcement asked Smith if he had any illegal narcotics in his residence. He stated he did and retrieved a quantity of crystal meth from a locked box concealed in his bedroom closet, which he handed over to law enforcement. Smith opened the box and removed a clear jar containing crystal meth from it. Smith was then placed under arrest.

11. The crystal methamphetamine was analyzed and found to have a net weight of 17.4 grams (actual), with a purity of 72.2%.

Victim Impact

12. There are no identifiable victims of the offense.

Adjustment for Obstruction of Justice

13. The probation officer has no information suggesting that the defendant impeded or obstructed justice.

Adjustment for Acceptance of Responsibility

*14. During an interview of the defendant conducted in the presence of counsel, Smith affirmed his guilt and that he made a truthful plea allocution. He further commented that he regrets the "bad decision" he made. Counsel expressed their intention to submit a written statement regarding the defendant's acceptance of responsibility. While no statement was received prior to disclosure of the draft presentence report, the following was submitted by counsel on August 2, 2012; it is unknown if the defendant has reviewed and accepted the written submission on his behalf:

"On or about April 7, 2011, I knowingly agreed with other people to distribute a quantity of methamphetamine. I provided my mailing address to an individual in Atlanta, Georgia so that he could send quantities of methamphetamine to my home via Federal Express. On April 7, 2011, I had 17.4 grams of methamphetamine in my home which I intended to distribute in the New Jersey Area [*sic*]. I had received the drugs via Federal Express. When I was questioned by law enforcement, I provided the drugs to them and then I was arrested.

"I know my actions were wrong and I am deeply sorry. Everything in my life was out of control during this time. I am now working and on the right track and I know that I will never participate in this type of conduct ever again. I just want a second chance to prove that."

15. Based on the foregoing and in anticipation of the defendant's written statement, a downward adjustment for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1, will be applied.

Offense Level Computation

16. The November 1, 2011, edition of the Guidelines Manual has been used in this case.

Count One - Conspiracy to Distribute and Possess with Intent to Distribute 5 Grams or More of Methamphetamine

17. **Base Offense Level:** The United States Sentencing Commission Guideline for violation of 21 U.S.C. § 846 [21 U.S.C. §§ 841(a)(1) & (b)(1)(B)] is found in U.S.S.G. § 2D1.1(a)(5) and calls for a base offense level of 26, for those offenses involving more than 5 grams but less than 20 grams of methamphetamine (actual). Smith is responsible for 17.4 grams (actual). 26

18. **Specific Offense Characteristic:** The defendant satisfies the criteria at U.S.S.G. § 5C1.2. Pursuant to U.S.S.G. § 2D1.1(b)(16), two levels are subtracted. -2

19. **Victim-Related Adjustments:** None. 0

20. **Adjustments for Role in the Offense:** None. 0

21. **Adjustment for Obstruction of Justice:** None. 0

22. **Adjusted Offense Level (Subtotal)** 24

23. **Adjustment for Acceptance of Responsibility:** Pursuant to U.S.S.G. § 3E1.1(a), the offense level is reduced two levels. -2

24. **Additional Adjustment for Acceptance of Responsibility:** Pursuant to U.S.S.G. § 3E1.1(b), the offense level is reduced one additional level provided a motion by the Government is granted at sentencing. -1

25. **Adjusted Offense Level:** 21

26. **Chapter Four Enhancements:** None. 0

27. **Total Offense Level:** **21**

PART B. DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudication(s)

28. None.

Adult Criminal Conviction(s)

29. None.

Criminal History Computation

30. The total of the criminal history points is zero. According to the sentencing table at U.S.S.G. Chapter 5, Part A, zero criminal history points establish a criminal history category of I.

PART C. OFFENDER CHARACTERISTICS

Personal and Family Data

*31. As confirmed by his birth certificate, the defendant, Daniel Joseph Smith, III, was born on May 02, 1975, in Hoboken, New Jersey. His father, Daniel Joseph Smith, II, passed away on July 15, 2011. The defendant's mother, 65, resides in Jersey City, New Jersey and is a retired UPS employee. Smith has one sister - Gwyneth, 33 - who currently resides in Milan, Italy, where she works as an au pair; she also teaches English.

32. Smith's parents divorced when he was five years old. Thereafter, he and his sister were raised by their mother who financially provided for them; Smith denies their care was relegated to any extended family members, noting they were "latch key kids" who looked after themselves as soon as they were old enough while their mother worked. Smith states his father had limited involvement in his life and that, for the 16 years prior to his father's death, the two did not have any contact. The defendant attributed this estrangement to his father's termination of financial support, which was generally sporadic, while Smith was in college.

33. While Smith recalls his father and extended family members had alcohol-related issues, neither his mother nor anyone else with whom he had regular contact during his formative years did. The defendant denied ever suffering any instances of abuse or neglect and affirmed his basic needs were consistently met, noting he and his sister attended private school on partial scholarships. Smith continues to share a positive relationship with his mother and sister, both of whom are aware of the instant prosecution.

34. The defendant has never been married nor has he fathered any children. He is not currently in a relationship.

35. Smith reports prior residential history in New York and New Jersey, with addresses throughout New York City and in Jersey City, New Jersey. In accordance with his bail conditions, the defendant is currently and temporarily residing with his mother in a single-family home in Jersey City. The residence was confirmed by a representative of Pretrial Services. Smith also maintains an apartment in Jersey City; however, the lease is scheduled to expire in August 2012. Plans for the defendant's future living arrangements (i.e., upon release from any term of imprisonment) are unknown. The defendant denies any international travel as an adult.

Physical Condition

36. Smith stands approximately 5'10" and weighs an estimated 215 pounds. He has greying brown hair and brown eyes. The defendant denies the presence of any distinguishing

physical markings, such as tattoos, scars, or birthmarks, and denies suffering from any physical limitations or disabilities.

37. Aside from a history of seasonal allergies, the defendant denies suffering from any chronic medical conditions or taking any medications. He further denies any history of hospitalization. Smith does not have a physician from whom he receives routine medical care.

Mental and Emotional Health

*38. Smith is reportedly receiving mental health counseling at the Jersey City Medical Center; he could not specifically recall his counselor's name side from "Mr. Mendoza." The defendant states he participates in weekly or bi-weekly, individual counseling for depression resulting from his legal situation, but that he does not find it "challenging"; Smith explained the counselor only reiterates what he reports without additional insight or solutions. The defendant indicated he began treatment in February 2012 and finds it "helpful" to talk to someone. To date, no reports pertaining to this treatment have been received from the medical center.

39. The defendant states that, after college, he pursued weekly, individual counseling for approximately six months to one year, to treat "a fog of depression." Smith was unable to recall where he received treatment but states he was "very medicated" on Paxil.

40. Smith was cooperative and very communicative during his presentence interview. He responded to all inquiries in a forthcoming manner.

Substance Abuse

41. The defendant reports a history of abusing multiple illegal substances. At the age of 25, Smith states he began smoking marijuana socially; he described the height of his use as "weekend binges." Smith states he last used marijuana approximately one and a half years ago.

42. When he was 27 years old, Smith began using cocaine socially. The defendant states he used on weekends, specifically Fridays, every few months and that use of cocaine was not something he pursued although quantities of the drug were readily available. He reports his last use was approximately two to three years ago.

43. Smith reports using ecstasy on weekends between ages 21 and 25, commenting he was a "club kid" (i.e., a regular patron of New York City nightclubs). The defendant states he last used ecstasy approximately two and a half years ago.

*44. The defendant states that, at age 25, he began using crystal meth. What began as weekend use reportedly evolved into his abusing the drug for the year prior to his arrest, initially using the drug every other day for the first six months of that year and then daily during the latter six months. While he could not estimate the quantity he consumed, Smith notes he spent less on it as he started selling it. The defendant denies his use affected his ability to hold a job and described crystal meth use as "more manageable" and "reliable." In an objection letter dated August 2, 2012, counsel further clarifies Smith was using crystal meth primarily on the weekends and that he used this particular drug because he felt its effects were more predictable, in that he knew exactly how his body would react to the drug.

*45. Smith completed a three-month Addiction Services Intensive Out-patient Program at Jersey City Medical Center, in Jersey City, on August 26, 2011. The defendant states he then began another out-patient treatment program, which was also for three months, which he completed in November or December 2011. According to treatment records submitted by Jersey City Medical Center, Smith last attended out-patient counseling on January 10, 2012, at which time he completed the out-patient program. Treatment notes, dated January 31, 2012, reflect the defendant attended treatment as scheduled and was active in group sessions. The defendant did not attend "12 step meetings" nor had he secured a sponsor; treatment notes from the previous month noted Smith "lack[ed] a supportive recovery network."[1] Smith submitted a urine sample on January 10, 2012, which initially tested positive for benzodiazepines; lab tests subsequently yielded negative results. Upon completion of the out-patient program, the defendant was referred for out-patient individual therapy to address depression; notes reflect Smith reported feeling depressed about being unemployed and the uncertainty of his legal situation.

Education and Vocational Skills

46. According to a copy of a diploma furnished by the defendant, Smith graduated from St. Peter's Preparatory School, in Smithville, in June 1993. A school representative confirmed the date of graduation as June 9, 1993.

47. Between September 1993 and May 26, 1994, Smith attended Trinity College, Hartford, Connecticut, where he completed his freshman year. The defendant states he left school after becoming ill and did not return. Information received from the school reflects he was on academic probation with a grade point average of 0.867 and was "required to withdraw" from the college.

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[1]* In the August 2, 2012 objection letter submitted by defense counsel, Smith "questioned" why his treatment notes reflected his lack of a supportive recovery network. Counsel contends she advised him that "this notation meant that he was a bit of a loner and did not have many close friends."

48. The defendant states that, in 1994, he completed one semester at St. Peter's College, Jersey City, New Jersey. Smith failed to continue his education after his father terminated financial support. Information received from the college confirms the defendant's dates of attendance as September 1992 through May 1993, and July 1994 through May 1995; it was reported Smith "withdrew" in May 1995, with a grade point average of 3.0.

49. Smith maintains he also attended various classes at Hudson Community College, Jersey City, New Jersey, through a friend of his mother's. The registrar confirmed the defendant's attendance between September 1994 and December 1994, when he completed one class.

50. The defendant reports vocational skills in bookkeeping and associated software programs.

Employment Record

51. In May 2012, the defendant secured employment as a bookkeeper with Merchants Hospitality, Inc., a restaurant group in New York, New York; he began working on June 4, 2012. According to the letter of employment submitted to Pretrial Services, Smith receives an annual salary of $37,000, with a full-time schedule of 45 to 50 hours per week.

52. Prior to obtaining the position detailed above, Smith had been unemployed since 2010 and had reportedly been supporting himself on savings and a portion of an inheritance from his father. According to his resume, Smith has been a self-employed "freelance bookkeeper and business manager" since 2010.

53. The following employment history is based largely on the resume furnished by the defendant and information provided during his presentence interview. The defendant states that, between 2007 and 2010, he worked as the business manager/bookkeeper at Jonathan LeVine Gallery, LLC, in New York City. The defendant states he was terminated. He reports earning an approximate annual salary of $50,000 from this job. Information received from the employer confirms Smith's dates of employment as March 12, 2008 until May 20, 2009, at which time he was terminated for "general incompetence and continual tardiness." His annual salary was confirmed as $50,000.

54. The defendant states he was employed as the business manager for The EU Restaurant and Diablo Royale/Deviled Foods, LLC, between November 2006 to January 2008. Both business are in New York City. This employment is corroborated by W-2 statements submitted by the defendant. Smith states he was terminated and made the "scapegoat" for a "bookkeeping error." The defendant earned approximately $50,000 in this position.

55. The defendant's resume reflects he was a self-employed bookkeeper/business manager for various small businesses in New York City between 2005 and 2006. This employment history is generally corroborated by W-2 statements submitted by the defendant.

56. Smith reportedly worked as the operations and business manager for two New York City restaurants, between 2003 and 2005, for an annual salary of $45,000. He states his employment ended when the restaurants failed.

57. The defendant was reportedly employed as the operations and business manager for BizBash Media, New York City, between 2001 and 2003.

58. Smith's resume reflects he was employed by Knowledge Strategies Group between 1999 and 2000, as the company's corporate communications/intranet editor/deputy to the chief operating officer. The defendant states he was laid off from this position which paid $45,000. Between 1996 and 1998, Smith was reportedly employed by Knowledge Strategies Group as an executive assistant/office manager/bookkeeper/recruiter.

Financial Condition: Ability to Pay

59. An Equifax credit history report obtained by the probation office lists six open credit accounts, including one line of credit with Citibank, with a combined outstanding balance of $5,638. Of this amount, $2,527 has been disputed by Smith. An Experian credit history report secured and furnished by the defendant, dated May 21, 2012, lists four open accounts.

60. The following is a summary of information reflected in the individual federal income tax returns submitted by the defendant:

Tax Year	Reported Adjusted Gross Income	Refund Owed/Tax Paid
2006	$9,107	$1,282 refund
2007	$46,965	$533 refund
2008	$43,325	$1,288 refund
2009	$19,497	$1,050 refund
2010	(did not file)	--
2011	$4,852	$0

*61. Smith submitted completed financial statements outlining his net worth and monthly cash flow. The information contained on those statements is outlined as follows:

Assets

Cash

Individually-held Checking Account - Citibank, NA, Acct. No. xxxxxx	1,231.00
Individually-held Savings/Money-Market Account - Citibank, NA, Acct. No. xxxxx	365.00
Individually-held Savings Account - Citibank, NA, Acct. No. xxxxxx	20.00
Individually-held Certificate of Deposit - Citibank, NA, Acct. No. xxxxx	532.00
Individually-held Savings Account - Ally Bank, Acct. No. xxxxxx	108.00
Individually-held Certificate of Deposit - Ally Bank, Acct. No. Xxxxxx	551.00
Individually-held 401k Account - Vanguard, Acct. No. xxxxx	83,080.00
Individually-held 401k Account - ING, Acct. No. xxxxxx	2,252.00
Subtotal:	**$88,139.00**

Unencumbered Assets

No Unencumbered Assets	0.00
Subtotal:	**$0.00**

Equity in Other Assets

No Equity in Other Assets	0.00
Subtotal:	**$0.00**

Total Assets:	**$88,139.00**

Unsecured Debts	
Credit Cards (5 accounts)	5,740.00
Total Unsecured Debt:	**$5,740.00**
NET WORTH:	**$82,399.00**
Monthly Cash Flow	
Income	
Monthly Net Income	2,132.00
Allstate Annuity Income #xxxxx	608.00
Total Income:	**$2,740.00**
Necessary Monthly Living Expenses	
Property Rent	1,040.00
*Utilities (Gas/Electric)	120.00
Basic Cable/Internet	126.00
Credit Cards (Minimum Monthly Payments - 5 accounts)	152.00
Total Expenses:	**$1,438.00**
NET MONTHLY CASH FLOW:	**$1,302.00**

62. **Analysis**: The defendant indicates the Vanguard account listed above was funded by an inheritance received from his father, while the ING account represents a 401k account established during a prior term of employment with BizBash. The annuity income, which is also the result of an inheritance from his father, reflected in the calculations above is income to be paid over a ten-year period; the annuity can only be paid in monthly installments and not in a lump sum payment. Based on documentation provided by the defendant, there is a balance of $66,297.14, remaining in the annuity.

*63. Although he is currently residing with his mother as a condition of his bail, Smith maintains an apartment at 159 Grand Street, Jersey City, the rent for which is included above. The lease is scheduled to terminate on August 31, 2012. The utilities and cable expenses listed above represent those for the defendant's apartment. In an August 2, 2012 objection letter, defense counsel submits Smith pays $300 per month towards his credit cards; we note the amount above is based on the minimum amount he must pay each month. Furthermore, after

disclosure of the draft presentence report, Smith subsequently reported that he pays his mother $200 per month towards unspecified living expenses.

64. Based on the foregoing, Smith currently demonstrates some ability to pay a fine within the guideline range, particularly if he is permitted to do so in installments. He has a notable net worth and does not appear to be living above his means; however, those circumstances are subject to change should he be sentenced to a term of imprisonment which may result in a loss of employment. We note Smith's cash flow is subject to further changes should he not renew his lease and/or if certain unused services (i.e., cable and internet) were terminated.

65. If the defendant is incarcerated, payment on a fine can commence through the Bureau of Prisons Inmate Financial Responsibility Program. An inmate participating in this program will be able to contribute half of monthly prison work earnings, for every month of imprisonment served, toward any immediately due fine or restitution.

PART D. SENTENCING OPTIONS

Custody

66. **Statutory Provisions:** There is a mandatory minimum term of imprisonment for Count One of 5 years and a maximum term of 40 years, pursuant to 21 U.S.C.§ 841(b)(1)(B).

67. **Guideline Provisions:** Pursuant to U.S.S.G. Chapter 5, Part A, based on a total offense level of 21 and a criminal history category of I, the guideline range for imprisonment is 37 to 46 months. However, because of the statutory provisions noted above, the range becomes 60 months. U.S.S.G. § 5G1.1.

68. The defendant may be eligible for the 'safety valve' provision in 18 U.S.C. § 3553(f) and U.S.S.G. § 5C1.2 (effective September 23, 1994) if the Court finds, at sentencing, that the defendant does not have more than one criminal history point, did not use violence or possess a firearm, did not have an aggravating role, has truthfully provided information to the government about the relevant conduct, and the offense did not result in death or permanent injury. In such case, the mandatory minimum prison term will not apply.

Impact of the Plea Agreement

69. The probation office concurs with the plea agreement stipulations.

Supervised Release

70. **Statutory Provisions:** A term of at least 4 years supervised release is required if a sentence of imprisonment is imposed, pursuant to 21 U.S.C. § 841(b)(1)(B). Presuming the Court will rule that the defendant is eligible for the benefits of 18 U.S.C. § 3553(f), the mandatory minimum term of supervised release under Title 21 is not applicable and the statutory exposure reverts to not more than 5 years under 18 U.S.C. § 3583(b)(1). For offenses committed after September 13, 1994, the defendant must submit to one drug test within 15 days after commencing supervised release and at least 2 periodic tests thereafter, unless the Court determines, based on reliable information, that there is a low risk of future substance abuse, pursuant to 18 U.S.C. § 3583(d).

71. **Guideline Provisions:** The guideline range for a term of supervised release is 2 to 5 years, pursuant to U.S.S.G. § 5D1.2(a) and Application Note 2 ('safety valve'). If a sentence of imprisonment of one year or less is imposed, a term of supervised release is not required but is optional, pursuant to U.S.S.G. § 5D1.1(b). Supervised release is required if the Court imposes a term of imprisonment of more than one year, unless a departure is granted in accordance with the Application Notes of U.S.S.G. §§ 5D1.1 and 5D1.2.

Probation

72. **Statutory Provisions:** The defendant is not eligible for probation because the instant offense is one for which probation has been expressly precluded by statute. 18 U.S.C. § 3561(a)(2) and 21 U.S.C. § 841(b)(1)(B).

73. **Guideline Provisions:** The defendant is not eligible for probation because the instant offense is one for which probation has been expressly precluded by statute. U.S.S.G. § 5B1.1(b)(2).

Possible Special Conditions

74. Pursuant to the provisions of 18 U.S.C. §§ 3563 and 3583, and U.S.S.G. §§ 5B1.3 and 5D1.3, with regard to the special conditions of probation and supervised release, respectively, the Court has the discretion to impose special conditions of supervision to the extent that such conditions are reasonably related to the factors set forth in 18 U.S.C. §§ 3553(a)(1) and (a)(2) and to the extent that such conditions involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in 18 U.S.C. § 3553(a)(2). The special conditions that may be imposed at sentencing are listed in Appendix A of this report.

DNA Collection

75. Prior legislation in 2000 and 2001 (Public Law Nos. 106-546 and 107-56) amended 18 U.S.C. §§ 3563(a), 3583(d), and 4209 to require persons convicted of certain current or prior federal offenses to cooperate in the collection of a DNA sample. Public Law No. 108-405 (October 30, 2004) amended 42 U.S.C. § 14135a(d)(1) to expand the list of qualifying federal offenses to include any felony, any offense under Chapter 109A of Title 18, any crime of violence (as defined in 18 U.S.C. § 16), and any attempt or conspiracy to commit any of the above offenses. The law amended 10 U.S.C. § 1565(d) to expand the list of qualifying military offenses to include any offense under the Uniform Code of Military Justice for which a sentence of confinement of more than one year can be imposed, and any other offense under the Uniform Code of Military Justice that is comparable to a qualifying federal offense. Cooperation in the collection of a DNA sample is a mandatory condition of community supervision unless a sample has been secured by the U.S. Bureau of Prisons during a term of imprisonment. Failure to cooperate in the collection of a DNA sample is a Class A misdemeanor, pursuant to 42 U.S.C. § 14135a(a)(5).

Fines

76. **Statutory Provisions:** The maximum fine is $5,000,000 pursuant to 21 U.S.C. § 841(b)(1)(B), or twice the gain or loss caused by the offense, whichever is greater, pursuant to 18 U.S.C. § 3571. The Criminal Fine Improvement Act of 1987 is applicable. Any fine exceeding $2,500, not satisfied within 15 days, will be charged interest at a rate determined by the U.S. Treasury auctions. If a defendant is unable to pay interest, the Court may waive the interest, limit the total interest to a specific dollar amount, or limit the time of interest accrual. See 18 U.S.C. § 3612(f). The liability to pay a fine terminates the later of 20 years from the entry of judgment or 20 years after release from imprisonment. See 18 U.S.C. § 3613(b). Fine payments, as well as the special assessment, should be made payable to the U.S. Treasury and forwarded to the Clerk of the Court. A special assessment of $100 is mandatory and due at sentencing, pursuant to 18 U.S.C. § 3013.

77. **Guideline Provisions:** The fine range for the instant offense is from $7,500 to $5,000,000, pursuant to U.S.S.G. §§ 5E1.2(c)(3) and (c)(4). In determining the amount of the fine, the Court shall consider any pertinent, equitable considerations, such as the need for the total sentence to reflect the seriousness of the offense, the defendant's ability to pay and any collateral consequences, any restitution ordered, and previous fines for similar offenses. The Court may also consider the expected costs to the government of any term of imprisonment or supervision in determining the total fine, pursuant to U.S.S.G. § 5E1.2(d). In the latter instance, the most recent advisory from the Administrative Office of the U.S. Courts, dated April 10, 2012, suggests that a monthly cost of $2,407.78 be used for imprisonment, $2,180.27 monthly for a halfway house, and a monthly cost of $286.11 for supervision.

Restitution

78. The Community Restitution provisions of the Mandatory Restitution Act of 1996, which provide for discretionary restitution to the community for certain drug offenses occurring on or after November 1, 1997 are not applicable in this case, because the statute of conviction is not included in this provision. 18 U.S.C. § 3663(c).

PART E. FACTORS THAT MAY WARRANT DEPARTURE

79. The probation officer has not identified any mitigating or aggravating circumstances concerning the offense or the offender which would warrant a departure from the guideline range.

PART F. FACTORS THAT MAY WARRANT A SENTENCE OUTSIDE OF THE ADVISORY GUIDELINE SYSTEM

80. Pursuant to 18 U.S.C. § 3553(a)(1) through (7), the following factors are to be considered in imposing a sentence: the nature and circumstances of the offense and the history and characteristics of the defendant; the need for the sentence imposed to satisfy the statutory purposes of sentencing; the kinds of sentences available; the applicable guidelines; pertinent Sentencing Commission policy statements; the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and the need to provide restitution. Available information concerning these factors is contained throughout the presentence report.

Respectfully submitted,

WILFREDO TORRES
Chief U.S. Probation Officer

By: _____
JANE PROBATION OFFICER
Senior U.S. Probation Officer

/jmy

Approved:

_____ _____
SUPERVISOR Date
Supervising U.S. Probation Officer

APPENDIX A

U.S. Probation Office - District of New Jersey
Special Conditions of Supervision That May Be Imposed at Sentencing

ALCOHOL/DRUG TESTING AND TREATMENT

You shall refrain from the illegal possession and use of drugs, including prescription medication not prescribed in your name, and the use of alcohol, and shall submit to urinalysis or other forms of testing to ensure compliance. It is further ordered that you shall submit to evaluation and treatment, on an outpatient or inpatient basis, as approved by the U.S. Probation Office. You shall abide by the rules of any program and shall remain in treatment until satisfactorily discharged by the Court. You shall alert all medical professionals of any prior substance abuse history, including any prior history of prescription drug abuse. The Probation Office shall supervise your compliance with this condition.

MENTAL HEALTH TREATMENT

You shall undergo treatment in a mental health program approved by the United States Probation Office until discharged by the Court. As necessary, said treatment may also encompass treatment for gambling, domestic violence and/or anger management, as approved by the United States Probation Office, until discharged by the Court. The Probation Office shall supervise your compliance with this condition.

NEW DEBT RESTRICTIONS

You are prohibited from incurring any new credit charges, opening additional lines of credit, or incurring any new monetary loan, obligation, or debt, by whatever name known, without the approval of the U.S. Probation Office. You shall not encumber or liquidate interest in any assets unless it is in direct service of the fine and/or restitution obligation or otherwise has the expressed approval of the Court.

SELF-EMPLOYMENT/BUSINESS DISCLOSURE

You shall cooperate with the U.S. Probation Office in the investigation and approval of any position of self-employment, including any independent, entrepreneurial, or freelance employment or business activity. If approved for self-employment, you shall provide the U.S. Probation Office with full disclosure of your self-employment and other business records, including, but not limited to, all of the records identified in the Probation Form 48F (Request for Self Employment Records), or as otherwise requested by the U.S. Probation Office.

COOPERATION WITH THE INTERNAL REVENUE SERVICE

You are to fully cooperate with the Internal Revenue Service by filing all delinquent or amended returns within six months of the sentence date and to timely file all future returns that come due during the period of supervision. You are to properly report all correct taxable income and claim only allowable expenses on those returns. You are to provide all appropriate documentation in support of said returns. Upon request, you are to furnish the Internal Revenue Service with information pertaining to all assets and liabilities, and you are to fully cooperate by paying all taxes, interest and penalties due, and otherwise comply with the tax laws of the United States.

SEX OFFENDER REGISTRATION

At the commencement of supervision, you shall register with the state sex offender registration agency in the State of New Jersey and any state where you reside or are employed, carry on a vocation, or are a student, as directed by the U.S. Probation Office.

COMPUTER MONITORING

You shall submit to an initial inspection by the U.S. Probation Office, and to any unannounced examinations during supervision, of your computer equipment. This includes, but is not limited to, personal computer, personal digital assistants, entertainment consoles, cellular telephones, and/or any electronic media device which is owned or accessed by you. You shall allow the installation on your computer of any hardware or software systems which monitor computer use. You shall pay the costs of the computer monitoring program. You shall abide by the standard conditions of computer monitoring. Any dispute as to the applicability of this condition shall be decided by the Court.

DENIAL OF COMPUTER

You shall not possess, procure, purchase or otherwise obtain access to any form of computer network, bulletin board, Internet, or exchange format involving computers unless specifically approved by the U.S. Probation Office. Any dispute as to the applicability of this condition shall be decided by the Court.

(In accordance with Third Circuit case law, this condition shall only be recommended for offenses that involve the following statutes: 18 2241, 2242, 2243(a) & (b), 2244, 2421, 2422, 2423, 2325, 2251, 2260(b), 2251(a), 2252(A)(g), 2252(B) & (C), 1591, 1460, 1462, 1463, 1465, 1470, and 8 1328).

RESTRICTED CONTACT WITH MINORS

With the exception of brief, unanticipated and incidental contacts, you shall not associate with children under the age of 18, except for family members or children in the presence of an adult who has been approved by the probation officer. You shall not obtain employment or perform volunteer work which includes, as part of its job/work description, contact with minor children, without the expressed approval of the U.S. Probation Office. You shall not maintain, within your residence or within any outside establishment within your control or custody, a collection of films, slides, pictures, tapes, videotapes or other form of pictorial representation whose subject matter involves minor children of either sex and can be deemed to be pornographic. The probation office shall have the right of reasonable search of your person and residence, or any other establishment within your custody or control, and shall, if necessary, request the assistance of other law enforcement personnel to enforce the provisions of this special condition.

POLYGRAPH EXAMINATION

You shall submit to an initial polygraph examination and subsequent maintenance testing, at intervals to be determined by the Probation Officer, to assist in treatment, planning, and case monitoring. You will be required to contribute to the costs of services rendered in an amount to be determined by the Probation Officer, based on ability to pay or availability of third-party payment.

LOCATION MONITORING PROGRAM

You are to participate in the Location Monitoring Program. You shall be confined to your residence for a period of ___ months commencing at the direction of the U.S. Probation Office. You shall be required to be at this residence at all times except for approved absences for gainful employment, community service, religious services, medical care, educational or training programs and at other such times as may be specifically authorized by the U.S. Probation Office. You shall wear a Location Monitoring device and follow all location monitoring procedures. You shall permit the Probation Officer access to the residence at all times and maintain a telephone at the residence without any custom services or portable, cordless equipment. You shall comply with any other specific conditions of home confinement as the Court may require. You shall pay all the costs associated with the Location Monitoring Device. (Or waive). The U.S. Probation Office may use less restrictive location monitoring technology if the U.S. Probation Office determines that a less restrictive device is available and appropriate.

COOPERATION WITH IMMIGRATION AND CUSTOMS ENFORCEMENT

You shall cooperate with Immigration and Customs Enforcement to resolve any problems with your status in the United States. You shall provide truthful information and abide by the rules and regulations of Immigration and Customs Enforcement. If deported, you shall not re-enter the United States without the written permission of the Attorney General. If you re-enter the United States, you shall report in person to the nearest U.S. Probation Office within 48 hours.

PROHIBITIONS ON GANG/CRIMINAL ASSOCIATIONS

You shall refrain from associating with, or being in the company of, any members of any street gang, outlaw motorcycle gang, traditional or non-traditional organized crime group, or any other identified threat group. You shall be restricted from frequenting any location where members of said organizations are known to congregate or meet. You shall not have in your possession any item or paraphernalia which has any significance or is evidence of affiliation with said organizations.

GAMBLING RESTRICTIONS AND REGISTRATION ON EXCLUSION LISTS

You shall refrain from all gambling activities, legal or otherwise, to include the purchase or receipt of lottery tickets. You shall register on the self-exclusion lists maintained by the New Jersey Casino Control Commission and Racetrack Commission within 60 days of the commencement of supervision and remain on these lists for the duration of supervision. The Probation Office shall supervise your compliance with this condition.

RESTRICTIONS FROM ENTERING GAMBLING ESTABLISHMENTS

You shall not enter any gambling establishment without the permission of the U.S. Probation Office and/or the Court.

RESIDENTIAL REENTRY CENTER PLACEMENT

You shall reside for a period of ___ months in a community corrections center, halfway house or similar residential facility and shall observe all the rules of that facility. You shall be eligible for weekend privileges. (Or deny). You shall pay subsistence as required by the program.

COMMUNITY SERVICE

You shall contribute ___ hours of community service work over a period of ___ or less, from the date supervision commences. Such service shall be without compensation, with the specific work placement to be approved by the U.S. Probation Office.

RESTRICTIONS FROM ENTERING GATEWAY NATIONAL PARK

You are to refrain from entering Gateway National Park while on supervision.

(Revised September 13, 2010)

ADDENDUM TO THE PRESENTENCE REPORT

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY
UNITED STATES V. JOE SMITH, DOCKET NO. [redacted]001

Any objection letters received by this office accompany the presentence report.

OBJECTIONS

By the Government

In an email received on August 3, 2012, the government affirmed it has no objections to the presentence report.

By the Defendant

In a letter dated August 2, 2012, defense counsel submitted no guideline objections and any non-guideline objections/revisions have been incorporated into the body of the final presentence report.

Respectfully submitted,

WILFREDO TORRES
Chief U.S. Probation Officer

By: _____
JANE PROBATION OFFICER
Senior U.S. Probation Officer

/jmy

Approved:

_____ _____
SUPERVISOR Date
Supervising U.S. Probation Officer

Md. CRIMINAL PROCEDURE Code Ann. § 14-102 (Copy w/ Cite) Pages: 3

Md. CRIMINAL PROCEDURE Code Ann. § 14-102

Annotated Code of Maryland

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*** Current through all Chapters Effective January 1, 2013, of the 2013 General Assembly Regular Session, First Special Session, and Second Special Session ***

CRIMINAL PROCEDURE
TITLE 14. OFFICE OF THE STATE PROSECUTOR

Md. CRIMINAL PROCEDURE Code Ann. § 14-102 (2012)

§ 14-102. Office of the State Prosecutor

(a) Established. --

(1) There is an Office of the State Prosecutor.

(2) The Office of the State Prosecutor is an independent unit in the Office of the Attorney General.

(b) Eligibility. --

(1) An individual is eligible to be the State Prosecutor only if the individual:

(i) executes an affidavit that the individual will not accept appointment to, or be a candidate for, a State or local office during the period of service as the State Prosecutor and for at least 3 years immediately after the individual last serves as the State Prosecutor; and

(ii) has lawfully and actively practiced law in the State for at least 5 years.

(2) The State Prosecutor shall renew the affidavit every 2 years during the period of service.

(3) A failure to renew the affidavit under this subsection shall subject the State Prosecutor to removal from office under this section.

(c) Nomination; appointment; tenure. --

(1) The State Prosecutor shall be:

(i) nominated by the Commission; and

(ii) appointed by the Governor with the advice and consent of the Senate.

(2) The term of the State Prosecutor is 6 years.

(3) At the end of a term, the State Prosecutor continues to serve until a successor is appointed and qualifies.

(d) Removal. -- Only on the recommendation of the Commission, the Governor may remove the State Prosecutor for:

(1) misconduct in office;

(2) persistent failure to perform the duties of the office; or

(3) conduct prejudicial to the proper administration of justice.

(e) Salary. -- The State Prosecutor is entitled to the salary provided in the State budget, but not less than the salary of a judge of a circuit court.

HISTORY: SG § 9-1201; 2008, ch. 15, § 2.

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Md. CRIMINAL PROCEDURE Code Ann. § 14-103

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CRIMINAL PROCEDURE
TITLE 14. OFFICE OF THE STATE PROSECUTOR

Md. CRIMINAL PROCEDURE Code Ann. § 14-103 (2012)

§ 14-103. State Prosecutor Selection and Disabilities Commission

(a) Established. -- There is a State Prosecutor Selection and Disabilities Commission.

(b) Membership. -- The Commission consists of:

(1) the Attorney General; and

(2) six individuals appointed by the Governor as follows:

(i) two individuals shall be appointed from a list of two or more nominees submitted by the President of the Senate:

1. only one of the individuals appointed shall be a lawyer; and

2. none of the nominees may be a member of the General Assembly or a full-time State employee;

(ii) two individuals shall be appointed from a list of two or more nominees submitted by the Speaker of the House of Delegates:

1. only one of the individuals appointed shall be a lawyer; and

2. none of the nominees may be a member of the General Assembly or a full-time State employee;

(iii) one individual who:

1. shall be appointed from a list of one or more nominees submitted by the Board of Governors of the Maryland State Bar Association; and

2. is a lawyer admitted to practice law in the State; and

(iv) one individual who:

1. shall be appointed from a list of one or more nominees submitted by the governing

board of the Maryland State's Attorneys Association; and

2. is a State's Attorney at the time of appointment and throughout the individual's term on the Commission.

(c) Appointment. --

(1) The Governor shall appoint the members of the Commission from the nominees submitted to the Governor under this section.

(2) The Governor may reject an individual as a nominee only for cause.

(3) If the Governor rejects an individual as a nominee, the Governor shall request the appropriate nominating authority to submit another nominee.

(d) Tenure. --

(1) The term of an appointed member is 4 years.

(2) The terms of appointed members are staggered as required by the terms in effect for members on October 1, 2008.

(3) An appointed member serves until a successor is appointed and qualifies.

(4) An appointed member is eligible for reappointment.

(e) Chair. -- From among the members, the Governor shall designate the chair of the Commission for the period that the Governor determines.

(f) Vacancies. -- A vacancy that occurs on the Commission shall be filled by the Governor in the same manner as provided for appointments in this section.

(g) Compensation and reimbursement for expenses. -- A member of the Commission:

(1) may not receive compensation for serving on the Commission; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

HISTORY: SG § 9-1211; 2008, ch. 15, § 2.

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CRIMINAL PROCEDURE
TITLE 14. OFFICE OF THE STATE PROSECUTOR

Md. CRIMINAL PROCEDURE Code Ann. § 14-104 (2012)

§ 14-104. Filling vacancies in Office of State Prosecutor

(a) Recommendations. -- On notification by the Governor that a vacancy exists or is about to occur in the position of State Prosecutor, the Commission shall:

(1) seek and review applications of proposed nominees;

(2) notify and request recommendations from the Maryland State Bar Association; and

(3) seek recommendations from members of the Commission and interested citizens and groups.

(b) Nominations. -- The Commission shall:

(1) interview and evaluate each eligible applicant; and

(2) nominate to the Governor, on a vote taken by secret ballot, one or more individuals whom a majority of the authorized membership of the Commission finds to be legally and professionally qualified.

(c) Report to Governor. -- The Commission shall report, in writing, to the Governor the name of the individual or individuals it nominates within 70 days after notification that a vacancy exists or is about to occur.

(d) Rejection of nominee. --

(1) (i) The Governor may reject a nominee for cause.

(ii) If a nominee is rejected for cause, the Commission shall submit another nominee.

(2) If the Governor rejects a nominee:

(i) the Governor shall send to the Commission a written statement that contains the reasons for the rejection; and

(ii) a copy of the statement of rejection shall be furnished to the nominee.

(3) The statement shall be confidential and privileged, unless the privilege is deemed waived by the Commission by the acts of the nominee in presenting to the public the reason for the rejection.

(4) The Commission may make the statement public.

(e) Time of appointment or rejection. -- The Governor shall exercise the power of appointment or rejection within 30 days after receipt of the Commission's report.

HISTORY: SG § 9-1212; 2008, ch. 15, § 2.

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CRIMINAL PROCEDURE
TITLE 14. OFFICE OF THE STATE PROSECUTOR

Md. CRIMINAL PROCEDURE Code Ann. § 14-105 (2012)

§ 14-105. Reprimand or removal

(a) Authority of Commission. -- The Commission may reprimand or recommend to the Governor the removal of the State Prosecutor if, after a hearing, the Commission finds that the State Prosecutor is guilty of:

(1) misconduct in office;

(2) persistent failure to perform the duties of the office; or

(3) conduct prejudicial to the proper administration of justice.

(b) Confidential and privileged proceedings and evidence. --

(1) Except as provided in paragraph (2) of this subsection, the proceedings, testimony, and other evidence before the Commission are confidential and privileged.

(2) On taking final action, the Commission may make its order and the proceedings, testimony, and other evidence public.

(c) Investigations; hearings. --

(1) On complaint or on its own initiative, the Commission may investigate allegations against the State Prosecutor that may warrant removal or reprimand.

(2) The Commission may:

(i) conduct hearings;

(ii) administer oaths and affirmations;

(iii) issue process to compel the attendance of witnesses and the production of evidence; and

(iv) require a person to testify and produce evidence by granting the person immunity from prosecution, penalty, or forfeiture.

HISTORY: SG § 9-1213; 2008, ch. 15, § 2.

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CRIMINAL PROCEDURE
TITLE 14. OFFICE OF THE STATE PROSECUTOR

Md. CRIMINAL PROCEDURE Code Ann. § 14-106 (2012)

§ 14-106. General powers and duties of State Prosecutor

The State Prosecutor has the powers and duties established under §§ 14-107 through 14-111 of this title.

HISTORY: SG § 9-1202; 2008, ch. 15, § 2.

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CRIMINAL PROCEDURE
TITLE 14. OFFICE OF THE STATE PROSECUTOR

Md. CRIMINAL PROCEDURE Code Ann. § 14-107 (2012)

§ 14-107. Investigations

(a) In general. --

(1) Except as provided in paragraph (2) of this subsection, the State Prosecutor may investigate:

(i) a criminal offense under the State election laws;

(ii) a criminal offense under the State Public Ethics Law;

(iii) a violation of the State bribery laws in which an official or employee of the State, a political subdivision of the State, or a bicounty or multicounty unit of the State was the offeror, offeree, or intended offeror or offeree of a bribe;

(iv) an offense constituting criminal malfeasance, misfeasance, or nonfeasance in office committed by an officer or employee of the State, of a political subdivision of the State, or of a bicounty or multicounty unit of the State; and

(v) a violation of the State extortion, perjury, or obstruction of justice laws related to an activity described in this paragraph.

(2) The State Prosecutor may not investigate an offense alleged to have been committed by the State Prosecutor or a member of the State Prosecutor's staff.

(3) The State Prosecutor may investigate an alleged offense under paragraph (1) of this subsection on the State Prosecutor's own initiative or on request of:

(i) the Governor;

(ii) the Attorney General;

(iii) the General Assembly;

(iv) the State Ethics Commission; or

(v) a State's Attorney.

(4) An individual who is advised by the State Prosecutor that the individual is under investigation under paragraph (1)(iv) of this subsection may release this information to the public, as well as any results of the investigation that pertain to the individual.

(b) By request only. -- On request of the Governor, the Attorney General, the General Assembly, or a State's Attorney, the State Prosecutor may investigate criminal activity that is committed:

(1) partly in the State and partly in another jurisdiction; or

(2) in more than one political subdivision of the State.

HISTORY: SG § 9-1203; 2008, ch. 15, § 2.

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CRIMINAL PROCEDURE
TITLE 14. OFFICE OF THE STATE PROSECUTOR

Md. CRIMINAL PROCEDURE Code Ann. § 14-108 (2012)

§ 14-108. Reports

(a) Report of alleged violations. --

(1) Except as provided in paragraph (2) of this subsection, if the State Prosecutor finds that an alleged violation of the criminal law set forth in § 14-107 of this title has occurred, the State Prosecutor shall make a confidential report of the findings and any recommendations for prosecution to the Attorney General and the State's Attorney for the county in which jurisdiction exists to prosecute the matter.

(2) A report of the findings and recommendations regarding allegations of offenses committed by a State's Attorney need not be made to that State's Attorney.

(b) Report of no violation or no recommendation for prosecution. --

(1) If the State Prosecutor finds that there has not been a violation of criminal law or the State Prosecutor does not recommend prosecution, the State Prosecutor shall report the findings to the person who requested the investigation.

(2) If the General Assembly requested the investigation, the report shall be made to the President of the Senate and the Speaker of the House of Delegates.

(3) On request of the person who was the subject of the investigation, the report shall be made available to the public as soon as possible.

HISTORY: SG § 9-1204; 2008, ch. 15, § 2.

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CRIMINAL PROCEDURE
TITLE 14. OFFICE OF THE STATE PROSECUTOR

Md. CRIMINAL PROCEDURE Code Ann. § 14-109 (2012)

§ 14-109. Prosecutions

(a) In general. --

(1) The State Prosecutor may prosecute a criminal offense set forth in the State Prosecutor's report of the findings and recommendations if, within 45 days after receipt of the report, the State's Attorney fails to file charges and begin prosecution in accordance with the recommendations.

(2) Notwithstanding paragraph (1) of this subsection, the State Prosecutor may immediately prosecute a criminal offense that is set forth in the State Prosecutor's report and that is alleged to have been committed by the State's Attorney.

(b) Appeals and postconviction proceedings. --

(1) The State Prosecutor shall represent the State in each appeal and postconviction proceeding that arises from a prosecution that the State Prosecutor conducts.

(2) Notwithstanding paragraph (1) of this subsection, the Attorney General may represent the State or assist the State Prosecutor:

(i) on the request of the State Prosecutor; or

(ii) as required by law in an appeal or collateral proceeding described in paragraph (1) of this subsection.

HISTORY: SG § 9-1205; 2008, ch. 15, § 2.

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CRIMINAL PROCEDURE
TITLE 14. OFFICE OF THE STATE PROSECUTOR

Md. CRIMINAL PROCEDURE Code Ann. § 14-110 (2012)

§ 14-110. Subpoena authority

(a) In general. -- The State Prosecutor has all the powers and duties of a State's Attorney, including the use of a grand jury in any county, when the State Prosecutor:

(1) investigates a case under § 14-107 of this title; or

(2) prosecutes a case under § 14-109 of this title.

(b) Authority to issue subpoena. --

(1) For the limited purpose of furthering an ongoing criminal investigation under § 14-107 of this title, the State Prosecutor may issue a subpoena to a person to produce telephone, business, governmental, or corporate records or documents.

(2) The subpoena may be served in the same manner as one issued by a circuit court.

(c) Right to counsel. --

(1) A person may have an attorney present during any contact with the State Prosecutor made under subsection (b) of this section.

(2) The State Prosecutor shall advise a person of the right to counsel when the subpoena is served.

(d) Failure to obey lawful subpoena. --

(1) (i) The State Prosecutor immediately may report the failure of a person to obey a lawfully served subpoena under subsection (b) of this section to the circuit court of the county having jurisdiction.

(ii) The State Prosecutor shall provide a copy of the subpoena and proof of service to the circuit court.

(2) After conducting a hearing at which the person who allegedly failed to comply with a subpoena issued under subsection (b) of this section has an opportunity to be heard and

represented by counsel, the court may grant appropriate relief.

(e) Recognized privilege or right not abrogated. -- This section does not allow the contravention, denial, or abrogation of a privilege or right recognized by law.

HISTORY: SG § 9-1206; 2008, ch. 15, § 2; ch. 500.

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CRIMINAL PROCEDURE
TITLE 14. OFFICE OF THE STATE PROSECUTOR

Md. CRIMINAL PROCEDURE Code Ann. § 14-111 (2012)

§ 14-111. Venue

The trial of a case that the State Prosecutor prosecutes in accordance with § 14-109 of this title shall take place before the court having jurisdiction in the county in which the offense was entirely or partly committed, subject to removal in accordance with the Maryland Rules.

HISTORY: SG § 9-1207; 2008, ch. 15, § 2.

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CRIMINAL PROCEDURE
TITLE 14. OFFICE OF THE STATE PROSECUTOR

Md. CRIMINAL PROCEDURE Code Ann. § 14-112 (2012)

§ 14-112. Budget and staff

(a) Budget. -- The budget of the State Prosecutor and the Office of the State Prosecutor shall be a part of the budget of the Office of the Attorney General.

(b) Staff. -- The State Prosecutor may appoint and employ the professional, investigative, and clerical staff provided in the State budget.

(c) Private practice of law prohibited. -- The State Prosecutor and the staff attorneys appointed by the State Prosecutor shall devote full time to their official duties and may not engage in the private practice of law.

(d) Use of services and personnel of other agencies. --

(1) To the extent practicable, the State Prosecutor shall use the services and personnel of:

(i) the Office of the Attorney General;

(ii) the Department of State Police; and

(iii) other State and law enforcement units.

(2) The units listed in paragraph (1) of this subsection shall cooperate, to the extent feasible, with the State Prosecutor and the State Prosecutor's staff.

HISTORY: SG § 9-1208; 2008, ch. 15, § 2.

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CRIMINAL PROCEDURE
TITLE 14. OFFICE OF THE STATE PROSECUTOR

Md. CRIMINAL PROCEDURE Code Ann. § 14-113 (2012)

§ 14-113. Meetings with Attorney General and State's Attorneys

The State Prosecutor shall meet and confer regularly with the Attorney General and the State's Attorneys.

HISTORY: SG § 9-1209; 2008, ch. 15, § 2.

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CRIMINAL PROCEDURE
TITLE 14. OFFICE OF THE STATE PROSECUTOR

Md. CRIMINAL PROCEDURE Code Ann. § 14-114 (2012)

§ 14-114. Annual report

The State Prosecutor shall submit an annual report on activities of the Office of the State Prosecutor that are not confidential to:

(1) the Governor;

(2) the Attorney General; and

(3) subject to § 2-1246 of the State Government Article, the General Assembly.

HISTORY: SG § 9-1210; 2008, ch. 15, § 2.

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Office of the Inspector General

Prepared for the Jordanian Anti-Corruption Study Tour

June 18, 2013

Edward L. Blansitt

Inspector General

What is an Inspector General?

An independent and objective individual who is responsible for overseeing the integrity and efficiency of operations for their specific agencies.

Responsibilities include:

- Ensuring that management used all funds available to their government agencies, including funds spent by outside entities awarded grants and contracts, in accordance with the laws and regulations.
- Receiving and evaluating concerns regarding **fraud, waste, abuse, and economy and efficiency** in certain government operations.
- Conducting either an audit or an investigation based on such concerns.

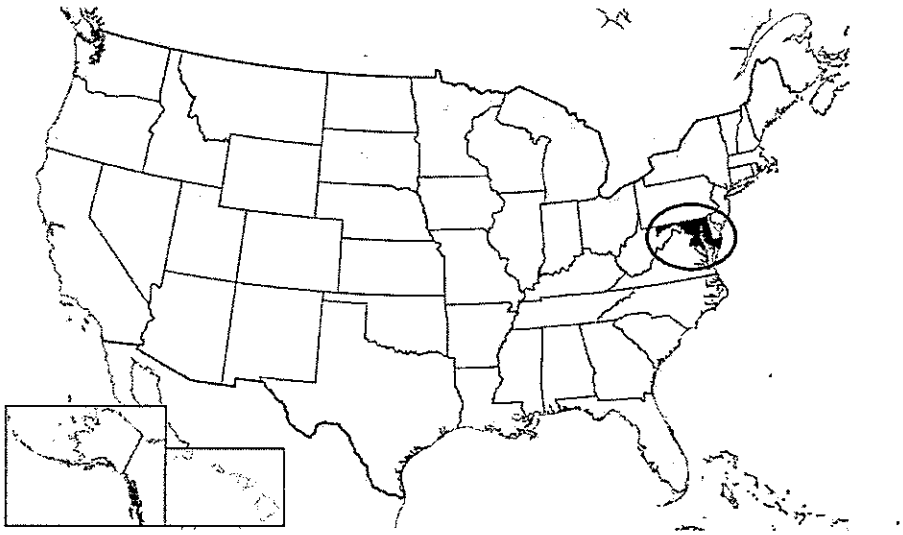
The specific authorities and responsibilities of each Inspector General vary and are specified in the laws that establish those positions.

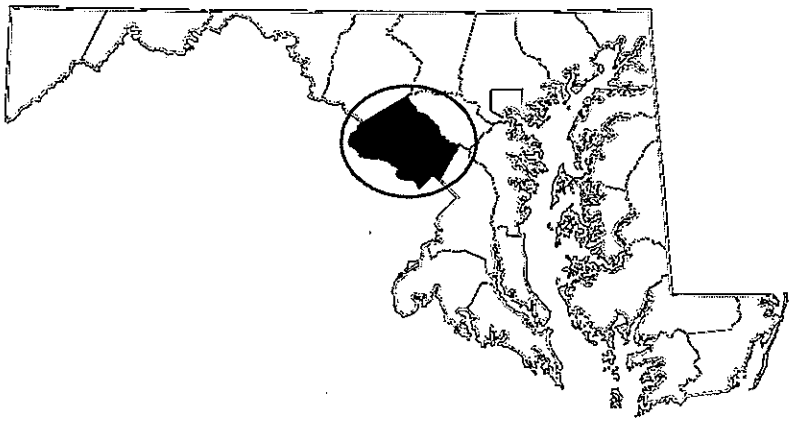
Fraud, Waste, and Abuse

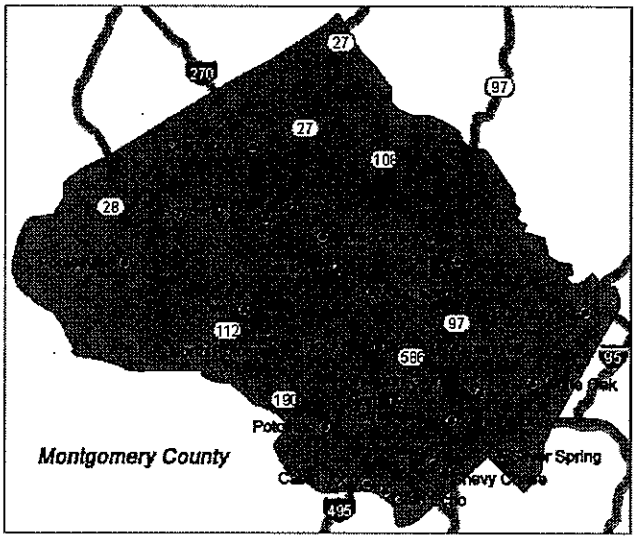
- **Fraud:** The misrepresentation of a material fact, knowingly or with reckless indifference to the truth, in order to obtain a benefit or payment to which one would normally not be entitled
- **Waste:** The negligent or extravagant expenditure of County funds, incurring of expenses, or misuse of County resources or property
- **Abuse:** The intentionally wrongful or improper use of County resources that can include the excessive or improper use of one's position, in a manner contrary to its rightful or legally intended use

Economy and Efficiency

- **Economy and Efficiency:** Using only those resources necessary to effectively accomplish tasks.



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Montgomery County

Types of Inspectors General

- **Federal:** 73 federal IGs, each overseeing a federal agency.

- **State:** At least 5 states and the District of Columbia have IGs, but Maryland does not. Some state agencies such as the State Department of Human Resources have an IG dedicated to oversight of that agency.

- **Local:** There are two local IGs in Maryland: One for Montgomery County, the other for Baltimore City.

Many state and local governments have similar positions with titles such as "Independent Auditor" rather than Inspector General.

Who We Are

- In 1997, the Montgomery County Council created the Office of Inspector General (OIG).

- The Inspector General is appointed by the County Council for a term of 4 years and may serve a maximum of two full terms.

- We serve as a "watchdog" to detect and prevent fraud, waste, and abuse and promote economy and efficiency in County government and County-funded agencies.

- Although appointed by the County Council, the Inspector General is solely responsible for choosing topics for review after carefully considering available resources and the mission of the Office.

- Authority and duties of the Office are found in Montgomery County Code §2-151.

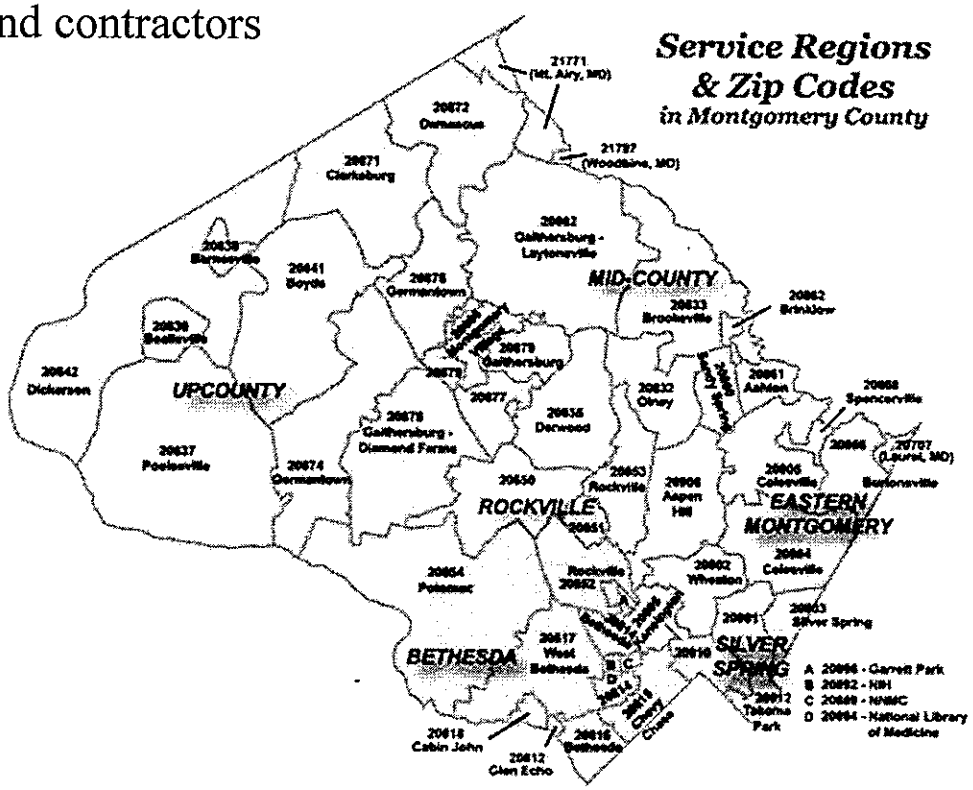
Our Mission

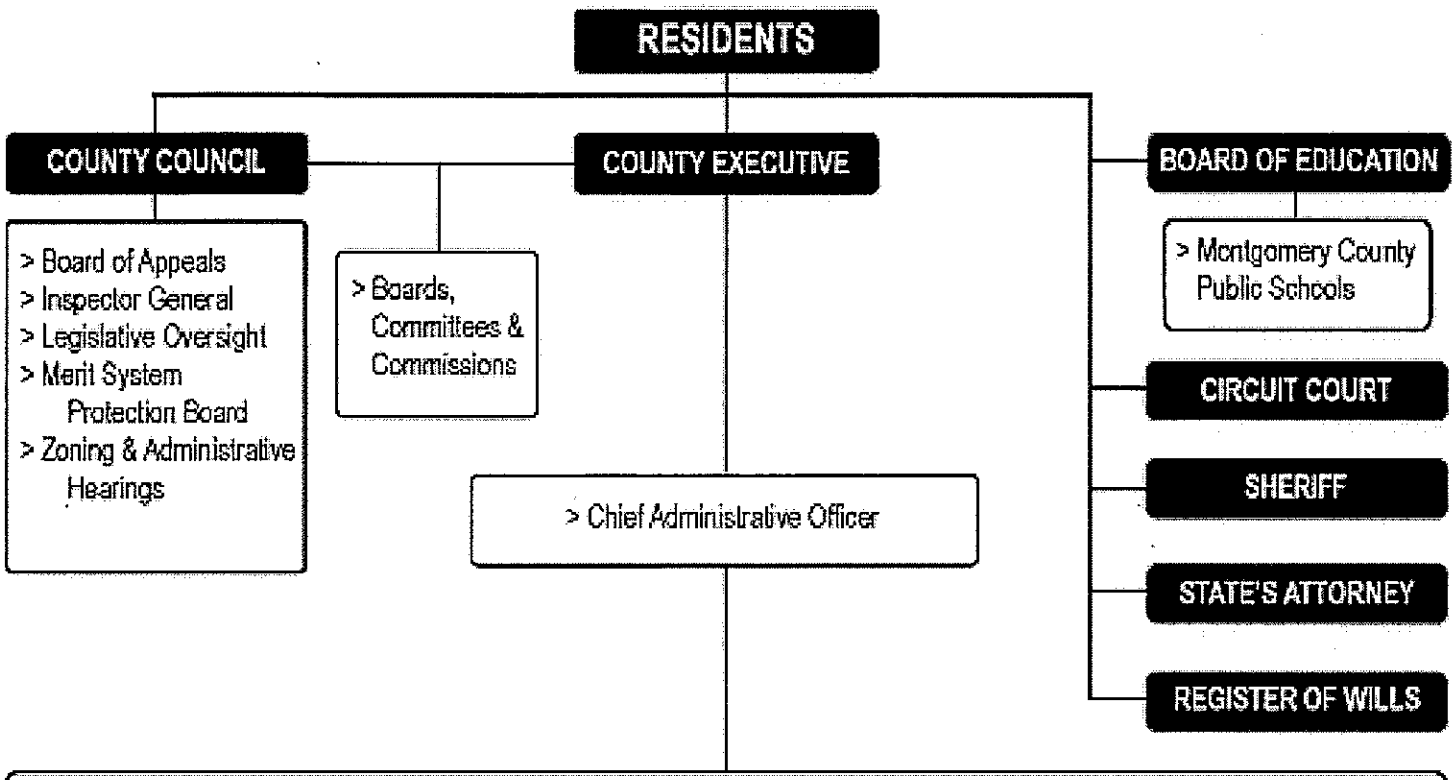
- Prevent and detect fraud, waste, and abuse
- Increase legal, fiscal, and ethical accountability
- Review efficiency and effectiveness of programs and activities of County government and independent County-funded agencies

Responsibilities of Montgomery County IG

- Responsible for oversight of the County government ,the County agencies, and the $4.8 billion they spend.

- Includes:
  - MC government agency employees
  - MC government taxpayer funds
  - federal and state funds provided to MC
  - MC contracts and contractors





Operational Departments

> Community Use of Public Facilities
> Consumer Protection
> Correction & Rehabilitation
> County Executive, Office of
> Economic Development
> Environmental Protection
> Fire & Rescue Service
> Health & Human Services
> Housing & Community Affairs
> Human Rights
> Libraries
> Liquor Control
> Permitting Services
> Police
> Recreation
> Regional Services Centers*
> Transportation
> Women, Commission for*

Administrative Departments

> County Attorney
> Ethics
> Finance
> General Services
> Human Resources
> Intergovernmental Relations
> Management & Budget
> Public Information
> Technology Services

Other Agencies

> Board of Elections
> District Court
> District of Columbia Water & Sewer Authority
> Housing Opportunities Commission
> Montgomery College
> Maryland-National Capital Park & Planning Commission
> Revenue Authority
> Washington Metropolitan Area Transit Authority
> Washington Suburban Sanitary Commission
> Washington Suburban Transit Commission

* Effective 7/1/2011 - Became part of the Community Engagement Cluster, which also includes the Office of Community Partnerships, the Gilchrist Center, and the Volunteer Center.

http://www.montgomerycountymd.gov/OIG/index.html

IG Authorities

- The IG is authorized to receive documents and information needed to carry out official duties.

- The IG is authorized to seek legal action, issue a subpoena, and administer an oath.

- The IG must comply with any public disclosures as required by federal or state law.

- The IG must report to the CAO, County Attorney, and Council an agency's failure to provide requested information.

Types of Issues

Contract or procurement fraud	Significant waste of County funds
Theft of County funds or property	Abuse of County position
Secret profits, kickbacks, or commissions	Serious misconduct
Workers' compensation or expense claims fraud	Computer misuse or crimes
Fraudulent travel/reimbursement claims or falsification of financial records	Whistleblower reprisal
Undisclosed conflict of interest	Offer, payment, or acceptance of bribes

OIG Fraud Hotline 240-777-7OIG (7644)
http://www.montgomerycountymd.gov/OIG/index.html

Non OIG Issues

- Day-to-day management issues
- Issues normally handled by the employmee complaint process
- Employee benefits and compensation questions or concerns
- Employment discrimination complaints

OIG Fraud Hotline 240-777-7OIG (7644)

report.fraud@montgomerycountymd.gov

What We Do

Audits

- Economy and Efficiency Reviews
- Program Integrity
- Internal/Management Controls
  - Policies and Procedures
- Make recommendations to promote accountability
- Notify and make recommendations to the Council and Executive regarding potentially serious problems in County programs/activities

Investigations

- Investigate credible complaints about violations of laws
  - Administrative laws
  - Criminal laws
- Report potential violations to law enforcement

The OIG must make all of the reports available to the public.

IG Work Plan and Annual Report

At the beginning of each term, the Inspector General must adopt and make public a four-year work plan and budget. The plan adopted by our office includes:

- Strategic Goals and Measures
- Major Challenges
- Plan Development
- OIG Short and Longer-term Action Plans
- Challenges Impacting OIG Success
- The planned activities include audits.
- Investigations are not planned in advance but receive high priority.

At the end of each fiscal year the Inspector General must present and make public a report of the accomplishments of the OIG during that year.

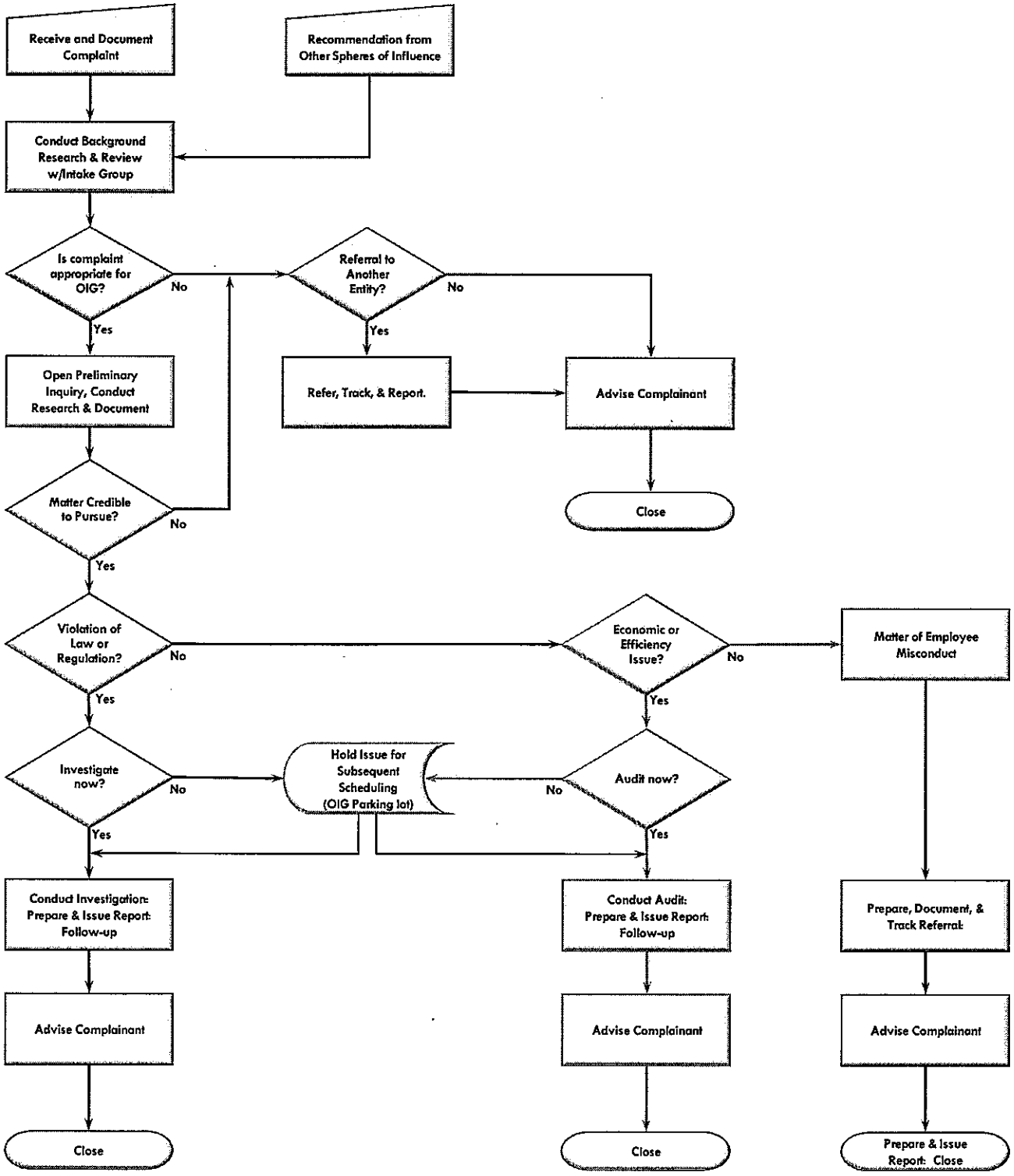
Identification of Projects

- How do we learn of potential violations of law and identify potential audit candidates?
    - Complaints from employees/taxpayers
    - Fraud Hotline (telephone, emails)
    - Newspaper articles
    - Letters to the County government
    - Advisory Group

OIG Advisory Group

- Provides objective and independent commentary to the OIG to assist the OIG in:
  - Developing annual plans for executing and reporting on audits and investigations
  - Determining position and skill needs of the office
  - Assessing the office's budgetary needs
- Composed of 5 to 7 County resident volunteers who are independently recognized community leaders
- The Inspector General selects the members of the Advisory Group
- Meets at least twice a year
- The members are free from any relationship that would interfere with the exercise of independent judgment as members of the Advisory Group
- Members serve one-year terms and no member's term will extend beyond the current Inspector General's tenure
- The Inspector General and the Deputy Inspector General serve as ex-officio members of the Advisory Group

Complaint Intake & Work Product Processing



Personnel and Staffing

Full Time:

- Edward L. Blansitt, III: Inspector General
- John H. Hummel: Deputy Inspector General
- Mollie N. Habermeier: Assistant Inspector General
- Michael B. Morgan: Assistant Inspector General

Part Time:

- Gary G. Weishaar: Assistant Inspector General
- Thomas Chase: Investigator

Temporary:

- Joanna Foronda: Legal Intern
- Scott Myers: Legal Intern
- Darshana Singh: Legal Intern
- Meredith Lerner: Intern

The OIG receives annual funding approved by the County Council.

Interaction with Law Enforcement

Refer evidence of criminal violations to the appropriate law enforcement agencies including:

- The Montgomery County police department
- The Montgomery County State's Attorney
- The Maryland State Prosecutor
- The Federal Bureau of Investigation
- The U.S. Secret Service

Recent IG Activity

- **Review of Fleet Management (Economy issue)**

The replacement cost to the County for automobiles and trucks in the fleet as of our audit was approximately $11 million, approximately 51% of the of non-public safety vehicles were due for replacement by the end of the next year. The County's system for assigning vehicles produced a high percentage of underutilized vehicles.

We recommended that the County avoid much of the new investment in fleet assets (we estimated $1.5 million) by applying a methodology for evaluating whether each vehicle is absolutely necessary for efficient operations and for determining the appropriate size and type of vehicle needed for the fleet.

We also found that not all County agencies maintain a log of each driver's license number and status; and review each driving record to identify suspensions or revocations. Failure to enforce compliance with policies pertaining to driving records and employee eligibility to operate County vehicles created an unnecessary vulnerability for the County.

We recommended that the County government ensure that personnel operating County vehicles are properly licensed and have maintained a safe driving record.

Recent IG Activity [continued]

- **Management of Purchase Cards**

We received allegations that Purchasing Cards (County credit-cards) of a small County department were misused. We questioned almost 45% of the transactions made with that department's Purchasing Cards, either because the transactions did not comply with the County's policies and procedures governing documentation of their use, or because the purchases and their purpose were questionable.

Management reviewed all of the transactions from September 2008 to December 2010 and verified the accuracy of payments. The County was reimbursed for the cost of questionable transactions determined by the to be non-compliant with County policies, procedures, or regulations.

Recent IG Activity [continued]

- **Report of Investigation: Administration of Montgomery County Department of Transportation Tree Planting Services Contracts (contract administration and potential violation of County Code)**

We received an allegation that a contractor had failed to comply with the terms of a contract and that the Contract Administrator had misused funds and mismanaged the contract. It was also alleged that the Contract Administrator initiated an action against the complainant, a contractor's employee who brought these concerns to our attention, in retaliation for disclosing information he reasonably believed to be gross mismanagement, or a waste of money. We found that the Contract Administrator did mismanage a tree planting services contract and misuse an arborist inspection contract. We estimated that if uncorrected, the program funds misused could be in excess of $180,000.

Evidence of the mismanagement included:

- Payment for services and materials that were improperly planted, damaged, or diseased and should not have been accepted.
- Payment for trees the tree planting services contractor unilaterally substituted that were not the cultivar specified in the contract.

We determined that the complainant's removal from employment resulted from his report of the Contract Administrator's mismanagement to the contractor who was his then employer, and the complainant's stated intent to report the alleged mismanagement to a higher authority in the County.

The Montgomery County Code has sections intended to prevent retaliation against contractors and employees for revealing information about fraud, waste, and or mismanagement, but these events did violate any section of the Code.

The Washington Examiner, "Montgomery County lawmaker pushes 'secret' contract with consultant", by Rachel Baye [edited]

County Councilwoman Valerie Ervin, D-Silver Spring, is lobbying for [a $1.3 million no-bid county] contract with real estate investor Chris McGoff, to "transform" the way the county greenlights developments. But several council members are raising their eyebrows at the fact that McGoff is also seeking approval to build dozens of townhouses -- and could directly benefit from changes he has proposed.

"They're not a neutral party," said County Councilman Hans Riemer, D-at large. "It would be easy to find a change management consultant that didn't have an economic interest that's contrary to the public interest."

Lawmakers have also criticized the secrecy shrouding the proposal, including closed-door meetings and the warning on the front of the proposal to not disclose it outside of the council.

"The secrecy around this is really weird," said County Councilman George Leventhal, D-at large. "We don't appropriate secret dollars, and we don't issue secret contracts."

McGoff proposed the contract through the Clearing Inc., his Washington-based consulting firm.

Meanwhile, he and residential real estate developer and broker Sterling Mehring are seeking county approval to build 39 townhomes next to Westfield Wheaton Mall.

With help from Ervin, McGoff has met with several County Council members in the last month to pitch a 14-to-15-month contract with the Clearing, multiple council sources said. If approved, the contract would grant the firm a hands-on role in shaping the county's planning processes, with the ability to "intervene" in decision-making, according to a written proposal obtained by *The Washington Examiner*.

The contract would cost the county $105,000 over the first two or three months and an additional $100,000 for each of the next 12 months.

The county would also have to hire employees to support the contract, said Riemer, who was briefed by Ervin and McGoff.

"[Ervin] insisted that it should be done rapidly, that it should be done in a hurry with [the current fiscal year's] dollars," Leventhal said. "The cost is out of this world."

Union Requests IG Investigate Possible Ethics Violations of Montgomery County Councilmember Valerie Ervin

January 4, 2013

UFCW Local 1994 MCGEO has made a formal request for County Inspector General Edward Blansitt to investigate possible ethics violations and conflict of interest in Ms. Ervin's dealings with real estate investor and developer Chris McGoff.

Ms. Ervin was pursuing a contract with Mr. McGoff's firm, The Clearing, Inc., to overhaul the planning and zoning process in the County. The contract would have cost the county $1.3 million in taxpayer funds if put in place, and clearly would have benefited Mr. McGoff in his real estate dealings. Ms. Ervin did not make her communications with Mr. McGoff public and her involvement with him was only recently revealed.

In 2009, Ms. Ervin said, "County taxpayers deserve accountability and transparency from county government," after she sponsored and passed a bill to enhance the county's ability to prosecute potential cases of "fraud, waste, and abuse by preventing potential conflicts of interest." (Montgomery County Government, press release, 11/17/2009.)

According to County ethics law:

Our system of representative government depends in part on the people maintaining the highest trust in their officials and employees. The people have a right to public officials and employees who are impartial and use independent judgment.

The confidence and trust of the people erodes when the conduct of County business is subject to improper influence or even the appearance of improper influence.

Local 1994 is asking the IG to investigate whether Ms. Ervin's activities in pushing for the single-source, no bid contract is a violation of county ethics code.

"Ms. Ervin is trying to underhandedly spend much-needed county funds to help a wealthy county developer," said UFCW Local 1994 President Gino Renne.

"Meanwhile, our members, many of whom work at the Park and Planning Commission, have faced years of austerity, gone years without a pay raise, seen increases in their health care costs. Ms. Ervin's back door maneuvering to have an outside contractor come in and write policy to the tune of $1.3 in taxpayer funds, aside from being unethical, is another smack in their face."

Response to the Municipal & County Government Employees Organization's Request for Investigation into an Alleged Violation of Ethics Law by a Member of County Council, January 31, 2013

This letter responds to your January 4, 2013 letter and our subsequent January 9, 2013 telephone conference in which you requested a formal investigation into violations of ethics law that you believe may have been committed by Councilmember Ervin. In my opinion, no investigation is warranted.

The specific concerns you expressed are that she 1) may have committed ethics violations in her dealings with a real estate developer who resides in her district, by pursuing a contract with that constituent's firm to overhaul the planning and zoning process in the County; 2) that the contract would have benefitted that constituent in his real estate dealings; and 3) that she did not make public her communications with the constituent.

As I believe you understand, at this point in time there is no contract in place between the County Council and any entity that would advise the Council on an overhaul of the planning and zoning process in the County. No Council action has been taken to approve such a contract, and no procurement action is in progress. A document developmed by The Clearing Inc. exists but was not submitted in response to any formal solicitation or procurement action.

The document, titled "Proposal…," contains a proposed timeline, performance period and pricing information, but is structured more as a concept paper than as a contract. It does not identify any specific process changes or actions that would benefit any developer, and would not appear to benefit one developer more than another.

If Councilmember Ervin promoted the concept because she believed it to be a good idea, or because her constituent wanted her help in presenting the concept to Councilmembers, such usual and customary services are not prohibited by the ethics law.

Questions?

Contact the OIG
240-777-8240

Email address:
IG@montgomerycountymd.gov

U.S. DEPARTMENT OF JUSTICE

Office of Professional Responsibility

(OPR)

June 20, 2013

Overseas Prosecutorial Development, Assistance and Training

Lyn Hardy

Senior Counsel , OPR

Washington, D.C.

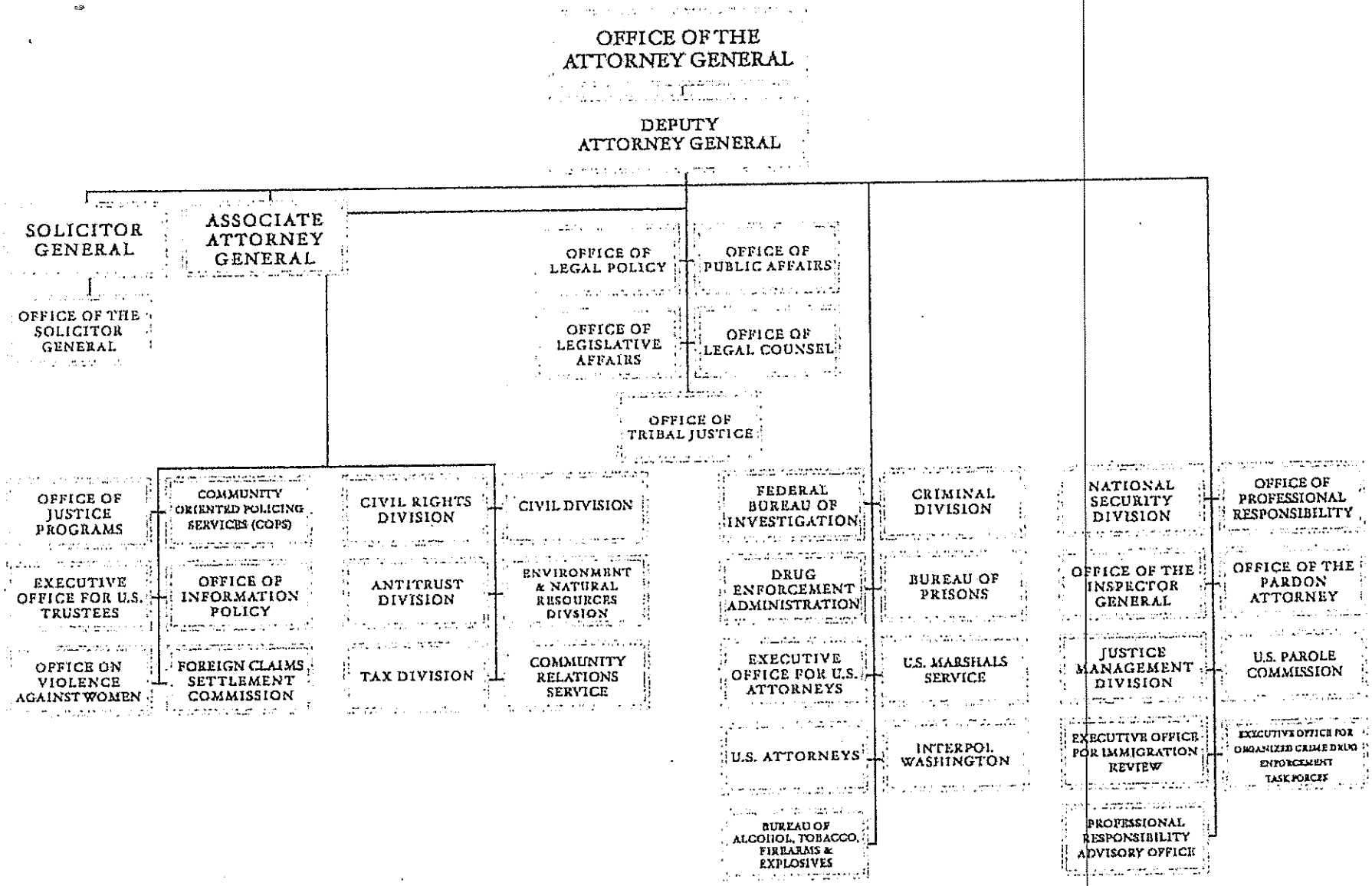
Lyn.Hardy@usdoj.gov

What is the Office of Professional Responsibility?

- The Department of Justice is the largest law enforcement agency in the world, with approximately 110,000 employees and 10,000 attorneys. Approximately 6,300 of the attorneys are criminal prosecutors.

- The Department has 93 United States Attorney's Offices nationwide and in U.S. Territories.

- Over the past 10 years, the Department has filed over 800,000 criminal cases involving more than 1 million defendants.



Approved by Date 11/26/12

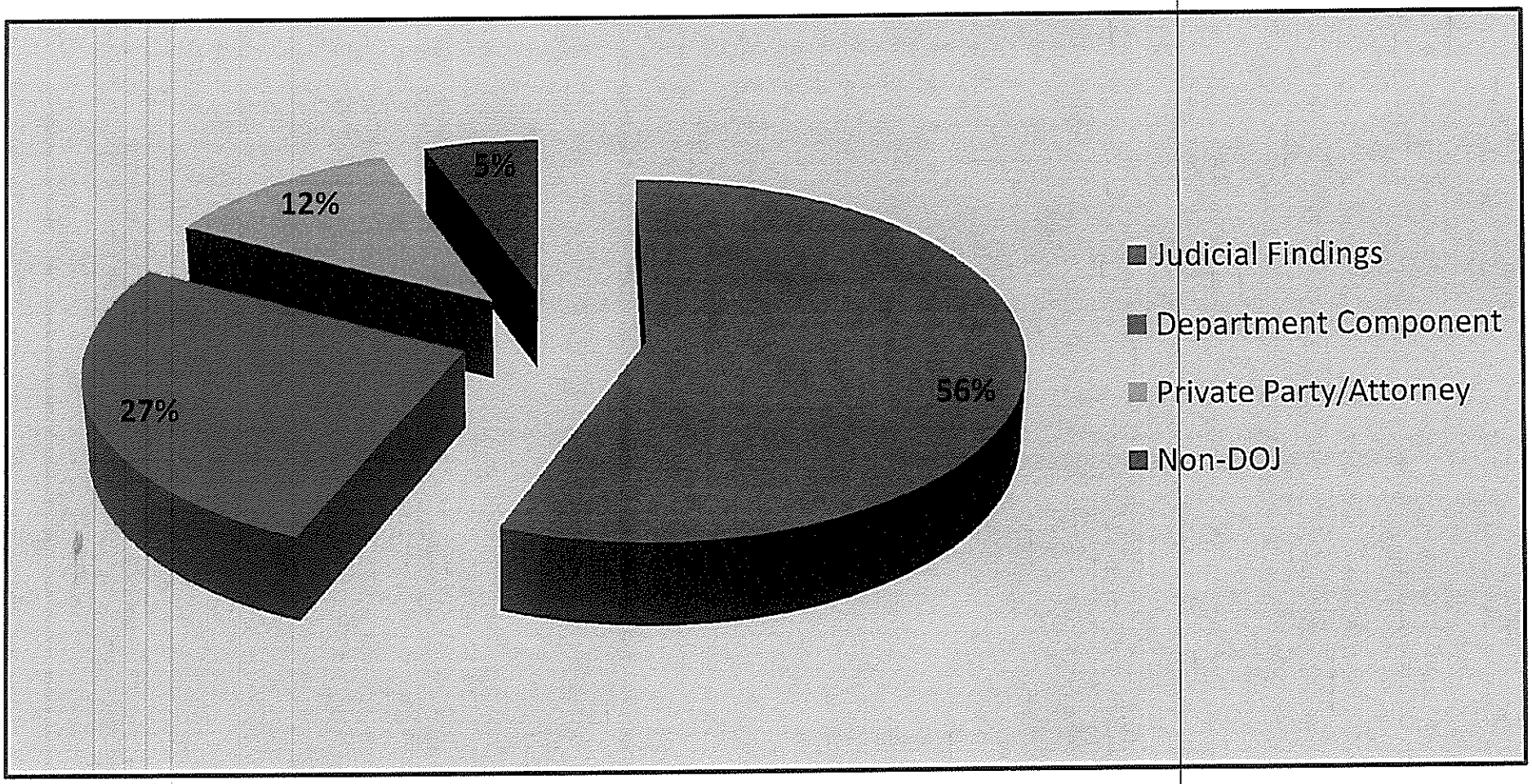
What is OPR?

- OPR is an office within the U.S. Department of Justice that reviews complaints of misconduct involving Department of Justice attorneys .

- Every Department attorney must follow Federal law and regulations, court rules and orders, the attorney's own state professional responsibility rules, and Department rules and policies.

- OPR receives a complaint when a Department attorney allegedly violates a rule, law, or court order.

Sources of Complaints in Investigations Opened Fiscal Year 2009 through Fiscal Year 2011



What is OPR?

- OPR has jurisdiction over all Department attorneys in the 50 United States and its territories (Guam, Mariana Islands, Virgin Islands, Puerto Rico, and the District of Columbia).

- OPR has jurisdiction over all Department components, including the 93 United States Attorney's Offices, USMS, ATF, DEA, and the FBI. In certain circumstances, OPR also has jurisdiction over FBI agents, DEA agents, and ATF agents if the allegations concerns an agent's involvement in litigation.

What is OPR?

- OPR ensures that Department attorneys act ethically and in compliance with applicable Rules of Professional Conduct.
- OPR also exonerates those who have been wrongly accused.
- OPR helps promote public confidence in the Federal criminal justice system.
- OPR helps maintain the high standards of its attorneys.

Overview of OPR's Work

- Once OPR receives a complaint, it opens a file and requests a written response from the subject attorney.

- OPR reviews the written response, relevant documents and any other information, and it interviews witnesses and subject attorneys. OPR also researches relevant law, rules, and Rules of Professional Conduct.

- OPR drafts a "report of investigation" that provides a full statement of the facts, the relevant law, the standards OPR uses for making its findings, and an analysis of its findings.

Overview of OPR's Work

For each allegation of misconduct, based on the facts and law, OPR will find that the Department attorney:

- Engaged in intentional professional misconduct: the attorney *knowingly* or *intentionally* violated a clear and unambiguous obligation or standard

- Engaged in reckless misconduct: the attorney acted in reckless disregard of a particular obligation or standard

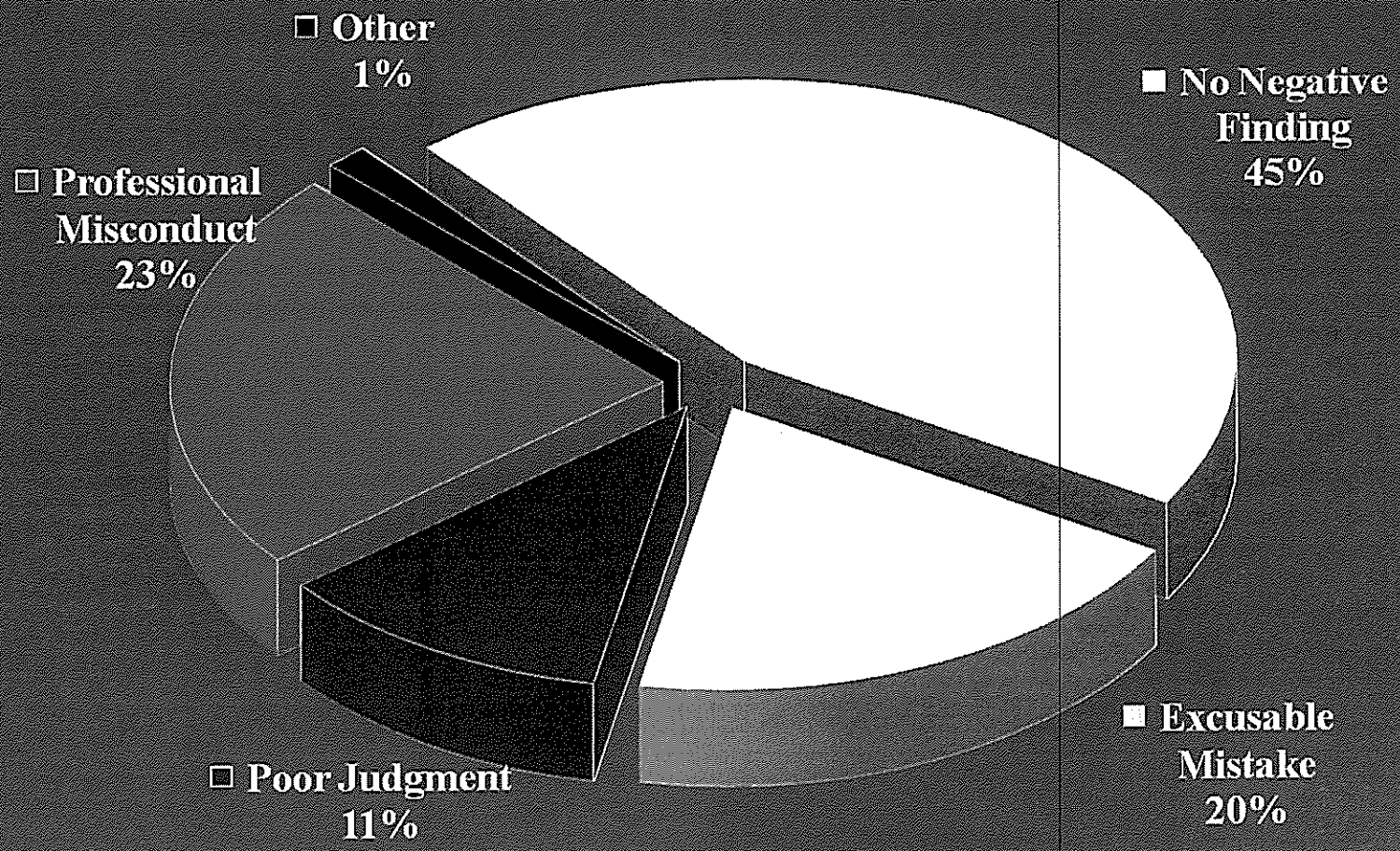
- Exercised poor judgment
- Made a mistake, or
- Acted appropriately

Top 6 Misconduct Allegations in Investigations Opened in FY 11

Misconduct Allegation	Number of Allegations	Percentage of Allegations in Investigations
Failure to comply with DOJ rules and regulations	10	19.2%
Abuse of authority, including abuse of prosecutorial discretion	7	13.5%
Misrepresentation to the court and/or opposing counsel	7	13.5%
Improper remarks to a grand jury, during trial, or in pleadings	4	7.7%
Failure to competently and/or diligently represent the client's interests	4	7.7%
Failure to comply with *Brady*, *Giglio*, or Fed. R. Crim. P. 16 discovery	2	3.8%

Findings in Closed Investigations

January 2001 through December 2010



Overview of OPR's Work

If OPR finds a Department attorney engaged in misconduct:

- The attorney can request review of OPR's findings by the Professional Misconduct Review Unit (PMRU), a separate office specifically established for review.
- PMRU can affirm or reject OPR's findings. PMRU can recommend discipline, which can include reprimand, suspension, or termination.

Overview of OPR's Work

At the conclusion of the disciplinary process, the attorney can be referred to his or her state bar licensing authority.

- Every Department attorney must have a license to practice law.
- An attorney's license is issued and controlled by a "state bar."
- The state bar can review OPR's findings and conduct its own investigation into the misconduct. The state bar can reprimand, suspend, or terminate an attorney's license depending on the severity of the conduct.

Professional Responsibility Standards

- The American Bar Association (ABA) has developed Model Rules of Professional Conduct, which set forth ethical rules for attorneys to follow in their practices.

- Most state bars have adopted the ABA Model Rules, although each jurisdiction has modified some aspect of the rules to fit the requirements of that state's law and authority.

- The ABA Model Rules can be found at: http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html

Professional Responsibility Standards

Watergate: In 1975, a former Attorney General of the Department, John J. Mitchell and other Department officials were convicted of conspiracy, perjury, and obstruction of justice in connection with the break-in and bugging of the Democratic National Convention Headquarters at Watergate. The conduct was done at the behest of the Whitehouse to ensure that the current party remained in office in the upcoming election.

See generally, U.S. Department of Justice's Office of Professional Responsibility, by Judith B. Wish at http://www.unafei.or.jp/english/pdf/RS_No80/No80_30VE_Wish.pdf

Professional Responsibility Standards

Government reform resulting from Watergate scandal:

- In 1975, then Attorney General Edward Levi created the Office of Professional Responsibility to investigate allegations of misconduct by Department attorneys. (OPR Regulations - 28 C.F.R. § § 0 and 45).
- Levi also created the Public Integrity Section within the Criminal Division to strengthen the Department's ability to combat corruption.
- Later, the Department's Ethic Office was created.
- The Professional Responsibility Advisory Office (PRAO) provides advice to Department attorneys if ethical or professional responsibility issues arise in litigation.

Professional Responsibility Standards

In 1978, President Jimmy Carter enacted three important reform measures to prevent abuses like Watergate from recurring:

- Ethics in Government Act of 1978 (Pub. L. No. 95-521, 92 Stat. 1824 (1978). Created the Office of Government Ethics (OGE). OGE established a comprehensive program to provide government employees with clear rules of conduct, access to professional ethics advice and procedures to resolve conflicts of interest.
  - The Act requires financial disclosure for senior government officials.
  - The Act provides post-employment conflict provisions.

Professional Responsibility Standards

- Civil Service Reform Act of 1978 (Pub. L. No. 95-454, 92 Stat. 1111 (1978)). Sought to protect federal employees and restrain officials from abusing governmental power. Established "merit system principles," to prohibit abuses of authority for political or other improper purposes. Call for advancement of employees based on ability, knowledge, and skills after fair and open competition.

- Inspector General Act of 1978 (Pub. L. No. 95-452, 92 Stat. 1101 (1978)). Created inspector generals in 13 agencies that could conduct audits and investigations on agency programs to ensure there was no waste or abuse. Promoted efficiency of programs and operations. An OIG was created for the Department of Justice in 1988.

Examples of OPR Investigations

Investigation of Politicized Hiring by Monica Goodling and Other Staff in the Office of the Attorney General

OPR and OIG conducted a joint investigation into allegations that the Department's White House Liaison, Monica Goodling, had discriminated on the basis of political affiliation against candidates for Department career positions . Goodling ultimately acknowledged that her hiring decisions of some career Department employees were influenced by political considerations, such as party affiliation.

Department policy and federal law prohibit consideration of political affiliation in hiring career positions.

OPR found that Goodling engaged in misconduct. Goodling was referred to the Virginia state bar association.

Report of investigation at http://www.justice.gov/opr/goodling072408.pdf

Examples of OPR Investigations

Investigation of U.S. Attorney Firings

OPR and OIG conducted a joint investigation into allegations that the removal of nine United States Attorneys from their positions in 2006 and 2007 was politically motivated or was intended to influence certain potentially political prosecutions.

OPR and OIG found no misconduct, rather, they concluded that the process Department officials used to identify the U.S. Attorneys for removal was fundamentally flawed and that certain officials, including former Attorney General Alberto Gonzalez and Deputy Attorney General Paul McNulty failed to adequately supervise the removal process.

Report of investigation at http://www.justice.gov/opr/us-att-firings-rpt092308.pdf

Preventing Misconduct before it Happens – 4 Main Areas

1. Clarification of the attorney's obligations. For example, the Department has provided specific guidance to attorneys on discovery and disclosure obligations, bar licensing obligations, and other areas. Procedures set out in United States Attorney's Manual.

2. Education: Annual training for all attorneys; online training; designated a Training Coordinator; training in USAOs and Divisions; formal classes at the National Advocacy Center.

3. Consultation: The Department established the Professional Responsibility Advisory Office (PRAO) to give advice to attorneys on ethics and professional responsibility issues.

4. Accountability: Performance evaluations, management oversight, OPR/OIG.

Resources and References

- Office of Professional Responsibility (OPR): http://www.usdoj.gov/opr
- Professional Responsibility Advisory Office (PRAO): http://www.justice.gov/prao/
- Office of Inspector General (OIG): www.justice.gov/oig/
- Department Ethics Office (DEO): http://www.justice.gov/jmd/ethics/
- United States Attorney's Manual: http://www.justice.gov/usao/eousa/foia_reading_room/usam/
- ABA Model Rules of Professional Conduct: http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html
- Office of Government Ethics (OGE): http://www.oge.gov/
- History of OPR: U.S. Department of Justice's Office of Professional Responsibility, by Judith B. Wish at http://www.unafei.or.jp/english/pdf/RS_No80/No80_30VE_Wish.pdf

U.S. Department of Justice
Office of Professional Responsibility
Policies and Procedures

Introduction

The Office of Professional Responsibility (OPR) was established by order of the Attorney General to ensure that Department of Justice (DOJ) attorneys and law enforcement personnel perform their duties in accordance with the highest professional standards expected of the nation's principal law enforcement agency. Pursuant to 28 C.F.R. § 0.39a, the Counsel for OPR reports directly to the Attorney General and Deputy Attorney General. OPR is staffed by a Deputy Counsel, three Associate Counsels, and between 20-25 Assistant Counsels.

The Role and Authority of OPR

OPR has jurisdiction to investigate allegations of professional misconduct against Department attorneys that relate to the exercise of their authority to investigate, litigate or provide legal advice, including allegations of professional misconduct against Department immigration judges. OPR also has jurisdiction to investigate allegations of misconduct against Department law enforcement personnel that relate to allegations of attorney misconduct within the jurisdiction of OPR. The Office of the Inspector General has jurisdiction over all allegations of misconduct against Department attorneys that do not fall within OPR's jurisdiction.

In addition to reporting its findings and conclusions in investigative reports, OPR provides advice to the Attorney General and Deputy Attorney General concerning the need for changes in policies and procedures that become apparent during the course of OPR's investigations.

Reporting Allegations of Misconduct

Pursuant to Chapter 1-4.100 of the United States Attorneys' Manual (USAM), all Department employees have a duty to report allegations of professional misconduct against a Department attorney that relate to the exercise of the attorney's authority to investigate, litigate, or provide legal advice, as well as allegations of misconduct against Department law enforcement personnel that relate to allegations of attorney misconduct within the jurisdiction of OPR.

Department employees must report "any evidence or non-frivolous allegation of misconduct" to their supervisor. An employee may also refer the allegation directly to OPR. Supervisors are required, in turn, to report any evidence or non-frivolous allegation of serious misconduct to OPR. However, if the supervisor participated in the alleged misconduct, he or she must refer the matter to a higher-ranking official for review. Employees and supervisors are encouraged to contact OPR for assistance in determining whether a matter should be referred to OPR.

Reporting Allegations of Misconduct During the Course of Judicial Proceedings

Judicial findings of attorney misconduct must be reported to a supervisor and to OPR. Any statement by a judge or magistrate judge indicating that a Department attorney has engaged in professional misconduct, and any indication by a judge or magistrate judge that the court is taking under consideration an allegation of professional misconduct, must be reported to a supervisor. The supervisor must, in turn, report to OPR "any evidence or non-frivolous allegation of serious misconduct."

Except in extraordinary cases, judicial findings of misconduct are investigated by OPR without awaiting the outcome of further judicial proceedings. Thus, findings of misconduct must be reported to OPR regardless of whether an appeal is contemplated or has already been taken.

The Review of Misconduct Allegations

OPR receives allegations against Department attorneys from a variety of sources, including U.S. Attorneys' Offices and DOJ litigating components, private individuals and attorneys, defendants and civil litigants, other federal agencies, state and local government agencies, judicial and congressional referrals, media reports, and self-referrals. OPR also regularly conducts searches of legal databases to identify opinions containing judicial findings of misconduct against Department attorneys.

OPR reviews each allegation and determines whether further review is warranted. The determination whether to close the matter or to obtain more information about the allegation is a matter of investigative judgment and involves many factors, including the nature of the allegation, its apparent credibility, its specificity, its susceptibility to verification, and its source. The majority of complaints received by OPR are determined not to warrant further review because, for example, the complaint is frivolous on its face, is outside OPR's jurisdiction, or is unsupported by any evidence. In such cases, OPR will close the matter without informing the subject attorney of the complaint.

When OPR needs more information to resolve a matter, OPR will initiate an inquiry. In such cases, OPR may request additional information from the complainant or from the subject attorney. Most inquiries are closed with no misconduct findings.

In cases that cannot be resolved based solely on the written record, OPR ordinarily initiates an investigation, which includes requesting and reviewing relevant documents and conducting interviews of witnesses and the subject attorney. The decision to conduct an investigation does not give rise to a presumption of professional misconduct. OPR makes misconduct findings only after conducting a full investigation.

Even if the subject attorney resigns or retires from the Department during the course of an investigation, OPR ordinarily completes the investigation in order to better assess the litigation impact of the alleged misconduct and to permit the Attorney General and Deputy Attorney General to judge the need for changes in Department policies or practices. In certain cases, however, the Office of the Deputy Attorney General will approve termination of such investigations if it is in the best interest of the Department.

The Investigative Process

OPR's inquiries and investigations involve a wide range of allegations, and the investigative methods used vary accordingly. In many cases, OPR initiates an inquiry because more information is needed to resolve the matter. In such cases, the first step is usually to request a written response from the attorney against whom the allegation has been made. Requests for written responses must be answered promptly and thoroughly. Supporting documentation and other relevant material should be included with the response, and other individuals with relevant information should be identified. However, the subject attorney should not interview other witnesses or ask them to prepare affidavits or written statements. In addition, the subject attorney's written response should not be edited or revised by any other Department attorney or official. If an attorney's trial schedule or other commitments preclude a timely response, an extension of time may be obtained by contacting OPR.

In requesting a written response, OPR asks the subject attorney to provide pertinent information regarding his or her professional background and experience, including his or her length of service and positions held with the Department. In order to determine what state bar rules may apply, OPR also asks the subject attorney to list each jurisdiction in which he or she maintains bar membership, regardless of his or her category of membership (*e.g.*, active, inactive, associate, or some other membership category).

If OPR determines based on its review of the record that there is no reasonable likelihood of a professional misconduct finding, the subject attorney and the United States Attorney or component head are notified that further inquiry is unwarranted and that the matter is closed.

In cases that cannot be resolved based on a review of the written record, OPR initiates an investigation of the alleged misconduct. Interviews are ordinarily conducted by two OPR attorneys. The interview of the subject attorney is transcribed by a court reporter, and the interviews of other witnesses are digitally recorded. Neither the subject nor a witness is permitted to record the interview. Co-workers are not permitted to attend interviews.

Following preparation of the transcript, the subject attorney will be given an opportunity, pursuant to a confidentiality agreement, to review the transcript and, if necessary, submit a supplemental written response. A confidentiality agreement signed by the subject attorney requires that all copies of the transcript be returned to OPR.

All Department employees have an obligation to cooperate with OPR investigations and must respond to questions posed during the course of an investigation upon being informed that their statements will not be used to incriminate them in a criminal proceeding. Employees who refuse to cooperate with OPR investigations may be subject to formal discipline, including removal. *See* Attorney General's April 12, 2002 Memorandum, "Duty to Report Misconduct and Cooperate with Investigations."

Assistance of Counsel

The majority of OPR investigations are administrative in nature, and employees are not entitled to counsel as a matter of law. However, counsel may be permitted if counsel does not interfere with or delay the interview. Counsel must be actually retained by the employee as his legal representative, not as an observer. Counsel are not permitted access to certain confidential criminal investigative information and may not be permitted access to grand jury information.

Post-Investigation Procedures

At the conclusion of the investigation, OPR prepares a report of investigation in which it makes findings of fact and reaches conclusions as to whether the subject attorney committed professional misconduct. OPR may find the subject attorney committed professional misconduct by: (1) **intentionally** violating a clear and unambiguous obligation or standard imposed by law, applicable rule of professional conduct, or Department regulation or policy; or (2) **recklessly disregarding** his or her obligation to comply with that obligation or standard. OPR may also find that the attorney exercised poor judgment or made a mistake. A poor judgment finding may lead to disciplinary action; a mistake finding does not.

Once OPR completes its report of investigation, the subject attorney and the United States Attorney or component head are officially notified of the results of the investigation. If OPR determines that the subject attorney committed professional misconduct, prior to issuing a final report, the subject attorney, pursuant to a confidentiality agreement, and the United States Attorney or component head may review the draft report, comment on the factual findings, and offer arguments as to why OPR should alter its conclusions. OPR will consider the comments and incorporate them into the final report, to the extent OPR considers it appropriate.

OPR may include in its report information relating to management and policy issues noted in the course of the investigation for consideration by Department officials.

Pursuant to 28 C.F.R. § 0.39a and OPR's routine uses under the Privacy Act, OPR also notifies the complainant of the results of the investigation.

Departmental Review of OPR Misconduct Findings

In December 2010, the Department established the Professional Misconduct Review Unit (PMRU) to review OPR misconduct findings in matters involving Assistant United States Attorneys and Criminal Division attorneys. The PMRU does not review poor judgment findings, which are referred to the United States Attorney or component head for appropriate action.

When OPR determines that an attorney who falls within PMRU's jurisdiction has committed professional misconduct, OPR provides its report of investigation directly to the PMRU for review without making a disciplinary recommendation. OPR also will provide the report of investigation to the subject attorney and the United States Attorney or the component head.

If the PMRU determines that OPR's misconduct findings are not supported by the evidence, it refers the matter to the United States Attorney or component head for action consistent with the PMRU's determination. The PMRU's determination is the Department's final ruling on the matter.

If the PMRU determines that OPR's misconduct findings are supported by the evidence, the PMRU makes a disciplinary recommendation. The PMRU seeks input from the United States Attorney, and the Executive Office for United States Attorneys, or the head of the Criminal Division regarding any applicable *Douglas* factors, which must be considered in determining the appropriate disciplinary action.[1]

In matters resulting in the issuance of a reprimand, a PMRU attorney issues the reprimand, and the Chief of the PMRU serves as the grievance official. In matters resulting in a suspension of 14 days or less, a PMRU attorney serves as the proposing official; the PMRU Chief serves as the deciding official; and the Office of the Deputy Attorney General serves as the grievance official. In matters resulting in a suspension of more than 14 days, a PMRU attorney serves as the proposing official; the PMRU Chief serves as the deciding official; and the subject attorney may appeal the decision to the Merit Systems Protection Board (MSPB).

When OPR concludes that a subject attorney engaged in professional misconduct but the attorney is not employed in a component that falls under the jurisdiction of the PMRU, OPR recommends a range of discipline. The recommendation is not binding on the management officials responsible for imposing discipline. However, if an official decides to impose discipline that is outside the range of discipline recommended by OPR (whether harsher or more lenient), the management official must notify the Office of the Deputy Attorney General before implementing that decision.

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[1] The *Douglas* factors are all of the mitigating and aggravating factors, as set forth in *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981).

Referral of Misconduct Findings to Bar Disciplinary Authorities

At the conclusion of the disciplinary process, OPR will notify state bar authorities of misconduct findings that involve the violation of a bar rule. In addition, when the PMRU upholds an OPR finding of professional misconduct based on the violation of a state bar rule, OPR will, at the PMRU's request, notify state bar authorities of the misconduct finding within 30 days of the final disposition of the matter by the PMRU.

Routine Uses of Investigative Information

In addition to the internal uses by Department officials, OPR's findings may be disseminated for the routine uses published at 76 Fed. Reg. 66752 (10/27/11). These uses include disclosure to other government agencies and officials for law enforcement purposes; to individuals or agencies in order to elicit information relevant to the investigation or another pending proceeding; to a court, grand jury, or regulatory or administrative agency; to other federal agencies when requested in connection with the hiring or retention of an employee, the issuance of a security clearance, or the investigation of an employee; to complainants to inform them of the results of OPR's review of their complaints; and to the subjects of an inquiry or investigation.

OPR Review of Proposals to Refer Non-DOJ Attorneys to Bar Disciplinary Authorities

Pursuant to Section 1-4.150 of the USAM, allegations of misconduct by non-DOJ attorneys and judges must be reported to OPR for a determination of whether to report the allegations to appropriate disciplinary officials. The Department has established a protocol that accommodates the Department attorney's obligation to report the unethical conduct of an attorney to state bar disciplinary authorities, and the interest of the Department in protecting confidential information. *See* USAM § 1-4.150; 28 C.F.R. § 0.39(a)(9); ABA Model Rule 8.3(a). OPR will determine, in conjunction with the Department component that referred the matter to OPR, whether to report the unethical conduct of the non-Department attorney or judge to the appropriate disciplinary authorities.

DM Number 324017

Subpart G–2—Office of Professional Responsibility

Source: Order No. 2835–2006, 71 FR 54414, Sept. 15, 2006, unless otherwise noted.

§ 0.39 Office of Professional Responsibility.

The Office of Professional Responsibility (DOJ–OPR) shall be headed by a Counsel, who shall be appointed by the Attorney General and subject to the general supervision and direction of the Attorney General or, whenever appropriate, the Deputy Attorney General.

§ 0.39a Functions.

(a) The Counsel shall:

(1) Receive, review, investigate and refer for appropriate action allegations of misconduct involving Department attorneys that relate to the exercise of their authority to investigate, litigate or provide legal advice, as well as allegations of misconduct by law enforcement personnel when such allegations are related to allegations of attorney misconduct within the jurisdiction of DOJ–OPR;

(2) Receive, review, investigate and refer for appropriate action;

(i) Any allegation of reprisal against an employee or applicant who discloses information pursuant to paragraph (a)(1) of this section; and

(ii) Allegations of reprisal taken against any Federal Bureau of Investigation employee for disclosing information pursuant to 28 CFR 27.1;

(3) Report to the responsible Department official the results of inquiries and investigations arising under paragraphs (a)(1) and (2) of this section, and, when appropriate, make recommendations for disciplinary and other corrective action;

(4) Refer any allegation not arising under paragraphs (a)(1) or (2) of this section to the Inspector General or another appropriate Department official;

(5) Notify any person who has made allegations pursuant to paragraphs (a)(1) or (2) of this section and any person who was the subject of such allegations of the completion and, as appropriate, the results of, any inquiry or investigation undertaken, where such notification is permitted by law and consistent with the law enforcement interests of the Department;

(6) Engage in liaison with the bar disciplinary authorities of the states, territories, and the District of Columbia with respect to professional misconduct matters;

(7) Submit an annual report to the Attorney General summarizing the work of the Office;

(8) Submit recommendations to the Attorney General and the Deputy Attorney General on the need for changes in policies and procedures that become evident during the course of the Counsel's inquiries and investigations;

(9) Review proposals from Department employees to refer to appropriate licensing authorities apparent professional misconduct by attorneys outside the Department, and make such referrals where warranted, except that referrals made pursuant to 8 CFR 1003.106(d) do not require the Counsel's review; and

(10) Perform any other responsibilities assigned by the Attorney General or the Deputy Attorney General.

(b) For the purpose of paragraph (a)(2)(i) of this section, any disclosure by an employee or applicant to a supervisor, Professional Responsibility Officer, the Office of Professional Responsibility, the Office of the Inspector General, the Executive Office for United States Attorneys, or other appropriate individual or component shall constitute disclosure to the Attorney General or the Counsel.

§ 0.39b Confidentiality of information.

The Counsel shall not disclose the identity of any person submitting an allegation of misconduct or reprisal pursuant to 28 CFR 0.39a(a)(1) or (2) unless the person consents to the disclosure of his identity or the disclosure is necessary to carry out the authority of the Office of Professional Responsibility, including conducting an investigation or referring the allegation to another component.

§ 0.39c Relationship to other departmental units.

(a) Primary responsibility for assuring the maintenance of the highest standards of professional responsibility by Department employees rests with the heads of the offices, divisions, bureaus, and boards of the Department.

(b) The heads of the offices, divisions, bureaus, and boards shall assure that any judicial finding of misconduct or serious judicial criticism relating to the duties described in §0.39(a)(1), or any nonfrivolous allegation of serious misconduct concerning an employee in their component and relating to those duties, is reported to the Counsel.

(c) The heads of the offices, divisions, bureaus, and boards shall provide information and assistance requested by the Counsel in connection with any inquiries or investigations conducted by the Counsel or by the Counsel's staff. As set forth in part 45, all

Department personnel, including the subject(s) of any inquiry or investigation, shall cooperate fully with any investigation conducted by the Counsel or his designee.

THE UNITED STATES DEPARTMENT OF JUSTICE'S OFFICE OF PROFESSIONAL RESPONSIBILITY

*Judith B. Wish**

I. INTRODUCTION

The United States Department of Justice's Office of Professional Responsibility (OPR) was created in 1975 as one response to the ethical abuses and misconduct committed by Justice Department officials during the Watergate scandal. OPR's mission is to hold accountable Justice Department attorneys, and law enforcement agents who work with those attorneys, who abuse their power as prosecutors or otherwise violate the high ethical standards required of the nation's chief law enforcement agency. OPR's mission is also to exonerate those who have been wrongfully accused of misconduct. OPR is an independent office that reports to the Attorney General and the Deputy Attorney General. It is staffed and led by career Justice Department attorneys.

In this article, I describe the history of OPR. I also discuss major reform legislation enacted in 1978, including the Ethics in Government Act, the Civil Service Reform Act, and the Inspector General Act, directed also at preventing the abuses of power that occurred during Watergate. With respect to the Justice Department particularly, in addition to OPR, there are four other components and offices that focus on ensuring that Department attorneys adhere to the highest ethical standards. They are the Public Integrity Section of the Criminal Division, the Office of the Inspector General, the Professional Responsibility Advisory Office, and the Department's Ethics Office. I discuss the function of each of these offices, as well as the Department's substantial training programme for its attorneys. In addition, I detail the sources of ethical and professional obligations with which Department attorneys must comply. Finally, I describe the organization and function of OPR, the most common kinds of misconduct Department attorneys commit and the types of attorneys who most often engage in misconduct, as well as various kinds of cases handled by OPR.

II. BRIEF OVERVIEW OF THE FEDERAL SYSTEM OF GOVERNMENT AND THE JUSTICE DEPARTMENT

By way of brief background, there are three components of the federal system of government in the United States. The Legislative Branch, consisting of the Congress, which enacts the laws, including the criminal laws; the Executive Branch, consisting of the President and Executive Agencies and Departments, including the Justice Department, which is primarily responsible for ensuring that the laws are enforced; and the Judicial Branch, including all federal courts, which hear cases involving alleged violations of federal laws, arising in both criminal and civil cases.

All federal prosecutors as well as most of the attorneys who represent the United States in civil litigation are employed by the Justice Department. The Justice Department is headed by an Attorney General who is appointed by the President and confirmed by the U.S. Senate. The Attorney General is a member of the President's cabinet. The current Attorney General is Eric Holder. He previously served as Deputy Attorney General from 1997 – 2001, during President Clinton's administration. There are an additional thirty-seven political appointees who, like the Attorney General, are nominated by the President and confirmed by the Senate, and who head up various offices and divisions within the Justice Department. Most of the prosecutors and other Department attorneys are career civil servants. That is, their employment does not depend on which political party is in power. Indeed, it is unlawful to consider the political affiliation of these employees in any personnel decisions.

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The federal judiciary is a separate and independent branch of government. Prosecutors, the Justice Department and the Executive Branch have no power to tell judges how to handle cases, or to prescribe or enforce rules of conduct or ethics for judges. Congress enacted the Code of Conduct for U.S. Judges but the Judicial Conference of the United States, not the Justice Department, enforces it. However, if a judge engages in criminal conduct such as taking a kickback or a bribe, the Justice Department has authority to investigate and prosecute the criminal conduct as it does with respect to any person who violates the law.

Justice Department attorneys direct criminal investigations and handle prosecutions involving alleged violations of federal laws. Department attorneys also defend the United States government in nearly all civil actions brought against the government and its agencies. In addition, they provide legal advice to investigators, Executive Branch agencies and the White House. There are about 10,000 Department attorneys, and about 110,000 Department employees in all. Criminal investigations are often handled by the Federal Bureau of Investigation (FBI), which is a component of the Justice Department. The FBI employs about 25,000 people, including 10,000 special agents stationed in FBI Field Offices throughout the country. The Justice Department has hundreds of offices throughout the United States, including ninety-four separate U. S. Attorneys' Offices, each located in its own district and each headed by a U.S. Attorney who is nominated by the President and confirmed by the Senate. The U.S. Attorney is the chief law enforcement officer within the district. The attorneys who work in the U.S. Attorneys' Offices are called Assistant U.S. Attorneys. With such a large number of offices and attorneys in the Justice Department, it is very important to have clear ethical rules and policies to govern the exercise of prosecutorial power and the day-to-day actions of prosecutors. It is also essential to ensure that those rules are enforced fairly and administered consistently throughout the country. When similar issues are handled differently by the same or different offices, there is a substantial possibility of creating a perception among the public and within the Justice Department of injustice, unfairness and (possibly) even corruption.

III. HISTORY OF THE CREATION OF THE OFFICE OF PROFESSIONAL RESPONSIBILITY

The creation of the Office of Professional Responsibility dates back to one of the more infamous episodes in modern American history: the events that led to the resignation of then President Richard Nixon and that involved the unprecedented misuse of the Justice Department by the White House for partisan political purposes. On New Year's Day in 1975, a former Attorney General of the United States and head of the Justice Department from 1969 to 1972, John N. Mitchell, along with other former Justice Department officials, was convicted of conspiracy, perjury and obstruction of justice in connection with the break-in and bugging of the Democratic National Committee (DNC) Headquarters located in the Watergate Office Building in Washington, DC, and the subsequent cover-up of those crimes. What became known as the Watergate scandal began in June 1972, when five men were arrested after breaking into the DNC Headquarters at the Watergate. It was later discovered that this was the second of two break-ins at the DNC Headquarters to plant electronic listening devices its offices to gain intelligence for the Republican presidential campaign. At the time of the arrests, one of the men was carrying an address book containing the name and telephone number of E. Howard Hunt, a White House aide who worked for a high-ranking assistant to President Nixon.

The subsequent investigation into that break-in brought to light an immense pattern of corruption and abuses of government power by President Nixon and his aides, including campaign fraud, political espionage and sabotage, illegal break-ins, improper federal tax audits by the Internal Revenue Service, illegal wiretapping on a massive scale by the FBI, and a secret "slush fund" laundered in Mexico to pay those who conducted these operations. It was a grand scheme to use the power of the government for improper partisan political purposes, that is, to keep the Republican Party and President Nixon in power.

After nearly two years of investigation, the fact that President Nixon had tape recorded conversations in the White House during his years in office came to light, and Archibald Cox, who had been appointed special prosecutor to conduct the Watergate investigation, issued subpoenas for certain of the tapes. A special prosecutor from outside the Justice Department had been named precisely because of concern over actual and perceived conflicts of interest if a Justice Department prosecutor handled the investigation. After a lengthy legal battle involving broad claims of Executive Privilege by the White House, the U.S. Supreme

Court ruled that President Nixon was required to turn over the tapes for use in the special prosecutor's criminal investigation. The incriminating tape recordings were used in subsequent prosecutions of government officials, and cited by the Judiciary Committee of the House of Representatives in its articles of impeachment against President Nixon. Before the full House of Representatives could vote on impeachment, President Nixon resigned and was succeeded by then Vice President Gerald Ford. Shortly after assuming office, Ford pardoned Nixon of "all offenses against the United States which he, Richard Nixon, has committed or may have committed or taken part in . . . .".

As a result of the various schemes that were discovered, two Attorneys General were convicted or pled guilty to crimes. As noted, President Nixon's first Attorney General, John Mitchell, was convicted of conspiracy, obstruction of justice and perjury. The tape recordings proved that Mitchell had participated in planning the Watergate break-ins and had repeatedly assisted in trying to cover up the White House's involvement in the scheme after the arrests.

Richard Kleindienst was Deputy Attorney General under John Mitchell. When Mitchell stepped down to run Nixon's campaign for reelection in 1972, Kleindienst was nominated to succeed Mitchell as Attorney General. During his confirmation hearing before the Senate Judiciary Committee, Kleindienst testified in response to questioning that no one in the White House had interfered with his decision making while he was Deputy Attorney General in an antitrust case against International Telephone and Telegraph (ITT). ITT had, at about that time, offered to make a very large contribution to help pay for the Republican National Convention at which President Nixon would be nominated for re-election. Kleindienst had testified to the Committee, "In the discharge of my responsibilities as Acting Attorney General in [the ITT case], I was not interfered with by anybody at the White House. I was not importuned. I was not pressured. I was not directed." *NY Times*, 17 May 1974. During the Watergate investigation, the White House's direct role in Kleindienst's decision came to light and he was forced to resign as Attorney General, and in 1974, Kleindienst pleaded guilty to testifying falsely to Congress. In entering his guilty plea, Kleindienst admitted that President Nixon had telephoned him and ordered him to drop the antitrust case against ITT. In the tape recording of that call, now on the Internet, Nixon ordered Kleindienst to drop the case, not to file a brief due in court the following day, and to "stay the hell out of it."

Kleindienst's successor, Attorney General Elliot Richardson, held office for only a few months. In what became known as the Saturday Night Massacre because the events occurred on a Saturday, Richardson resigned rather than follow President Nixon's order to fire special prosecutor Cox, who was then insisting on being given access to the incriminating White House tape recordings. Richardson's Deputy Attorney General, William Ruckelshaus, also resigned rather than fire the special prosecutor. The official who was third in command of the Justice Department at the time, Solicitor General Robert Bork, ultimately fired Cox. President Nixon then promptly abolished the special prosecutor's office and directed the FBI to seal its records. The public outcry and Constitutional crisis created by the Saturday Night Massacre forced the White House to agree to the appointment of a second special prosecutor, Leon Jaworski, and ultimately led to the resignation of President Nixon.

Upon assuming office, President Ford inherited a Justice Department that was demoralized and widely disrespected. A 1975 law review article (50 N.Y.U. L. Rev. 382 1975) observed: "Except, perhaps, for the Presidency itself, no government institution suffered greater dishonor from Watergate revelations than did the Justice Department. The criminal conduct of incumbent and former Attorneys General, the early mishandling of the Watergate investigation and discrediting testimony before the Watergate Committee - such factors produced a widespread perception that politics and Justice had become intolerably intertwined."

As a first step toward turning the Justice Department around, President Ford appointed Edward Levi to be Attorney General. Levi was a well-respected university president and distinguished legal scholar with no background in politics. He was not a stranger to Washington, however. He had experience working in the Antitrust Division of the Justice Department earlier in his career, and working in Congress as Chief Counsel to the House Committee on Monopolies and with the White House on two White House task forces in the 1960s.

Attorney General Levi was immediately faced with competing proposals, from Congress and elsewhere,

about how the Justice Department should be restructured to prevent Watergate-style abuses of prosecutorial power in the future, and to give the Department a measure of independence from the White House. These proposals included taking the Attorney General out of the President's cabinet and the Justice Department out of the Executive Branch so it would not report to the President. Another would have required the Attorney General, the Deputy Attorney General and the several Assistant Attorneys General (who head up various offices and components within the Department) to belong to a different political party than the President. A third proposal would have split the Department into two parts, one headed by the Attorney General which would serve as legal advisor to the President and the other headed by a Chief Prosecutor responsible for law enforcement. Yet another would have established a permanent Special Prosecutor outside the authority of the Attorney General and the Justice Department.

In his first year in office in 1975, as one response to the Watergate abuses and to these proposals, Attorney General Levi issued an order creating the Office of Professional Responsibility and directed it to "receive and review any information or allegation concerning conduct by a Department employee that may be in violation of law, regulations or orders, or applicable standards of conduct or may constitute mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health and safety." The mission of OPR was "to ensure that Departmental employees continue[d] to perform their duties in accord with the professional standards expected of the nation's principal law enforcement agency." To head the office, Attorney General Levi appointed Michael Shaheen, a career Department of Justice lawyer. Shaheen served as the Counsel for Professional Responsibility and head of OPR for more than 20 years, until retiring from that post at the end of 1997.

The Attorney General also created the Public Integrity Section within the Criminal Division to strengthen the Department's ability to combat corruption through the prosecution of elected and appointed public officials at all levels of government, state and federal, who are involved in actual violations of federal law. The Public Integrity Section also has exclusive jurisdiction over allegations of criminal misconduct by federal judges and monitors the investigation and prosecution of election fraud and conflict-of-interest crimes. Thus, Public Integrity Section attorneys prosecute selected cases against federal, state and local officials, and are available as a source of advice and expertise to other Justice Department prosecutors and investigators throughout the country.

The Public Integrity Section has been highly successful in handling such cases. Most importantly, the creation of a special unit in Washington has had the effect of removing potential conflicts of interest that may exist when local prosecutors investigate local lawyers and officials, and of increasing public trust in the system of justice as it is applies to public officials. Because the office consists of career prosecutors who make decisions based on an objective set of standards, the Public Integrity Section can and does make critical decisions without regard to political considerations. It also brings uniformity to the investigation of corruption charges involving federal, state and local officials throughout the country.

With these affirmative steps, Attorney General Levi was able to resist Congressional attempts to split the Justice Department or establish prosecutorial and other law enforcement authority outside of the Executive Branch and the control of the President.

Following the election in 1976, Democratic President Jimmy Carter came into office and he, along with a newly elected Congress, was intent on reforming the federal government to prevent the abuses of Watergate from recurring. Three very important reform measures were enacted in the same month in 1978, and require mention here to put OPR's role in perspective. The first was the Ethics in Government Act of 1978 (Pub. L. No. 95-521, 92 Stat. 1824 (1978)). In addition, Congress passed the Civil Service Reform Act of 1978 (Pub. L. No. 95-454, 92 Stat. 1111 (1978)), and the Inspector General Act of 1978 (Pub. L. No. 95-452, 92 Stat. 1101 (1978)). Each of these laws has had a significant impact on preventing the abuse of government power so evident in Watergate, and the Ethics in Government Act and the Civil Service Reform Act provide many of the ethical obligations with which Department attorneys must comply and which OPR enforces.

IV. POST-WATERGATE MAJOR REFORM LEGISLATION

A. Ethics in Government Act

The Ethics in Government Act was intended to "increase public confidence in the level of integrity of federal government officials, to deter conflicts of interest from arising, and to stop unethical persons from entering public service." Through the creation of the Office of Government Ethics (OGE), the Act formalized and institutionalized a consistent, ongoing programme to provide all federal government employees with clear rules of conduct, access to professional ethics advice and procedures to resolve questions of conflict of interest as they arose. The OGE is headed by a Director who is appointed by the President and confirmed by the Senate, and serves a five year term. The fact that his appointment is for a term of years, rather than at the pleasure of the President, confers a measure of independence on the director.

The Ethics in Government Act has several important parts. First, in order to guard against and identify potential conflicts of interest, the law mandates annual public financial disclosure reporting for senior government officials, both political and career. OPR's Counsel and Deputy Counsel are among those who must file such reports. The annual reports must include the listing of certain gifts, financial holdings, outside income, positions in organizations and debts. The annual reports must also include the sources of a spouse's income, and certain assets bought, sold or held by a spouse or dependent child of the employee. The reports are reviewed by the employee's supervisor and by ethics officials in his or her agency to identify potential conflicts of interest with respect to the work each employee performs. These detailed reporting requirements, for example, would quickly disclose to the Justice Department whether an employee was making official decisions that could affect his or her finances or was making investment decisions based on official information concerning a specific individual or entity. In addition, these financial disclosure forms must be available, upon request, to the public and news media. Although intrusive, these reporting obligations are deemed necessary to guard against conflicts of interest by highly-placed officials. The reporting requirement also applies to Members of Congress, federal judges and certain senior staff members of both, although the OGE is not responsible for the contents or enforcement of those reports.

Certain other government employees are required to file annual confidential and more abbreviated disclosure reports. With respect to the Justice Department, a Confidential Financial Disclosure Report must be filed by all non-executive employees whose duties require them to participate personally and substantially through decision or the exercise of significant judgment in a matter which could have an economic impact on a non-federal entity. This includes any employee involved in contracting or administering grants, regulating or auditing any non-Federal entity and, in some cases, investigating or prosecuting a case. All OPR attorneys fall within this category and must file the annual report. The reports are reviewed by the head of their offices to identify possible conflicts of interest with their work assignments. The reports remain confidential, however (5 U.S.C. § 2634.907).

Second, the OGE is responsible for reviewing the financial disclosure forms prepared by persons the President nominates for appointments that require the consent of the Senate, including all cabinet members and the politically appointed executives who report to them. The law requires that nominees to positions that require confirmation by the Senate transmit their financial disclosure reports to OGE. The Director of OGE reviews the forms, advises the nominee if corrective action is necessary and then, as appropriate, certifies to the Senate that reports filed with the OGE are "in compliance with applicable laws and regulations." This process has become so much a part of the "vetting" of nominees that the Senate confirmation committees normally do not schedule a hearing on the candidate until the Director of OGE certifies that the nominee's financial disclosure report is in order.

Third, the Ethics in Government Act amended and expanded the legal restrictions on the jobs federal employees may accept after leaving government employment and on their future dealings with the government. Those restrictions generally prevent the employee from "switching sides" after leaving government service. Thus, a former employee is permanently prohibited from representing anyone else before the government on a particular matter involving specific parties in which the employee participated personally and substantially while working for the government. A former employee is prohibited for two years from representing another person before the government on a particular matter involving specific parties that was pending under his of her official responsibility during the employee's last year of government service,

even if he did not participate in the matter himself. In addition, a senior employee is generally prohibited for one year from representing another person before the agency in which he or she served during his last year of government service.

Finally, the law gives OGE the authority to develop additional standards regarding conflicts of interest and ethics in the Executive Branch. The OGE did so in the form of regulations entitled Standards of Ethical Conduct for Employees of the Executive Branch (Standard of Conduct) which are applicable to all executive branch employees.

Finally, the law provided for the appointment of an Independent Counsel who would, under specified circumstances, investigate allegations of wrongdoing by certain members of the Executive Branch, including the President. That provision, reenacted several times, has since expired.

B. The Civil Service Reform Act

The Civil Service Reform Act (CSRA) was the second piece of major reform legislation enacted in 1978. Among the high crimes and misdemeanours with which President Nixon was charged in the articles of impeachment voted by the House Judiciary Committee in July 1974, was the use of governmental power to harass and intimidate political opponents. The Final Report of the Senate Select Committee on Presidential Campaign Activities addressed abuses in grant and regulatory programmes directed at punishing the "enemies" of the president. Employees were ordered to install illegal wiretaps, to improperly award contracts, and to release grant funds to unqualified recipients. After committee hearings, Congress concluded that there had been extensive violations of civil service laws and procedures.

The Civil Service Reform Act sought to correct that situation by protecting federal employees and restraining the ability of officials to abuse governmental power in the future. First, the Act articulates aspirational "Merit System Principles" intended to condemn abuses of authority for political or other improper purposes. In brief, the principles call for recruitment, selection and advancement in employment based on ability, knowledge and skills, after fair and open competition. They specify fair and equitable treatment of all applicants and employees without regard to political affiliation, race, colour, religion, national origin, sex, marital status, age, or handicapping condition, and with regard for their privacy and constitutional rights. They further provide for protection of employees from arbitrary action, personal favoritism, or coercion for partisan political purposes. They also provide protection for "whistleblowers" who lawfully disclose information pointing to mismanagement, waste or violation of any law, rule or regulation. Finally, they prohibit any government official from using official authority or influence for the purpose of affecting the results of an election.

The law also establishes a list of "Prohibited Personnel Practices," which form enforceable standards. These principles forbid any official with authority to make or recommend personnel actions to discriminate against an employee or applicant based on race, colour, religion, sex, national origin, age, handicapping condition, marital status or political affiliation. They also prohibit the consideration of employment recommendations based on factors other than personal knowledge or records of job-related abilities or characteristics. They forbid the coercion of political activity of any person, and prohibit the willful obstruction of anyone from competing for employment and improperly influencing anyone to withdraw from competition. They also prohibit reprisal for whistleblowing. In addition, they prohibit nepotism and discrimination based on personal conduct which is not adverse to on-the-job performance.

C. The Inspector General Act of 1978

The third piece of reform legislation was the Inspector General Act of 1978 (Pub. L. No. 95-452, 92 Stat. 1101 (1978)). In the United States' system of government, Congress has the authority to appropriate funds for all government agencies and programmes, and the oversight power to ensure that those funds are properly expended. In a series of hearings in 1977, Congress concluded that "fraud, abuse and waste in the operations of federal departments and agencies and in federally-funded programmes are reaching epidemic proportions," and further that "[t]he federal government has . . . failed to make sufficient and effective efforts to prevent and detect fraud, abuse, waste and mismanagement in federal programmes." S. Rep. 95-1071, S. Rep. No. 1071, 95th Cong., 2nd Sess. 1978, 1978 U.S.C.C.A.N. 2676, 1978 WL 8639 (Leg. Hist.). The Inspector General Act was enacted to correct these problems. The law created Inspectors General in thirteen executive agencies with the authority to, among other things, conduct, supervise, and co-ordinate

audits and investigations relating to the programmes and operations of the agency; make recommendations to improve the economy and efficiency of programmes and operations administered by the agency; and keep the agency head and Congress "fully and currently informed . . . concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programmes and operations, . . . recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action" (5 U.S.C. App. 3, § 4).

The Act gave Inspectors General their own staffs and budgets and a level of independence from the agency head to which he or she reported. Although appointed by the President with the consent of the Senate, Inspectors General may not be removed by the President unless the agency head gives written notice to Congress of the reason for the removal. The Act also limits the authority of the agency head vis-a-vis the Inspector General such that the agency head "shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subp[o]ena during the course of any audit or investigation." The act also requires all Inspectors General to issue semiannual reports of their activities to the agency head, and the agency head must transmit the Inspector General's report to Congress within thirty days. The agency head may comment on the Inspector General's report, but may not change it.

The Inspectors Generals' relationship with Congress has been a source of controversy since the Act was passed. In 1978, the Justice Department successfully argued that it would be inappropriate to place an Inspector General, a law enforcement official with reporting obligations to the legislative branch, in an executive branch agency whose business is law enforcement, an inherently executive branch function, and whose head, the Attorney General, is the highest ranking law enforcement official in the country. In addition, the Justice Department argued that OPR already existed and had broad authority and responsibility to conduct investigations and "monitor the integrity and professionalism of the Department."

Nearly a decade later, however, in 1986, Congress again proposed to establish an Inspector General in the Department of Justice along with several other agencies that also had been exempt from the original Act. For similar reasons, the Department opposed the change. In a compromise, the Congress in 1988 created an Inspector General for the Justice Department, but reserved to OPR jurisdiction over certain misconduct (Pub. L. 100-504). Thus, the Act requires the Inspector General to "refer to the Counsel, Office of Professional Responsibility of the Department, for investigation, information or allegations relating to the conduct of an officer or employee of the Department of Justice employed in an attorney, criminal investigator, or law enforcement position that is or may be a violation of law, regulation, or order of the Department or any other applicable standard of conduct . . . ." (5 U.S. C. App. 3, sec. 8E).

Thus, in 1988, the mission of OPR was codified by statute and narrowed to focus on the most serious types of allegations against attorneys and criminal investigators and agents working with those attorneys. In the 1990s, further refinements were made to OPR's and the Inspector General's respective jurisdictions. As a result, OPR's current jurisdiction extends to "allegations of misconduct involving Department attorneys that relate to the exercise of their authority to investigate, litigate or provide legal advice, as well as allegations of misconduct by law enforcement personnel when such allegations are related to allegations of attorney misconduct within the jurisdiction of DOJ-OPR." In addition, OPR has authority to pursue special investigations as assigned by the Attorney General; allegations of reprisal against any employee for reporting misconduct to OPR; and complaints by FBI employees of retaliation for whistleblowing.

As I will discuss more fully below, many of the obligations imposed by the Ethics in Government and Civil Service Reform Acts provide the basis for misconduct investigations conducted by OPR, the OIG and the Public Integrity Section of the Justice Department.

V. ETHICS ENFORCEMENT WITHIN THE DEPARTMENT OF JUSTICE

As the history of abuses of governmental power that led to the creation of OPR and enactment of the reform legislation detailed above makes clear, ethics enforcement is essential to ensure that Department officials working with career Justice Department attorneys do not abuse for partisan political or other improper purposes, the unique power they exercise as prosecutors, but rather exercise it fairly and

impartially. Ethics enforcement is also important to ensure that Department attorneys conduct themselves in accordance with the myriad other professional obligations governing their day-to-day activities as attorneys. Equally important, ethics enforcement is essential to demonstrate to the public that the Justice Department adheres to the rule of law and not to the will of the officials who happen to hold office when that will contravenes the rule of law. Thus, ethics enforcement is important both to ensure that Justice Department attorneys act ethically in performing their jobs and that the public knows that they do so.

The Justice Department's commitment to the maintenance of high ethical conduct by its attorneys is demonstrated by the fact that it has five separate offices that handle ethics issues, as well as a significant training programme. I have already discussed the creation of the Office of Professional Responsibility, the Public Integrity Section in the Criminal Division, and the Office of the Inspector General. Those offices primarily focus on investigating allegations of ethics violations that have already occurred. The Professional Responsibility Advisory Office (PRAO) and the Department Ethics Office, on the other hand, are focused on providing ethics advice to all Department employees prior to any allegations having arisen. In addition, the Department makes available throughout the year a large array of training courses for attorneys in a variety of settings, and recently adopted a policy of mandatory annual Professionalism Training.

A. Professional Responsibility Advisory Office (PRAO)

This office of about twenty-five attorneys and support staff was established by the Department in 1999 to ensure the provision of prompt and consistent advice to Department attorneys on issues related to professional responsibility. By law and Department policy, all Department attorneys must be duly licensed and authorized to practice law as an attorney by at least one state bar and they must comply with that state bar's Rules of Professional Conduct as well as the rules of the court before which they appear. PRAO was created to provide Department attorneys with advice concerning compliance with the various state bar rules. For example, most state bar rules prohibit an attorney from contacting a person about a matter regarding which the person is represented by a lawyer unless the lawyer consents or the contact is authorized by law. If a prosecutor is not sure whether it would be considered "authorized by law" under a particular state's rules to allow a law enforcement officer working undercover in an investigation to remain in contact with a criminal suspect who has a lawyer, PRAO is available to advise on whether and how the prosecutor may do so. Each U.S. Attorney's Office and other component within the Department has an attorney who serves as a Professional Responsibility Officer, or PRO, trained by PRAO, who provides advice within the office and acts as a liaison to PRAO.

If a Department attorney seeks advice from PRAO, provides all relevant information pertaining to the issue in question, and follows all the advice given but is later found by a court, or is otherwise alleged to have engaged in misconduct, OPR will not hold that attorney responsible for any wrongdoing. This policy is intended to encourage Justice Department attorneys to seek counsel and advice from PRAO or their PRO to do the right thing before they act, rather than taking a chance and running afoul of the ethics rules.

B. Justice Department Ethics Office

As noted, the Office of Government Ethics promulgated the Standards of Conduct and provides ethics advice and opinions with regard to those standards. Those standards cover such areas as receipt of gifts and entertainment, travel, conflicts of interest, financial disclosure requirements, outside employment and activities, political activities, procurement integrity, misuse of position and government resources and restrictions on post-government employment.

The standards may be supplemented by agencies with OGE's approval and the Justice Department has adopted several additional standards that specifically relate to attorneys. They include a provision prohibiting an employee from participating in a criminal investigation or prosecution if the employee has a personal or political relationship with any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or with any person or organization which the Department attorney knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.

An employee who believes that his or her participation might be prohibited by the rule must report the matter to his or her supervisor. If the supervisor agrees, he or she must relieve the employee from further

participation in the matter unless the supervisor determines, and records in writing, that the employee can remain impartial and professional, and that his or her participation would not create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution.

Another pertinent Justice Department standard of conduct prohibits employees from engaging in outside employment that involves the practice of law, without obtaining a waiver from the Department, unless the work is uncompensated and in the nature of community service, or unless it is on behalf of the employee, his or her parents, spouse or children. It also prohibits employees from engaging in any criminal matter, litigation, investigation, grants or other matters in which the Justice Department is or represents a party, witness, or litigant, investigator or grant-maker.

The Justice Department's Ethics Office is also responsible for administering the Department-wide ethics programme and for implementing policies on ethics issues. That office also provides individual advice and periodic training to all Department employees on compliance with the Standards of Conduct and the Department's supplemental standards. Similar to the PRAO structure, each component and office has a Deputy Designated Agency Ethics Official (a DDEO) who is responsible for administering the ethics programme within the component, and who acts as a liaison to the Department's Ethics Office.

C. Ethics Training for Department of Justice Attorneys

As noted, Department attorneys are required to be licensed to practice law by at least one state bar licensing authority. Many state bar licensing authorities have annual continuing legal education (CLE) requirements, such that licensed attorneys in that state must fulfill a certain number of hours of legal training, often including ethics training. The Justice Department has a training center, the National Advocacy Center (NAC), in Columbia, South Carolina, which offers training year round in a variety of subjects, including ethics, many of which provide CLE credit for the attorneys attending.

In addition, in 2008, the Department adopted a new policy on Professionalism Training for its attorneys. In announcing the new policy, the Attorney General noted, "[t]here are few priorities that are more important to the Department's mission than ensuring that we are properly trained so that we may continue to demonstrate the highest levels of ethical conduct and professionalism for which the Department is known." The new policy applies to most Department attorneys and requires them to take at least four hours of professionalism training each calendar year, including at least two hours of Justice Department professional responsibility, one hour of government ethics, and one hour of sexual harassment and non-discrimination or equal employment opportunity training. The Professionalism Policy is a Department requirement and not tied to the requirements of any individual state bar. Department attorneys may satisfy the Professionalism Policy's requirements through training conducted by their component, courses at the NAC, or by watching training videos offered by the Department's Office of Legal Education and available via each attorney's desktop computer. Department attorneys are required to certify at the end of each calendar year to their component's management that they have complied with the Professionalism Policy and its requirements.

In addition, the Department provides training targeted at specific issues as they arise. For example, earlier this year, in a much-publicized decision, Attorney General Holder dismissed the prosecution against former Alaska U.S. Senator Ted Stevens, in which he was charged with making false statements in his financial disclosure report (discussed above). While Senator Stevens had been convicted by a jury of all the charges against him, the Department later learned that, prior to trial, prosecutors apparently had not disclosed to the defence all impeachment evidence, as is required by the Constitution, state bar rules and Department policy. In this case, they did not turn over to defence counsel notes that contradicted testimony from an important government witness. As a result, defence counsel did not have those notes available at trial for their cross-examination of the witness. Under the U.S. system of justice, the question is not whether Senator Stevens was in fact guilty; the question is whether he had been fairly convicted under our Constitution and the rules of criminal procedures. Because these assurances of a fair conviction were lacking since not all impeaching evidence had been disclosed, the Attorney General dismissed the case. Two consequences flowed from the Senator Stevens case for our purposes. First, OPR is conducting an investigation to determine whether the prosecutors committed professional misconduct. That investigation is on-going. Second, the Department has begun a programme of re-training its prosecutors with regard to their discovery obligations under the Constitution, state bar rules, rules of criminal procedure and

Department policy to avoid the recurrence of such a case. In addition, the Department has created working groups to consider new policies to govern criminal and civil discovery.

VI. ADDITIONAL SOURCES OF PROFESSIONAL OBLIGATIONS AND STANDARDS

In addition to the duty not to abuse the unique power of prosecutors for improper purposes, which abuse led to the creation of OPR, attorneys are subject to a myriad of professional obligations that govern their conduct as attorneys. Specifically, Department attorneys are subject to obligations imposed by the U.S. Constitution and case law, federal laws, state bar and court rules of professional conduct, the Standards of Conduct, and Justice Department regulations, policies, and procedures. In our legal system, many of these rules and regulations are designed to ensure that our criminal justice system is fair and that the rights of the accused are protected. In helping to guarantee that Department attorneys respect, and do not abuse, the power they have, making certain that they scrupulously adhere to these rules and regulations is an important part of OPR's mission.

A. Obligations Imposed by the Constitution and Case Law

The Constitution establishes numerous rights for criminal defendants with which Department attorneys must comply. For example, the Fifth Amendment to the Constitution provides that no one may be compelled to testify against himself in a criminal case. That right has been extended by case law to prevent a prosecutor from suggesting during a criminal trial that the defendant should have testified. Thus, if the defendant chooses not to testify, which the defendant has an absolute right to do, a prosecutor may not ask the jury to draw an inference of guilt from the defendant's failure to testify.

The due process clause of the Fifth Amendment as interpreted by the U.S. courts requires prosecutors to provide to the defence all exculpatory evidence they may have gathered during an investigation – for example, police notes, witness statements, scientific tests and other evidence that might raise doubts as to the defendant's guilt. By case law, this right has been extended to include impeaching evidence. The right also applies to certain kinds of pretrial proceedings as well as trials. The remedy for failing to turn over such information can be severe; a judge can reverse a conviction if he or she finds that, had the evidence been disclosed, there is a reasonable probability that the result of the trial would have been different.

In addition, the Fourth Amendment protects a person's reasonable expectation of privacy against government intrusion. Under that right, a prosecutor must first obtain a search warrant issued by an independent judge showing that the government has probable cause before authorizing a search by law enforcement officers.

B. Federal Laws

Federal laws impose a variety of ethical obligations on Department attorneys. For example, in 1957, Congress enacted the Jencks Act, 18 U.S.C. § 3500, which gives a criminal defendant in a federal prosecution the right to discover any witness statement against him which is relevant to the witness's trial testimony and which is in the possession of the government. The law extends to police notes, memos, reports, summaries, letters or verbatim transcripts used by government agents or employees to testify at trial.

Also, in 1968, Congress enacted Title III, prohibiting private citizens from using certain electronic surveillance techniques, but exempting law enforcement agents so long as they complied with explicit directives that controlled the circumstances under which the agent's use of such surveillance would be permitted. Although many of the restrictions were required by the Fourth Amendment, several of Title III's provisions are more restrictive than that Constitutional protection. One of the statute's most restrictive provisions is the requirement that federal agencies must submit requests for the use of certain types of electronic surveillance to the Justice Department for review and approval before applications for such interception may be submitted to a court for an order authorizing the interception.

C. Court Rules

Federal Rules of Criminal and Civil Procedure as well as the Federal Rules of Evidence and local federal court rules also impose obligations on Department attorneys. For example, the Federal Rules of Criminal Procedure require government attorneys well before trial to allow the defendant to inspect any exhibits that the government intends to use at trial. And Rule 6(e) prohibits government attorneys from disclosing

matters occurring before a grand jury. These various rules also set deadlines and rules affecting the pretrial disclosure of evidence. Thus, for example, the Federal Rules of Civil Procedure allow each party to a civil suit, during the discovery phase of a case, to serve upon the opposing party written requests for admissions of fact. Under the rules, if the opponent admits a fact, the party is relieved from having to prove the fact at trial. The Federal Rules specify that answers to such requests must be filed within thirty days.

In addition, courts establish obligations for government attorneys in particular cases. For example, courts frequently adopt a scheduling order governing pre-trial discovery and pleadings. On occasion, courts issue pre-trial rulings regarding the admissibility of evidence or that limiting the purpose for which such evidence may be admitted. Such rulings and orders bind the prosecutor in that case.

D. State Rules of Professional Conduct

This is a source of rules and obligations that has become more important for Department attorneys in recent years: the professional rules of conduct developed by state bars and adopted by state supreme courts or enacted by state legislatures. Some time ago, there had been uncertainty as to whether Department of Justice attorneys were bound by such rules, because of the constitutional doctrine known as preemption. According to this doctrine, federal authorities are not bound by state rules that interfere with federal laws.

In 1998, Congress clarified this issue by enacting the Citizens Protection Act, 28 U.S.C. § 530B, that explicitly requires federal prosecutors to abide by the rules of the court before which they appear. The Citizens Protection Act was a response to a concern by certain Congressmen that Justice Department prosecutors had to be reined in and made subject to the same professional standards applicable to private attorneys. Most federal courts have their own local rules which incorporate the rules of professional conduct of the state bars in which they are located. This law then clearly requires federal prosecutors to comply with the rules of professional conduct of the states in which they appear in court. These state provisions are a significant source of the rules that bind Department attorneys. Typically, such rules include provisions requiring reasonable diligence and promptness in representing a client, providing objective and independent legal advice, guarding the confidentiality of information received from a client, and compliance with the client's lawful instructions. Such rules also normally require candor to the court and opposing counsel as well as correction of testimony later discovered to be false. They also normally prohibit prosecutors from communicating with parties they know are represented by an attorney unless the party's attorney consents, and from communicating with the court unless the opposing lawyer is present (*ex parte* communications).

E. Department of Justice Regulations and Policies

The Department has its own extensive regulations and policies that impose professional obligations on Department attorneys. For example, because of the sensitive Constitutional rights at issue, there are regulations that require prior approval by the head of the Criminal Division before a Department attorney may issue a grand jury subpoena to a reporter [First Amendment] or a lawyer [Sixth Amendment]. There are also rules requiring certain types of plea agreements to be approved by a supervisor who stands in the shoes of the client for this purpose. The Department also has extensive regulations governing the kinds of information that can be provided to the news media while a case is pending, in order to protect the defendant's right to a fair trial.

In some cases, the Department imposes rules that are stricter than those imposed by state bars or courts and the Constitution. For example, the Department recently adopted provisions governing the disclosure of exculpatory information before a criminal trial that are considerably more expansive - - that is, they require more information to be disclosed - - than the Constitution requires. In addition, while state bar rules typically prohibit prosecutors from prosecuting a criminal case if they know the charges are not supported by probable cause, the Department's Principles of Federal Prosecution prohibit a prosecutor from indicting a defendant unless a stricter standard is met – namely, that he believes that the admissible evidence will probably be sufficient to obtain and sustain a conviction.

The Department's regulations limit the exercise of a prosecutor's discretion in other ways as well. Thus, in determining whether to commence prosecution, or take other action against a person, Department regulations provide that the prosecutor should not be influenced by a person's race, religion, sex or national origin, or political association, activities or belief, the attorney's own personal feelings concerning the person, his associations or the victim; or the possible effect of the decision on the attorney's professional or personal circumstances.

VII. HOW OPR CONDUCTS INVESTIGATIONS AND DISPOSES OF THEM

A. OPR's Jurisdiction

As noted, when it was created in 1975, OPR had jurisdiction over all Department employees and all allegations of misconduct as well as fraud, waste and abuse. The office effectively served as both OPR and the Inspector General at the time. The office consisted of only a few attorneys and conducted relatively few investigations itself; rather, it oversaw investigations conducted by the internal affairs offices of the various components and agencies within the Justice Department such as the FBI and Drug Enforcement Administration (DEA). From time to time, an allegation of abuse of prosecutorial or investigative power by Department officials at the direction of the White House arose, necessitating OPR's direct involvement in the investigation, sometimes with the assistance of the FBI, such instances were not the norm, however. For the most part, OPR served in an oversight capacity on behalf of the Department's leadership.

After an Inspector General was established for the Department in 1988, OPR's jurisdiction became more focused on the conduct of attorneys acting as attorneys and on law enforcement agents assisting them. Thus, since 1994, OPR has had jurisdiction to investigate allegations that Department of Justice attorneys engaged in misconduct in the exercise of their authority to investigate, litigate, or render legal advice. OPR's jurisdiction includes attorneys assigned to the various components of the Justice Department, including the FBI, DEA, Bureau of Alcohol, Tobacco & Firearms, Bureau of Prisons, and the U.S. Marshals Service. OPR also investigates allegations of professional misconduct made against Department attorneys who serve as immigration judges and enforce the Immigration and Nationality Act. Further, OPR investigates misconduct allegations against Department of Justice law enforcement agents when Department attorneys are involved in the alleged misconduct. Other allegations of misconduct against attorney and law enforcement agents are investigated by the Office of the Inspector General – example, for off-duty misconduct, voucher fraud, and the like.

OPR is an independent office, not within any of the Divisions or components of the Justice Department, and reports directly to the Attorney General and Deputy Attorney General. As noted, the office is headed by a Counsel for Professional Responsibility and a Deputy Counsel. Throughout the decade of the 1990s, and at the direction of then Attorney General Janet Reno, OPR grew in size from seven to twenty-four attorneys along with additional support staff. Its attorneys also began to conduct many more investigations themselves and the investigations focused largely on compliance by Department attorneys with their numerous professional obligations. Currently, there are four Associate Counsel who oversee the work of twenty-two Assistant Counsel and eight support staff members. Five of the Assistant Counsel are Assistant U.S. Attorneys on detail to OPR from U.S. Attorneys' Offices across the county. Most of the permanent OPR attorneys have prior experience as Assistant U.S. Attorneys or as Department of Justice litigators. Within the Justice Department, OPR's investigations are uniformly regarded as fair and thorough. However, the office continues to be understaffed and as a result is not able to complete the investigations it conducts in as timely a manner as the attorneys who are subjects of the investigations, the Department, and the public deserve.

B. Sources of Complaints

Department employees have a duty to report to an appropriate supervisor, any evidence or non-frivolous allegations of misconduct concerning themselves or their colleagues. The supervisor must evaluate whether the misconduct allegation at issue, if true, is serious. If so, the supervisor must report the matter to OPR. Any statement by a judge indicating a belief that a Department attorney has engaged in misconduct must be reported to a supervisor and he must report it to OPR if he determines it to be a non-frivolous allegation of serious misconduct. The duty to report is not limited to instances where the court uses the term "misconduct" because courts do not always use that term when an attorney fails to abide by his professional responsibilities. In cases where a judge *finds* that a Department attorney committed misconduct or requests an inquiry into possible misconduct, the attorney or his supervisor must immediately report the matter to OPR, even if the reporting attorney considers the judge's action to be frivolous. Such matters are usually tracked for full and often expedited investigations.

As a result of that reporting requirement, about half of all allegations of misconduct against Department attorneys are brought to OPR's attention by Department sources. These include self-referrals and referrals

of complaints by officials in U.S. Attorneys' Offices and Department litigating divisions. The remaining complaints received by OPR come from a variety of sources, including private attorneys, defendants, inmates and civil litigants, other federal agencies, state or local government officials, congressional referrals, and media reports.

In addition, OPR regularly searches the Westlaw (legal) database for cases involving judicial criticism and findings of misconduct, and reviews such matters that have not already been referred to OPR to determine whether an investigation is warranted.

C. Miscellaneous Matters and Inquiries

OPR receives about 1,100 letters, emails and other forms of communication each year, asking for assistance. Many complaints are frivolous on their face, vague and unsupported by any evidence, or not within OPR's jurisdiction. For example, a prisoner might complain about jail conditions, or about the public defender who represented him, or the judge who presided over his case. Such complaints are referred to the appropriate component within the Department or the complainant is directed to an office or agency outside the Department for assistance.

About twenty-five percent or 250 of the complaints are determined to be serious enough to require OPR to open inquiries into the allegations. Typically in such cases, OPR asks the subject attorney to provide a written response to the allegations, one that is written by him and not edited by anyone in his office or the Department, along with relevant documents. A large majority of these inquiries are closed with a finding of no misconduct based on a review of these materials and the individual bringing the matter to our attention is advised by letter that his complaint did not warrant further investigation. However, if in the course of an inquiry, OPR determines that further investigation is needed, the matter is converted to an investigation, the conduct of which is described below. In addition, we open some matters as investigations from the outset due to the serious nature of the allegations. For example, a finding of misconduct or serious judicial criticism of a Department attorney by a court is normally opened as a full investigation.

D. Investigations

In a typical year, we initiate between 80 and 100 full investigations. When a matter is handled as an investigation, two OPR attorneys are assigned to the matter. Normally the case file is reviewed and each witness with information about the allegations is interviewed. The interviews are recorded with a digital tape recorder. If the matter is an administrative investigation, and nearly all OPR investigations are administrative in nature, the subject of the allegations is required to sit for an interview on the record under oath with a court reporter transcribing the interview. The subject attorney is later given an opportunity to review the transcript and provide additional information in writing regarding the allegations. All Department attorneys have a duty to co-operate with an OPR investigation. Employees who do not co-operate may be formally disciplined, including termination of their employment with the Department (28 CFR § 45.13 (2006)). In administrative investigations, OPR will normally permit the subject to have privately retained counsel present at his or her interview as long as the counsel does not interfere with the questioning. OPR administrative investigations are occasionally hampered by the fact that we cannot compel non-Department witnesses to participate in OPR administrative investigations and some refuse to do so. Because the investigation is not criminal, OPR cannot conduct a grand jury investigation and serve grand jury subpoenas to compel participation.

If the allegations are criminal in nature and OPR is deemed the appropriate office to investigate, the subject attorney is notified of that fact and is not required to participate in the investigation. Thus, if a decision is reached to try to interview him because it would advance the investigation, he or she is told that he or she is not required to submit to an interview and that, if he or she does, his or her statements may be used against him or her in a subsequent criminal trial. Under these circumstances, the subject attorney has a right to be represented by counsel. A Department attorney cannot be fired for refusing to participate in a criminal investigation, but if the investigation is conducted administratively and he or she is compelled to testify, he or she can be disciplined administratively for what he or she admits to.

At the conclusion of an investigation, the assigned OPR Assistant Counsel prepares a report outlining the results of the investigation and findings and conclusions as to whether the subject attorney committed professional misconduct, exercised poor judgment, made a mistake or acted appropriately under the circumstances.

E. Overview of Disposition of Investigations, 2001 to 2009

1. OPR Findings and Conclusions

In analyzing whether a Department attorney committed professional misconduct, OPR first determines whether the attorney violated the obligation or duty at issue. For example, if an attorney is alleged to have violated his duty of candor toward the court by making a false statement or failing to correct a statement he subsequently learned was false, OPR first determines whether the attorney in fact breached his duty. OPR then determines whether that conduct constituted professional misconduct, poor judgment, mistake, or was appropriate under the circumstances.

OPR finds that an attorney committed intentional professional misconduct if it finds that the attorney acted with the purpose of violating his or her obligation, or knowing that the natural and probable consequences of his or her action will be to violate the obligation.

OPR finds that an attorney committed misconduct in reckless disregard of the attorney's professional obligation when the attorney knows, or should know, of the obligation and that his or her conduct involves a substantial likelihood that he or she will violate the obligation, and the attorney nonetheless engages in the conduct, which is objectively unreasonable under all the circumstances.

Even if an attorney did not breach an obligation, OPR may find that he or she exercised poor judgment when, faced with alternative courses of action, the attorney chose a course of action that is in marked contrast to the action the Department may reasonably expect an attorney exercising good judgment to take. Alternatively, OPR may find that the attorney made an excusable human error, or a mistake, despite his or her exercise of reasonable care under the circumstances.

2. Different Roles for OPR and the Courts

Between January 2001 and June 2009, OPR found professional misconduct in twenty-four percent of the investigations it completed during these eight years, and found poor judgment in eleven percent. OPR made no negative findings in sixty-five percent of the investigations it closed in the last eight years. Among the sixty-five percent are many involving serious criticism or findings of misconduct by the courts. It is noteworthy that OPR disagrees with courts frequently. It does so for several reasons, including the fact that the roles of OPR and the courts in addressing possible misconduct by Justice Department attorneys are significantly different. The courts' interests are in protecting the rights of defendants, enforcing the court's orders and maintaining decorum, and imposing sanctions for rule violations. In fashioning an appropriate course of action, a court is limited to the record in the case before it, and often does not permit the individual prosecutor to address his or her individual culpability.

OPR, on the other hand, focuses on the individual attorney's personal responsibility to uphold the standards of professionalism established by the Constitution, statutes, court and bar rules, and Department regulations and policies. In so doing, OPR takes a more in-depth look at what led to the court's criticism, and delves into the entire background of the case and the scienter level of the attorney. Thus, in making an assessment of the attorney's culpability in handling the matter, we look at such factors as the attorney's communications with the client agency, investigators, and supervisors, what the attorney knew or should have known based on his or her level of experience and the obvious applicability of the rule to the situation, and his or her options for dealing with unexpected problems. In addition, courts use varying definitions of what constitutes "professional misconduct" and often criticize attorneys without using that term at all. For example, a court may use the term "professional misconduct" to describe conduct that OPR refers to as "poor judgment" or a "mistake." Or, conversely, a court may describe as an "error" conduct that we determine constituted reckless misconduct.

3. Most Frequent Allegations and Findings of Misconduct

As noted, much of the day-to-day work of OPR involves ensuring that Justice Department attorneys adhere to the highest standards of professionalism and do not allow anything, including a zeal to convict, to compromise those standards. Between January 2001 and June 2009, the most common allegations of misconduct by Department attorneys were that an attorney made misrepresentations to the court or opposing counsel, and that an attorney failed to act diligently in performing performed his or her duties as a Department attorney, including neglecting assigned cases or committing discovery violations.

Attorneys were also alleged to have made improper remarks to a grand jury or a petit jury, made unauthorized disclosures of client secrets or confidences or of non-public information, failed to comply with Department rules and regulations, missed court deadlines, or failed to perform some other obligation in a timely manner.

As to findings of professional misconduct during the same period, allegations of failure to diligently perform duties resulted in the most findings of misconduct, followed by allegations of making misrepresentations to the court or opposing counsel. OPR also made findings of misconduct for failure to comply with Department rules or regulations, for making unauthorized disclosures, for making improper remarks to a jury, and for discovery violations.

4. Investigations Involving Allegations of Misuse of Power

From time to time, OPR is called upon to investigate allegations of misuse of prosecutorial power by Department officials and line attorneys. As noted, such investigations have been part of OPR's mission since the office's creation in the aftermath of Watergate. Since the early 1990s, OPR has investigated and where appropriate found misconduct in cases involving allegations that criminal prosecutions were started, or terminated, for partisan political purposes, and the FBI's investigative powers were misused to benefit the incumbent administration.

More recently, OPR along with the Department's Inspector General, jointly investigated allegations that seven U.S. Attorneys were simultaneously removed from their positions, and two others were removed a short time before, for improper partisan political purposes. We focused on the reasons for the U.S. Attorney removals and whether the U.S. Attorneys were removed by the Department's leadership, in conjunction with the White House, to influence an investigation or prosecution or to retaliate for their actions in any specific investigation or prosecution for partisan political purposes. We found substantial evidence that partisan political considerations played a part in the removal of several of the U.S. Attorneys. Because several White House officials and former Department officials refused to be interviewed by us and the White House refused to provide internal White House documents related to the removals of the U.S. Attorneys, we recommended that a counsel specially appointed by the Attorney General conduct further investigation, with a grand jury and subpoena power, to determine whether the evidence demonstrates that any criminal offense was committed with regard to the removal of any U.S. Attorney.

We also found evidence that several other U.S. Attorneys were viewed as mediocre performers and were removed because they also lacked political support of their home state Senators, while other mediocre performing U.S. Attorneys were not removed because they had such support and removal would have resulted in a fight between the White House and the Senators. We noted that while U.S. Attorneys are Presidential appointees who may be dismissed for any lawful reason or for no reason, they may not be dismissed for an illegal or improper reason. U.S. Attorneys should make their prosecutorial decisions based on the Department's and the Administration's priorities and the law and the facts of each case, not on a fear of being removed if they lose political support. If a U.S. Attorney must maintain the confidence of home state political officials to avoid removal, regardless of the merits of the U.S. Attorney's prosecutive decisions, respect for the Justice Department's independence and integrity will be severely damaged and every U.S. Attorney's prosecutive decisions will be suspect. The longstanding tradition of integrity and independent judgments by Department prosecutors will be undermined, and confidence that the Justice Department decides who to prosecute based solely on the evidence and the law, without regard to political factors, will disappear.

The Attorney General accepted our recommendation, and appointed a counsel to conduct an investigation which is on-going. OPR and the OIG also examined allegations of politicized hiring at the Justice Department by several officials in the Office of then Attorney General Alberto Gonzalez and concluded that such officials in fact considered political and ideological affiliations of candidates for career attorney positions and for other personnel actions concerning Department attorneys in violation of the Civil Service Reform Act and Department policy. Again, the danger of such misuse of power is that the Department will be perceived as staffed by prosecutors with an ideological or political perspective that will influence the prosecutive decisions they make rather than the facts and the law.

In addition, OPR has been conducting an investigation into whether the attorneys who drafted memoranda approving the CIA enhanced interrogation techniques complied with their obligation to provide objective and

independent legal advice or instead provided the advice they knew their client wanted. OPR also conducted investigations into allegations that certain investigations and prosecutions were initiated selectively against political opponents while public officials of the President's party who engaged in similar conduct were not prosecuted. Such allegations undermine the American government's promise of a fair, unbiased, and politically blind criminal justice system and, obviously, require prompt and thorough investigations.

F. Who Gets in Trouble with OPR

The types of lawyers who tend to get in trouble with OPR are, it appears, the kinds of lawyers who tend to get in trouble wherever they work. These are some common categories that such lawyers seem to fall into: the over eager, the under eager and the uninformed Department attorney. For the over-eager attorney, or "the Zealot," winning is everything. This can be the result of believing that the outcome of a particular case is so important that corners may be cut to gain a conviction. This attorney is so aggressive that he improperly tries to gain advantage by failing to disclose information that by law must be provided to the defendant pursuant to Federal Rule of Criminal Procedure 16, the *Brady v. Maryland, 373 U.S. 83 (1963)*, Department regulations and the Federal Rules of Civil Procedure. Or he violates his duty of candor to the court by failing to disclose material information that is adverse to a position advanced by the Department attorney. Or he misstates the evidence, impugns opposing counsel, makes improper remarks to the jury or breaches plea agreements.

The under-eager attorney, or the "minimalist," does not appreciate and respect the importance of representing the United States as his client. He may fail to charge a case timely or meet discovery or other disclosure obligations because he failed to review all of the files in a timely manner. Or he may fail to obey a court order because he did not prepare the memorandum or pleading timely. In essence, he does not diligently represent his client, the United States.

There are also, unfortunately, some Department attorneys who do not know the rules and, "blissfully ignorant," fail to master the Rules of Professional Responsibility, Evidence, or Criminal or Civil Procedure in the manner required to carry out their important function. These attorneys fail to keep up with new laws or court decisions, fail to review slip opinions, and do not bother to read new Department policies such as the one dealing with disclosure of exculpatory evidence. As noted, OPR considers an attorney's experience level in evaluating misconduct allegations, but knowledge of the rules is expected and required even for attorneys lacking significant experience.

VIII. CONSEQUENCES OF A PROFESSIONAL MISCONDUCT FINDING BY OPR

In cases where OPR concludes that a Department attorney committed professional misconduct, a report is sent to the head of the office or division where the attorney works with a recommendation of a range of discipline for the component head to consider in proposing discipline. OPR is otherwise not involved in the discipline process. Discipline can range from a written reprimand, suspension without pay, up to termination of employment. At the conclusion of the discipline process, pursuant to Department policy, OPR notifies the relevant state bar of which the subject attorney is a member of its finding of misconduct. We share with the bar a copy of OPR's report upon request.

OPR is charged with providing advice to the Attorney General and Deputy Attorney General concerning the need for changes in policies and procedures which become evident during the course of OPR's investigations. OPR moreover, tracks misconduct findings in order to detect developing trends, and recommends remedial training for individual attorneys and changes in institutional training programmes to address patterns of violations. OPR also recommends changes in Department policies and procedures.

OPR reports are usually not made public. Even within the Department, they are shared on a need-to-know basis. This is because they contain sensitive information about the subject attorney and other witnesses referred to in the report who are protected by the Privacy Act. 5 U.S.C. § 552a. (The Privacy Act establishes special requirements for the Executive Branch with regard to disclosure of information on individuals it has collected pursuant to its mission.) In addition, the report may contain other sensitive law enforcement information, classified information, or information prohibited from disclosure by Federal Rule of Criminal Procedure 6 (e) which, as noted, prohibits the government from disclosing matters occurring

before a grand jury.

Occasionally, however, the subjects of a report are high-ranking public officials and the subject matter is of such importance to the public that the public's interest in disclosure outweighs the privacy interests of the subjects. Thus, the joint OIG/OPR reports I referred to regarding the U.S. Attorney removals and the Department's hiring practices were deemed to be so important in terms of restoring public confidence in the Department and the morale of its employees, that the reports were made public.

Lastly, OPR may share information with other government agencies and officials for law enforcement purposes; with individuals and agencies in order to elicit information relevant to the investigation or another pending proceeding, in a court, grand jury, regulatory or administrative proceedings; with other federal agencies when requested in connection with hiring or retention of an employee, the issuance of a security clearance, or the reporting of an investigation of an employee; with complainants to the extent necessary to inform them of the progress or results of OPR's review of their complaints; and to the subject of an OPR investigation or inquiry to further the investigation or inquiry or to give notice of the status or outcome of the matter.

HRSP Mission

Promoting justice by prosecuting human rights violators and other international criminals

Report Violations

HRSP is seeking information that may assist the U.S. Government in identifying human rights violators.

If you know of anyone in the United States or of any U.S. citizen anywhere in the world who may have been involved in perpetrating human rights violations abroad, please contact:

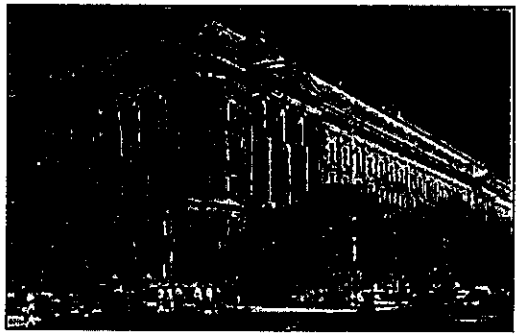
Kathleen O'Connor
1-800-813-5863
(The call is free.)

Or email her at
hrsptips@usdoj.gov.

You **do not** have to identify yourself when providing information.

Please provide as much detail as possible.

Your information will be reviewed promptly by HRSP.



For assistance or further information:

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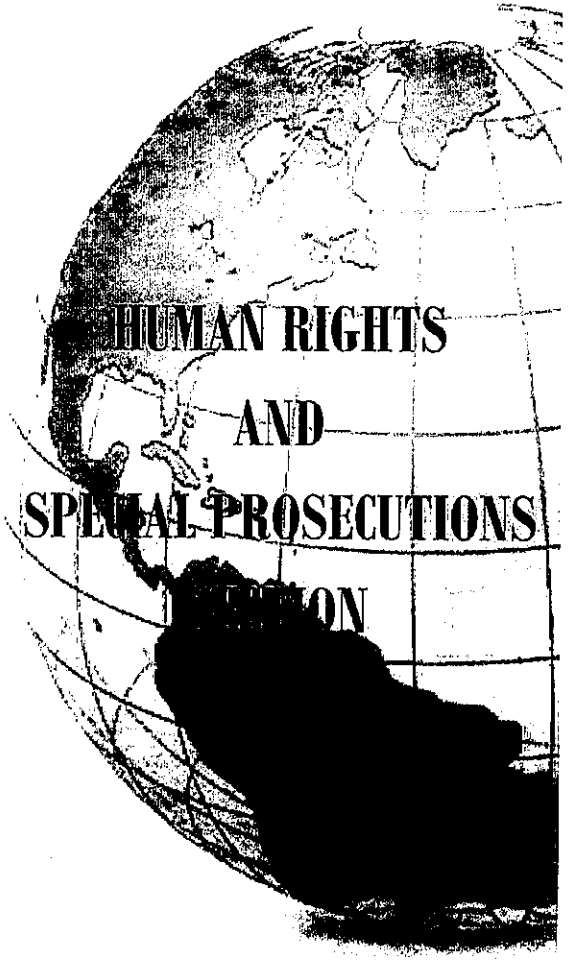
http://www.justice.gov/criminal/hrsp

U.S. Department of Justice
Criminal Division



BACKGROUND

The Human Rights and Special Prosecutions Section (HRSP) is a component of the Criminal Division of the U.S. Department of Justice (DOJ) in Washington, D.C. It was created in March 2010 by merging the Domestic Security Section and the Office of Special Investigations.

HRSP's responsibilities include enforcing federal criminal laws relating to:

1) serious human rights violations such as torture, genocide, war crimes, and use of child soldiers;
2) immigration related offenses, particularly those involving human rights violators or smuggling networks connected with national security or transnational organized crime; and
3) international violent crimes, particularly those involving U.S. government employees and contractors overseas.

HRSP prosecutes cases, primarily in partnership with United States Attorneys Offices (USAOs), works on policy matters, and assists U.S. and foreign prosecutors. HRSP regularly works with law enforcement officials in the Department of Justice, other federal departments, and foreign governments. The Section works especially closely with U.S. Immigration and Customs Enforcement's Homeland Security Investigations (HSI); the Federal Bureau of Investigation (FBI); the Bureau of Diplomatic Security (DS) and other State Department components; and various law enforcement agencies within the Department of Defense. HRSP also coordinates closely with DOJ's National Security Division, which handles terrorism-related matters.

HUMAN RIGHTS VIOLATIONS

HRSP investigates and prosecutes human rights violators. Where federal jurisdiction exists, this effort includes the prosecution of individuals who engaged in torture, war crimes, genocide and the use or recruitment of child soldiers. HSI and FBI are the principal law enforcement agencies with which HRSP works in pursuing these cases.

HRSP is involved in a coordinated effort with other federal entities to ensure that the United States does not become a safe haven for human rights violators. In this work, HRSP has frequent contact with foreign governments, international tribunals and non-governmental organizations (NGOs).

HRSP pursues accountability for human rights abusers in a variety of ways. In addition to prosecution for the substantive offenses, HRSP prosecutes for immigration and naturalization fraud related to efforts to conceal an abuser's background, trains prosecutors and agents on human rights law, and conducts outreach to nongovernmental organizations and immigrant communities.

HRSP plays an important role in the work of the inter-agency Atrocities Prevention Board (APB), created in 2012 to coordinate a "whole-of-government" approach to the prevention of, and response to, incidents of genocide and mass atrocities.

HRSP is also responsible for the identification, investigation, civil prosecution, and removal or extradition of participants in World War II-era Nazi-sponsored acts of persecution.

SELECT CASES

U.S. v. Roy M. Belfast, Jr. a/k/a Chuckie Taylor: The first -ever federal prosecution of a charge of torture involved the American son of former Liberian President Charles Taylor. Chuckie Taylor was commander of an armed security force in Liberia during his father's administration. He was accused of having committed torture by, among other things, burning victims with molten plastic, lit cigarettes, candle wax, and an iron. Taylor was convicted after a jury trial and was sentenced in 2009 to 97 years in prison.

U.S. v. Steven D. Green: A former U.S. Army soldier, Green was tried and convicted in 2009 after a jury trial on charges arising from an incident that occurred in March 2006 in Iraq, during which Green and several fellow soldiers raped, killed, and then burned the body of a 14-year-old Iraqi girl. They also killed the girl's parents and six-year-old sister during the same incident. Green was sentenced to life imprisonment.

U.S. v. Gilberto Jordan: Jordan was convicted in 2010 of naturalization fraud for concealing his participation in a notorious massacre perpetrated in the village of Dos Erres, Guatemala, in 1982 while Jordan was serving in the Guatemalan military. In 2010, he received the statutory maximum sentence of 10 years' imprisonment.

U.S. v. Ivan Kalymon: In 2011, a removal order was issued in U.S. immigration court directing Kalymon's deportation on the basis of his conduct in shooting Jews in 1942 while serving in a Nazi-sponsored police unit in German-occupied Ukraine.

WHAT CAN HRSP DO?

A former Guatemalan soldier participated in the killing of unarmed men, women, and children in Guatemala in 1982. He moved to the United States and became a U.S. citizen.

When the U.S. government located him, we took legal action, and he was sentenced to 10 years in prison and lost his citizenship.

Que peut faire la HRSP?

En 1982, au Guatemala, un ancien soldat guatémaltèque a participé au massacre d'hommes, de femmes et d'enfants non armés. Il est venu s'établir aux États-Unis; il est ensuite devenu citoyen américain.

Une fois repéré par le gouvernement des États-Unis, des poursuites judiciaires ont été engagées à son encontre. Il a été condamné à dix ans de prison et a perdu sa citoyenneté.

¿Qué es lo que la HRSP puede lograr?

Un ex-soldado guatemalteco participó en la matanza de hombres, mujeres y niños desarmados en Guatemala. Se mudó a los Estados Unidos y se hizo ciudadano estadounidense.

Cuando el gobierno de los Estados Unidos logró ubicarlo, emprendimos acción legal y fue condenado a 10 años de prisión y perdió su ciudadania estadounidense.

ماذا يمكن أن تفعل HRSP؟

شارك جندي كواتيمالا السابق في قتل رجال غير مسلحين ونساء وأطفال وفي غواتيمالا في عام 1982. انتقل الى الولايات المتحدة وحصل على الجنسية الامريكية.

اتخذنا إجراءات قانونية بحقه عندما عثرت الحكومة الأمريكية عليه وحكم بالسجن لمدة 10 سنوات وفقد جنسيته.

HRSP Mission

Promoting justice by prosecuting human rights violators and other international criminals.

La Mission de la HRSP

Promouvoir la justice en traduisant devant les tribunaux les personnes impliquées dans les violations des droits de l'homme et autres criminels internationaux.

Misión de la HRSP

Fomentar la justicia mediante el procesamiento de aquellos que hayan cometido violaciones de derechos humanos, así como otros crimenes a nivel internacional.

مهمة HRSP

تعزيز العدالة بمحاكمة منتهكي حقوق الإنسان ومجرمين دوليين آخرين

Human Rights and
Special Prosecutions Section

Section Des droits de l'Homme et des Poursuites Judiciaires Spéciales

Sección de Derechos Humanos y Procesamientos Especiales

حقوق الإنسان وقسم المحاكمات الخاصة

http://www.justice.gov/criminal/hrsp

U.S. Department of Justice
Criminal Division
Human Rights and Special Prosecutions Section

HUMAN RIGHTS AND SPECIAL PROSECUTIONS

Before you came to the United States, were you or anyone you know ever ***hurt or threatened*** *by any government, military, police, or armed people or groups?*

Do you believe that any of these people ***may have come to the U.S.?***

Avant votre venue aux États-Unis, avez-vous, vous même ou l'une de vos connaissances, été victime d'une **agression ou subi de menaces** de la part d'un gouvernement, d'une armée ou d'une force policière quelconques ou de la part d'individus ou de groupes armés de nature similaire?

Pensez-vous que certaines de ces personnes **vivent aux États-Unis?**

Antes de llegar a los Estados Unidos, ¿usted, o cualquier persona que usted conozca, fueron **lastimados o amenazados** por algún individuo o grupo armado, policial, militar, o del gobierno?

¿Cree usted que alguna de estas personas **podría estar en a los Estados Unidos?**

قبل مجيئك الى الولايات المتحدة ، هل **تضررت او هددت** انت أو أي أحد تعرفه من طرف أي حكومة او جيش أو شرطة أو أشخاص أو جماعات مسلحين؟

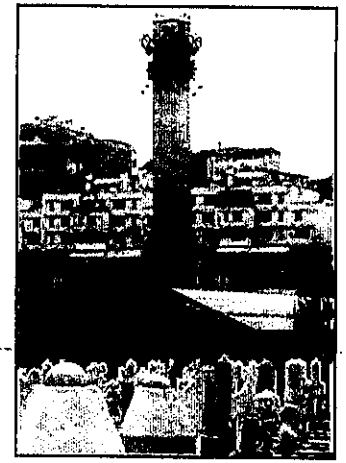
هل تعتقد أن أي من هؤلاء الأشخاص **قد جاءوا إلى الولايات المتحدة؟**

If so, you are not alone.

Thousands of persons who have suffered persecution are able to start new lives in the U.S.

The U.S. government wants to make sure that human rights violators do not get to live in the U.S.

THE HUMAN RIGHTS AND SPECIAL PROSECUTIONS SECTION (HRSP) of the U.S. Department of Justice works with other federal government agencies to identify and prosecute human rights violators.



WHAT TYPES OF ACTIONS ARE CONSIDERED HUMAN RIGHTS VIOLATIONS? Some examples include: murder, rape, physical or mental torture, and the recruitment or use of children as soldiers.

If you know of anyone who is now in the U.S. and may have been involved in human rights violations in another country, please help us find them and bring them to justice. Call HRSP and leave a message for Kathleen O'Connor in any language, 1-800-813-5863. The call is free. Or email her at hrsptips@usdoj.gov. You do not have to identify yourself when providing information. Please provide as much detail as possible. Your information will be reviewed promptly by HRSP.

Si es así, usted no está solo.

Miles de personas que han sufrido persecución logran comenzar una nueva vida en los Estados Unidos.

El gobierno estadounidense quiere asegurarse de que aquellos que hayan cometido violaciones de derechos humanos no logren vivir en los Estados Unidos.

LA SECCIÓN DE DERECHOS HUMANOS Y PROCESAMIENTOS ESPECIALES (HSRP) del Departamento de Justicia de los Estados Unidos de América colabora con otras agencias federales de gobierno para identificar y procesar a aquellos que hayan cometido violaciones de derechos humanos.

¿QUÉ TIPOS DE ACCIONES SE CONSIDERAN VIOLACIONES DE DERECHOS HUMANOS? Algunos ejemplos incluyen: el asesinato, la violación sexual, la tortura física o mental y el reclutamiento o uso de niños como soldados.

Si usted sabe de alguna persona que pudiera haber estado involucrada en violaciones de derechos humanos en otro país, por favor ayúdenos a encontrarla y llevarla ante la justicia. Llame a la HRSP y deje un mensaje para Kathleen O'Connor en cualquier idioma, 1-800-813-5863. La llamada es gratuita. O envíele un correo electrónico a: hrsptips@usdoj.gov. No es necesario que usted se identifique para proporcionar información. Por favor provea la mayor cantidad de detalles posible. Su información será revisada de inmediato por la HRSP.

إذا كان الأمر كذلك، فأنت لست وحدك.

آلاف الأشخاص الذين عانوا من الاضطهاد قادرون على بدء حياة جديدة في الولايات المتحدة.

حكومة الولايات المتحدة تريد أن تتأكد من أن منتهكي حقوق الإنسان لا يستطيعون العيش في الولايات المتحدة.

قسم حقوق الإنسان وقسم المحاكمات الخاصة (HRSP) بوزارة العدل الأمريكية تعمل مع وكالات حكومية أخرى لتحديد ومحاكمة منتهكي حقوق الإنسان.

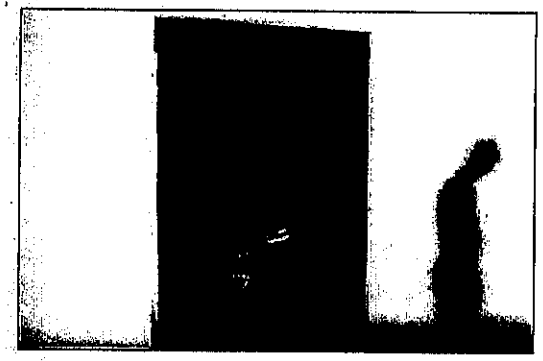
ما هي أنواع الأفعال التي تعتبر انتهاكات لحقوق الإنسان؟ تشتمل بعض الأمثلة على: القتل والاغتصاب والتعذيب الجسدي أو العقلي وتوظيف الأطفال أو إستخدامهم كجنود.

إذا كنت تعرف أي أشخاص موجدين حاليا في الويلايات المتحدة الامريكية ربما تورطوا في انتهاكات حقوق الإنسان في بلد آخر، الرجاء مساعدتنا للعثور عليهم وتقديمهم للعدالة. اتصل بHRSP وأترك رسالة لكاثلين أوكونور بأي لغة.
1-800-813-5863
المكالمة مجانية. أو ابعث لها رسالة إلكترونية علىhrsptips@usdoj.gov
ليس عليك أن تعرف بهويتك عند تقديم المعلومات يرجى تقديم أكبر قدر ممكن من التفاصيل ستتم مراجعة معلوماتك على الفور من قبل HRSP

Si c'est le cas, vous n'êtes pas seul(e).

Des milliers de personnes, victimes de persécutions, ont pu commencer une nouvelle vie aux États-Unis.

Le gouvernement des États-Unis cherche à s'assurer que les personnes impliquées dans les violations des droits de l'homme ne puissent pas vivre aux États-Unis.



La Section des Droits de l'Homme et des Poursuites Judiciaires spéciales (HRSP) du Ministère de la Justice des États-Unis travaille en collaboration avec d'autres agences du gouvernement fédéral pour trouver les personnes impliquées dans les violations des droits de l'homme et les traduire en justice.

Quels types d'actes sont considérés comme des violations des droits de l'homme? Quelques exemples peuvent inclure le meurtre, le viol, la torture mentale et physique et le recrutement ou l'utilisation d'enfants soldats.

Si vous connaissez une personne qui, vivant actuellement aux États-Unis, a été impliquée dans des violations des droits de l'homme dans un autre pays, aidez-nous, s'il vous plait, à la trouver et à la traduire en justice. Appelez la HRSP et laissez un message à Kathleen O'Connor dans une langue de votre choix, 1-800-813-5863. Les appels sont gratuits. Vous pouvez également lui envoyer un email à l'adresse suivante: hrsptips@usdoj.gov. Vous n'êtes pas tenu de révéler votre identité lorsque vous fournissez des informations. Merci de donner autant de détails que possible. Les informations que vous apportez seront rapidement examinées par la HRSP.

About **ICITAP**

ICITAP is an agency of law enforcement experts who provide training, mentoring, technical assistance, and equipment donations to foreign governments.

Our mission is to help keep our world safe by

- Promoting human rights and global rule of law
- Developing capacity to fight transnational crime, terrorism, and corruption
- Helping to build professional law enforcement institutions
- Advancing international law enforcement partnerships

"Promoting the rule of law around the world protects our global community from the lawlessness that endangers basic human rights and our own national security."

Lanny Breuer
Assistant Attorney General
Criminal Division

ICITAP works in partnership with the U.S. Department of State, the U.S. Agency for International Development, the Department of Defense, and the Millennium Challenge Corporation. These agencies fund ICITAP's programs.

For more information about ICITAP and our work around the world, please visit us at ***www.justice.gov/criminal/icitap/***

Building individual skills and organizational capacity

U.S. Department of Justice
Criminal Division
International Criminal Investigative Training Assistance Program

ICITAP

INTERNATIONAL CRIMINAL INVESTIGATIVE TRAINING ASSISTANCE PROGRAM

Building Law Enforcement Capacity and Partnerships Worldwide

Our **History**

Congress established ICITAP in 1986 to help train foreign police forces on criminal investigations.

Today, we are a full-service, international law enforcement development agency.

Over the past 25 years, ICITAP has provided assistance in more than 90 countries worldwide. The agency works with

- emerging democracies and developing countries
- key allies in combating terrorism and transnational crime
- nations in post-conflict stabilization and reconstruction

Marine and border security

Our **Programs**

ICITAP provides assistance to all sectors of civilian law enforcement:

- Police and investigators
- Specialized/Tactical Units
- Forensic laboratories
- Correctional systems
- Border security forces
- Maritime units

ICITAP has offices and programs in Africa, East Asia and the Pacific, Europe and Eurasia, the Near East, South and Central Asia, and the Western Hemisphere.

Forensic evidence collection and analysis

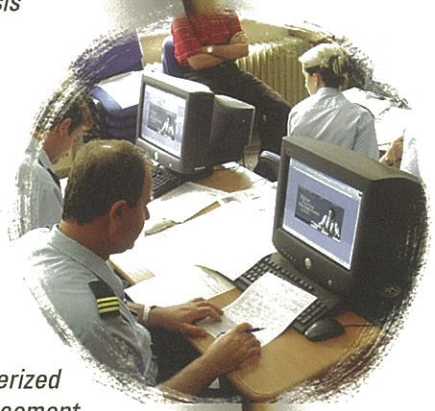
Our **People**

ICITAP draws on the best subject matter experts available to carry out its mission.

Our people possess decades of experience in federal, state, and local law enforcement, both in the United States and internationally.

Many are active law enforcement agents with the U.S. Departments of Justice, Homeland Security, and Treasury.

ICITAP's experts live overseas and work in concert with host country counterparts. They share their knowledge to build effective and professional law enforcement institutions worldwide.



Computerized law enforcement information systems

Performance Indicator Summary							
#	Indicator	Achievements in 2013				Cumulative Target for 2013	Notes
		Q1	Q2	Q3	Q4		
0.1	Percentage of respondents who express confidence in the rule of law in Jordan (USAID/Jordan Indicator).					75%	This indictaor is no longer applicable as the survey activity has been cancelled.
0.2	Number of USG-assisted courts with improved case management systems (F Indicator 2.1.3-13 & USAID/Jordan Indicator and USAID/Jordan Indicator).					65	This indicator will be reported in the fourth quarterly report.
0.3	Number of judges and judicial personnel trained with USG assistance (F Indicator 2.1.2-7 & USAID/Jordan Indicator).	160	196			200	This indicator will be reported in every quarterly report.
0.4	Number of USG sponsored workshops where judges and judicial personnel take the lead in drafting laws, regulations and procedures.	4	0			18	This indicator will be reported in every quarterly report.
1.1	Number of legal provisions, regulations and procedures designed to enhance judicial independence supported with USG assistance (F Indicator 2.1.2-2).	0	0			5	This indicator will be reported in every quarterly report.
1.2	Number of strategies, plans and assessments designed to increase transparency and accountability, and sponsored by the judiciary.	1	2			5	This indicator will be reported in every quarterly report.
1.3	Number of Judicial Council press releases published via media to enhance the public's understanding of reforms to judicial authorities and administration.	1	0			12	This indicator will be reported in every quarterly report.
2.1	Number of recommendations made for reforms intended to protect fundamental freedoms in line with international human rights standards.	0	0			3	This indicator will be reported in every quarterly report.
2.2	Average daily number of inquiries made for case information via kiosks and web portal (Indicator from ROLP's 2008-2011 PMEP).	21308	20197			2356	This indicator will be reported in every quarterly report.
3.1	Percentage of recommendations from the Prosecution Improvement Implementation Plan which the Judicial Council agrees to implement.	100%	100%			50%	This indicator will be reported every quarter beginning in the second quarter of 2012.
3.2	Number of automated case management functions implemented to enhance civil and criminal case management, execution and enforcement.	0	2			5	This indicator will be reported in every quarterly report.