

NAAUSA NEWS



For Members of the National Association of Assistant United States Attorneys

NAAUSA PROPOSES COLLECTIONS REFORM LEGISLATION

NAAUSA has developed a collections reform legislative proposal that provides significant financial resources for United States Attorney's offices and offsets the costs of the AUSA retirement legislation. It has become an integral component of the AUSA retirement legislation.

The NAAUSA proposal would establish an Enhanced Financial Recovery Fund, projected to provide an estimated \$720 million in new funds from FY 2007 to FY 2012 to:

- Enhance DOJ's ability to collect criminal and civil debts owed to the U.S. and the victims of crime by providing \$20 million a year for FLU resources.
- Provide supplemental revenue to DOJ for any purpose.
- Address GAO criticism that USAOs are not aggressively collecting outstanding debts.
- Offset the costs of providing retirement benefits for AUSAs which will bring them up to par with all other members of the courthouse family and federal law enforcement communities.
- Associate the costs of collection with the debtors instead of DOJ.

NAAUSA's collections reform proposal has evolved through the expert advice of financial experts in the field. Mark Exley, USAVAE, and Christine Sciarrino, USACT, have provided insight and time (on annual leave) in meetings with DOJ and Congressional officials in refining the proposal.

The proposal has been reviewed, on a non-official basis, by senior staff at the Department, including Bill Mercer, Principal Associate Deputy Attorney General, and Lee Lofthus, DOJ's Comptroller. . The original idea to increase funding for U.S. Attorney's offices from collections originated with the Office of Management and Budget.

The legislative proposal builds upon current law by imposing surcharges and offsets on debts owed

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THANK YOU, DEDICATED NAAUSA MEMBERS

By Richard L. Delonis, NAAUSA President(USAMIE)

The active involvement of AUSAs in identifying, shaping and supporting issues that NAAUSA takes on is critical to NAAUSA's success. AUSAs who take the time to contribute their knowledge and experience are valuable to our organization.

Those who take the time to write letters and visit their lawmakers in Congress are also key players. In fact, every issue that NAAUSA has addressed since our birth fifteen years ago has been the result of extensive work by our members.

Given the critical linkage that exists between personal involvement and the

achievement of NAAUSA's goals, I want to recognize the contributions of the following NAAUSA members:

William I. Shockley - Bill Shockley retired earlier this year from the USACAN and previously served as NAAUSA President during NAAUSA's darkest days. During that time he extensively researched the history of law enforcement retirement. The Board recently honored Bill Shockley through conferral of its first lifetime NAAUSA membership.

Steven H. Cook - Steve Cook (USATNE) currently serves as NAAUSA Vice President, and has been a leading force in developing and advocating proposals for improvements in AUSA security.

Mark Exley and Christine Sciarrino - Mark Exley (USAVAE) and Christine Sciarrino (USACT) have worked extensively with financial litigation experts around the country to develop NAAUSA's comprehensive legislative proposal on collections reforms.

Stan Harris - Stan Harris (USAMSS), a former staffer to Sen. Trent Lott (R-MS), has recently played a key role in advising and

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and increasing special assessments. The legislative proposal consists of five parts.

1. 5% Criminal Surcharge - Impose a 5% surcharge on criminal debtors who do not pay fines or restitution within 15 days of judgment. The crime victim fund would still be entitled to 10% of principal and interest. The 5% surcharge would replace delinquent and default penalties which are ineffective, inefficient and rarely collected.
2. 5% Civil Surcharge - Impose a 5% surcharge on civil debtors who do not pay civil debt within 15 days of judgment. The federal agencies still would be entitled to 100% of principal and interest. The 5% surcharge would replace the 10% civil enforcement surcharge which only applies to selected enforcement actions and has not generated substantial recoveries.
3. Increase Civil Offset to 5% - Add 2% to the current 3% of civil recoveries now paid to the DOJ Working Capital Fund. The additional 2% would go into the Enhanced Financial Recovery Fund.
4. 5% Offset on Federal Restitution - The 5% offset on federal restitution would match the 5% civil offset and apply only to criminal judgments where restitution is due a federal agency. All funds collected would go to the DOJ Enhanced Financial Recovery Fund.
5. Increased Special Assessments - Special assessments, which are collected before fines and restitution would be increased across-the-board. For example, the special assessment for a felony would increase from \$100 to \$200. The special assessments would be due upon conviction and require payment by date of sentencing.

Background, assumptions and the legislative text of the proposal are published on the NAAUSA website at www.naausa.org.

NAAUSA continues to actively work with Congressional allies, Department of Justice officials and US Attorneys in refining and securing Congressional passage of the proposal.

Projected Deposits (in millions)

	FLU Support	AUSA Retirement	Net Costs	Total Deposits to Fund	New Money to Treasury	Net Money to Treasury	Net Money to DOJ
FY07	20	51	71	81.9	15.1	-55.9	10.9
FY08	20.7	82	102.7	136.1	55.1	-47.6	33.4
FY09	21.4	87	108.4	193.9	107.8	-0.6	85.5
FY10	22.2	91	113.2	260.0	157.4	44.2	146.8
FY11	23.0	95	118	332.7	218.2	100.2	214.7
FY12	23.8	99	122.8	404.7	279.2	156.4	281.9
Total	131.1	505	636.1	1409.3	832.8	196.7	773.2



NAAUSA News

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The NAAUSA News reports on views of Assistant United States Attorneys in their capacity as members of NAAUSA and not as employees of the Department of Justice.

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assisting NAAUSA in building relationships with key Senate allies in securing additional USAO budget resources.

These NAAUSA members have traveled, sometimes extensively, around the country in support of NAAUSA. They and members of the NAAUSA Board of Directors have willingly given up considerable hours of annual leave in support of NAAUSA. Other NAAUSA members around the country also have taken annual leave and given up some of their weekends to meet with key members of the House, including House Judiciary Committee Chairman James Sensenbrenner (R-WI), Rep. Chris Cannon (R-UT), Rep. Bob Goodlatte (R-VA), Rep. Lamar Smith (R-TX), Rep. Steve Chabot (R-OH) and Rep. Spencer Bachus (R-AL).

Additionally, NAAUSA members have been persistent in securing their Representative's cosponsorship of H.R. 3183, the Assistant United States Attorney Retirement Benefit Equity Act. Recently, nearly 40 members from Tennessee and over 40 members from Pennsylvania wrote personal, persuasive letters to Majority Leader Bill Frist (R-TN) and Senate Judiciary Committee Chairman Arlen Specter (R-PA) urging their support of the NAAUSA retirement legislation.

If I failed to recognize your recent personal efforts to help NAAUSA in this column, I apologize. If you haven't yet gotten involved, what's stopping you? NAAUSA relies on AUSAs as constituents and voters to influence Congress. Many NAAUSA members who have written to their House Members and Senators have had an impact. Those who have been especially effective in getting the attention of their member of Congress and securing their support are the ones who have personally met with their lawmakers. Don't wait for your colleagues to get the job done, please get started now.



AUSA MEETINGS WITH CONGRESS OK, EOUSA RULES

Questions have been raised by some AUSAs as to whether they need to obtain advance DOJ approval prior to participating in meetings with their Members of Congress or Congressional staff to discuss issues of interest to NAAUSA. Apparently, some AUSAs have been advised by USAO management that such approval is necessary, even when AUSAs participating in such meetings are acting in their "personal capacity as a NAAUSA member" and are on annual leave.

The uncertainty over the need for advance approval to participate in meetings on Capitol Hill prompted NAAUSA to seek advisory guidance from the Executive Office of U.S. Attorneys, which resulted in correspondence from Scott Schools, General Counsel, Executive Office for United States Attorneys (GCO), dated August 4, 2006. NAAUSA has

provided this correspondence to all NAAUSA delegates and posted it on the NAAUSA website.

In a nutshell, advance approval by the Department of Justice is not required when AUSAs meet with Members of Congress or Congressional staff, so long as AUSAs act in their personal capacities as NAAUSA members and protect against the disclosure of confidential Department information. NAAUSA considers EOUSA's guidance as appropriate and helpful in ensuring that Congressional visits by NAAUSA members are positive and constructive.

The EOUSA guidance letter states that:

-- An AUSA need not obtain DOJ approval in order to meet, in his/her personal capacity, with a member of Congress to discuss NAAUSA issues. Over a decade ago, a 1994 legal opinion by the Office of Legal Counsel of the Department of Justice concluded that AUSAs may speak with Congress in their personal capacities under certain restrictions. An AUSA acting in his or her personal capacity is permitted to meet with Members of Congress or their staffs as long as the AUSA makes clear that he or she is not speaking for the Department, the AUSA avoids using his or her official title or position in connection with the meeting other than as a biographical detail, the AUSA complies with the rules on the protection of confidential information, and the AUSA complies with any other law, rule, Department policy, and ethical standards.

-- If sought by the AUSA, the assistance of GCO is readily available in advising AUSAs on their professional and ethical obligations and responsibilities prior to meetings with Members of Congress or their staffs.

-- The assistance of the DOJ Professional Responsibility Advisory Office is also available to ensure AUSA conformance with local Bar rules, particularly to ensure nondisclosure of confidential DOJ information during the course of meetings with Members of Congress or their staffs. If uncertainty exists as to what information is confidential, GCO and USAO management should be consulted.

-- AUSAs who wish, in their personal capacity as a NAAUSA member, to address budget issues with Congressional representatives, may seek beforehand an EOUSA budget briefing, which may be made available, depending upon time and resources.

In summary, DOJ approval is NOT required prior to Congressional visits by AUSAs, so long as the visits are undertaken in their "personal capacities as NAAUSA members." NAAUSA of course strongly discourages any NAAUSA member from engaging in any activity at any time that may disclose confidential Department information.





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AUG - 4 2006

Mr. Dennis W. Boyd
NAAUSA
12427 Hedges Run Dr., Suite 104
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RE: AUSA Congressional Visits

Dear Mr. Boyd:

This letter is in response to your email regarding approval for Assistant United States Attorneys (AUSAs) on leave to attend meetings on Capitol Hill. As you are aware, a 1994 opinion by the Office of Legal Counsel for the Department of Justice concluded that AUSAs may speak with Congress in their personal capacities under certain restrictions. An AUSA acting in his or her personal capacity is permitted to meet with Members of Congress or their staffs as long as the AUSA makes clear that he or she is not speaking for the Department, the AUSA avoids using his or her official title or position in connection with the meeting other than as a biographical detail, the AUSA complies with the rules on the protection of confidential information, and the AUSA complies with any other law, rule, Department policy, and ethical standards.

Although specific approval is not required, the General Counsel's Office (GCO) for the Executive Office for United States Attorneys (EOUSA) will continue to advise AUSAs who consult with GCO prior to meeting with Members of Congress or their staffs of their obligations and responsibilities in accordance with the requirements of law, rule, Department policy, and ethical standards. This consultation will ensure that AUSAs are informed so that in the course of their interactions they can act in accordance with both government and professional ethics rules and regulations, as well as Department of Justice policies.

In addition, AUSAs may contact the Professional Responsibility Advisory Office prior to meeting with Members of Congress or their staffs so that they can obtain specific guidance on their responsibilities under local Bar rules, particularly with respect to the disclosure of confidential Department information. That guidance may include advice to seek consent from the United States for the release of confidential information. See e.g., ABA Model Rule of Professional Responsibility 1.6.

Finally, AUSAs are also encouraged to consult with GCO, the Counsel to the Director staff, and the management in their own offices to determine what information is confidential. See USAM 1-8.080.

I understand that contacts with Congress regarding budget issues have generated your inquiry. Many AUSAs are not privy to the actual budget process nor do they have familiarity with the budget of their own offices. In order to ensure that AUSAs who choose to speak with Congressional members or staffers regarding the budget provide accurate information, EOUSA will, upon request, provide budget briefings as time and resources permit for those AUSAs who, in their personal capacities, seek to address this issue with Congress.

Thank you for your inquiry and please feel free to contact me if you have additional questions.

Sincerely,

Scott Schools
General Counsel

NAAUSA LOBBYING FOR HIGHER USAOs BUDGET

Budget constraints upon United States Attorneys' Offices are a major and continuing concern of NAAUSA. They critically limit the ability of AUSAs to do their jobs in the pursuit of justice.

Between FY 2004 and FY 2006, United States Attorneys' Office budgets have been reduced between 6 percent and 16 percent to address funding shortfalls, prompting cutbacks in staffing and spending for vital needs in many offices. Additional funding rescissions and inflationary absorptions, such as cost-of-living salary increases and rising rent, also have contributed to the budget crunch. (See article on Page _ on the specific impact of curtailed spending in USAOs across the country.)

During NAAUSA Board meetings beginning in 2005, discussions focused on the tight USAO budgets and resulting staffing shortages and heavy workloads. NAAUSA staff met with senior staff at the Office and Management Budget several times and addressed budget shortages with United States Attorneys and the Controller for the Department of Justice.

Now some members of Congress are beginning to focus attention on the USAO funding problem and asking questions. Representative Henry Waxman (D-CA), the Ranking Member of the House Government Reform Committee, and



NAAUSA Counsel, Bruce Moyer; FAUSA SDMS, Stan Harris, Senator Trent Lott (R-MS), and NAAUSA Executive Director Dennis Boyd after meeting on USAO budget

Representative John Conyers (D-MI), the Ranking Member of the House Judiciary Committee, on July 24 sent a letter to Attorney General Alberto Gonzales seeking information on the magnitude of the US Attorney Office staffing and resource shortages and their impact.

In an August 3 reply, Assistant Attorney General William E. Moschella placed much of the blame for budget shortfalls on Congress. "Simply put," Moschella said, "from fiscal year 2003 through fiscal year 2006, Congressional action on the United States Attorneys' appropriations have included rescissions of \$67.2 million coupled with the required absorption of another \$52.8 million in cost of living salary increases." "These two actions alone have reduced the amount available to the United States Attorneys by \$120 million over that time," Moschella said. (The text of the Waxman-Conyers and Moschella letters is on the NAAUSA website.)

Meanwhile, NAAUSA is continuing to work aggressively on Capitol Hill to reverse the impact of the budget cutbacks of US Attorney Offices, in an attempt to restore some of the prior

rescinded funds and, at the very least, secure funding for US Attorney Offices that meets the FY2007 level requested by the President. The House Appropriations Committee provided funding for USAOs in FY 2007 at the level requested by the President, but the Senate Appropriations Committee provided \$18.5 million less than the President's request.

Why US Attorney Office Budget Cuts Undermine the Pursuit of Justice

Between FY 2004 and FY 2006, United States Attorneys' Office budgets have been reduced between 6 percent and 16 percent to address funding shortfalls, prompting cutbacks in staffing and spending for vital needs in many offices. Budget cuts last year resulted in 9% reductions in AUSAs and a similar reduction in percentage terms in support staff. These staffing shortages and resource deficits are critically undermining the ability of Assistant U.S. Attorneys to pursue justice and do their jobs in the following significant ways:

- Billions of dollars of criminal and civil debt cannot be collected because of staffing shortages.
- Efforts to prosecute some gang and violent crime cases have been reduced.
- Thresholds in declination guidelines have been increased to exclude many white-collar crime and drug/violent crime cases that had traditionally been handled by USAOs in the past.
- Some federal cases are being turned over to local District Attorney's offices because of lack of staffing.
- Spending on critical infrastructure investments, such as physical security and information technology, has been curtailed.
- In some offices, management officials (First Assistants and Chiefs) have been tasked with line AUSA work, limiting office management and oversight.
- Common litigation expenses, such as case-related travel for witness interviews, use of expert witnesses and the costs associated with the production of financial records pursuant to grand jury proceedings, have been curtailed in some offices.
- In other offices, FBI bankruptcy fraud investigations have been reduced because of lack of AUSAs to handle the cases.
- One USAO adopted a new policy of charging indigent defendants for photocopies of Brady material, the potentially exculpatory evidence that the government is constitutionally required to provide to defendants, because the office could not afford paper for the copier.
- In a serious health care fraud case, the targets turned over hard drives with case details; however, the conversion of the hard drives to written documents was too expensive and the case had to be dropped.
- Another health care fraud case is on hold because the three rooms of documents turned over in a search warrant could not be scanned due to lack of funds

The critical impact of reduced funding for AUSA case-related travel to conduct witness interviews and case preparation represents but one example how prosecutions are being undermined by funding cutbacks. Personal, face-to-face on-site interviews with witnesses prior to trial are essential to successful prosecution, especially when the witnesses are

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HOW TO GET SENATE COSPONSORS

By Ken Bauman, USAOR, Member NAAUSA Board of Directors

In the fall of 1966 I entered the doors of Fenton Hall the home of the University of Oregon's School of Law. Orlando John Hollis the crusty old dean ran the place. Some years earlier he had finished his stint as Oregon's faculty representative on the committee with oversight of the scandal ridden the Pacific Athletic Conference (PAC 8, now the PAC 10).

All the incoming students took a class from Dean Hollis. Among the things that Dean Hollis told us was that as lawyers we have an obligation to give back to the community. He told us that we should always be involved in a professional, a public, and a charitable activity in our communities. As I look back over my career, I understand the wisdom of Dean Hollis' words. When I began with the United States Attorney's Office for the District of Oregon in 1972 I took Dean Hollis' words to heart. I have always involved myself in these three non-work activities. The contacts I have made in my service activities have aided me immensely in my professional and personal life.

I was asked to write this article because some of my board colleagues noticed that I have always been able to immediately get Oregon's two senators and four of our five congressional representatives to co-sponsor our retirement legislation. Its easy for me to do because of my past public activities. Politicians generally start out in the grass roots of a community and a state. I have known Senator Wyden since he was involved in local politics in the Portland Metropolitan Area. I have known Senator Smith since he served in the Oregon State Senate. When I contact the senators, I am already known to them and their staff.

I am told that if we had a significant number of senators who sponsored our retirement legislation it would help its passage immensely. While you may not be able to go back in time and engage in the three service activities promoted by Dean Hollis, you certainly can begin your public involvement now. Write your senators and ask their support for our retirement legislation. Copy their Chief of Staff and their local in-state representative. Follow that up with phone calls and seek a personal meeting with the senator's local representative, later a meeting with the senator's Chief of Staff, and then the Senator. Nothing promotes a senator's recognition of you like "face time." Sure, along the way you are going to get hit up to go to political fundraisers, but the money you contribute will reap substantial benefits to you and your fellow AUSAs, and should you choose to go into private practice, benefits you in the future.

Involvement in our local communities is not only a good thing, it is the right thing. In a group that is sometimes referred to the "Me" generation, maybe its time for all of us to think of our commitment to our community in larger terms than just how we perform on our job. I am always proud when at various functions a friend introduces me to one of their friends saying, "This is my friend, Ken Bauman, and he is a Assistant United States Attorney." I am proud that the members of my community and state know the capacity in which I have served them over the years.

Now, sit down, write your congressional delegation and ask them to support our retirement legislation by becoming co-sponsors. NAAUSA has other goals besides our retirement legislation and a track record with your congressional delegation may serve you and your fellow AUSAs when congressional support is needed for those projects.

KEY CONGRESSIONAL COMMITTEES-109TH CONGRESS

The following committees and members are key to the approval of almost all legislation of interest to NAAUSA and especially the AUSA retirement legislation. Names in bold were sponsors or cosponsors of the retirement legislation in the 108th Congress.

UNITED STATES SENATE

Committee on Homeland Security and Governmental Affairs

Susan M. Collins, Chair (R-ME)

Republicans

Ted Stevens (AK)
George V. Voinovich (OH)
Norm Coleman (MN)
Tom Coburn (OK)
Lincoln D. Chafee (RI)
Robert F. Bennett (UT)
Pete V. Domenici (NM)
John W. Warner (VA)

Democrats

Joseph I. Lieberman, Ranking Member (CT)
Carl Levin (MI)
Daniel K. Akaka (HI)
Thomas R. Carper (DE)
Mark Dayton (MN)
Frank Lautenberg (NJ)
Mark Pryor (AR)

Committee on the Judiciary

Arlen Specter, Chairman (R-PA)

Republicans

Orrin G. Hatch (UT)
Charles E. Grassley (IA)
Jon Kyl (AZ)
Mike DeWine (OH)
Jeff Sessions (AL)
Lindsey Graham (SC)
John Cornyn (TX)
Sam Brownback (KS)
Tom Coburn (OK)

Democrats

Patrick Leahy, Ranking Member (VT)
Edward Kennedy (MA)
Joseph R. Biden, Jr. (DE)
Herbert Kohl (WI)
Dianne Feinstein (CA)
Russell D. Feingold (WI)
Charles E. Schumer (NY)
Richard Durbin (IL)

UNITED STATES HOUSE OF REPRESENTATIVES

Government Reform Committee
Thomas M. Davis III, Chair (R-VA)

Republicans

Dan Burton (IN)
Christopher Shays (CT)
Ileana Ros-Lehtinen (FL)
John McHugh (NY)
John Mica (FL)
Gil Gutknecht (MN)
Mark Souder (IN)
Steven C. LaTourette (OH)
Todd R. Platts (PA)
Chris Cannon (UT)
John J. Duncan Jr. (TN)
Candice Miller (MI)
Michael Turner (OH)
Darrell Issa (CA)
Ginny Brown-Waite (FL)
Jon C. Porter (NV)
Kenny Marchant (TX)
Lynn A. Westmoreland (GA)
Patrick McHenry (NC)
Charles W. Dent (PA)
Virginia Foxx (NC)
Vacancy

Democrats

Henry A. Waxman, Ranking Member (CA)
Tom Lantos (CA)
Major R. Owens (NY)
Edolphus Towns (NY)
Paul Kanjorski (PA)
Carolyn Maloney (NY)
Elijah Cummings (MD)
Dennis J. Kucinich (OH)
Wm. Lacy Clay (MO)
Diane Watson (CA)
Stephen F. Lynch (MA)
Chris Van Hollen (MD)
Linda T. Sanchez (CA)
C.A. Ruppertsberger (MD)
Brian M. Higgins (NY)
Eleanor Holmes Norton (DC)

Independent

Bernard Sanders (VT)

Judiciary Committee

F. James Sensenbrenner, Jr. Chair (R-WI)

Republicans

Henry J. Hyde (IL)
Howard Coble (NC)
Lamar S. Smith (TX)
Elton Gallegly (CA)
Bob Goodlatte (VA)
Steve Chabot (OH)
Dan Lungren (CA)
William L. Jenkins (TN)
Chris Cannon (UT)
Spencer Bachus (AL)
Bob Inglis (SC)
John N. Hostettler (IN)
Mark Green (WI)
Ric Keller (FL)
Darrell Issa (CA)
Jeff Flake (AZ)
Mike Pence (IN)
Randy Forbes (VA)
Steve King (IA)
Tom Feeney (FL)
Trent Franks (AZ)
Louie Gohmert (TX)

Democrats

John Conyers Jr., Ranking Member (MI)
Howard L. Berman (CA)
Rick Boucher (VA)
Jerold Nadler (NY)
Bobby Scott (VA)
Melvin L. Watt (NC)
Zoe Lofgren (CA)
Shelia Jackson Lee (TX)
Maxine Waters (CA)
Marty Meehan (MA)
William Delahunt (MA)
Robert I Wexler (FL)
Anthony D. Weiner (NY)
Adam Schiff (CA)
Linda T. Sanchez (CA)
Adam Smith (WA)
Chris Van Hollen Jr. (MD)
Debbie Wassermann-Schultz (FL)

Note: Names in bold are sponsors/cosponsors of H.R. 2260, NAAUSA's retirement legislation introduced in the 108th Congress.

PROFESSIONAL LIABILITY INSURANCE AND THE OPR PROCESS

By Debra L. Roth

Shaw, Bransford, Veilleux & Roth, P.C.

Attorneys at Law

Last year we wrote an article for this publication that compared the potential liabilities facing federal employees in the performance of their duties with the general protections in the professional liability policy offered by Wright & Company. AUSA's face a more narrowly defined set of potential liabilities given their prosecutorial responsibilities and powers. Like federal law enforcement officers, an AUSA is more likely to be sued in his or her individual capacity than the average federal official. For AUSA's, these suits are usually filed by convicted felons claiming some type of prosecutorial misconduct. DOJ regularly provides AUSA's with representation, and dismissal is routinely granted on the basis of immunity mitigating the need to invoke the insurance policy. However, in exercising prosecutorial powers, AUSA's also face a unique exposure for which the law of immunity does not apply and DOJ does not provide representation. That exposure starts with an investigation by DOJ's Office of Professional Responsibility into an alleged ethical abuse or attorney misconduct. Through the insurance policy, we have represented AUSA's under OPR investigations, and present in this article information about what you can expect in that process.

OPR has jurisdiction to investigate allegations of misconduct by DOJ attorneys that relate to the attorney's investigative and litigating authority. OPR learns of the allegations by several reporting mechanisms. First, per the US Attorneys' Manual, all DOJ employees must report to the U.S. Attorney or the Assistant Attorney General any non-frivolous allegation of professional misconduct (usually made by opposing counsel or defendants and civil litigants). They then are required to evaluate whether the allegations is "serious," and if so must report it to OPR. Second, any statement by a judge or magistrate indicating a belief that an attorney has engaged in professional misconduct must be reported to a supervisor who then must report it to OPR if it amounts to a "non-frivolous allegation of serious misconduct." Third, a judicial finding of professional misconduct or judicial request for an inquiry into possible misconduct must be reported directly to OPR regardless of whether the allegation is frivolous or non-serious. Finally, most of you probably did not know that OPR conducts "periodic searches of legal databases to identify opinions containing judicial findings of misconduct." We have represented DOJ attorneys in OPR investigations triggered by all of these reporting mechanisms, and it is judicial findings of misconduct which OPR handles most expeditiously.

Not every allegation warrants a full blown investigation by OPR. OPR reviews each allegation and decides whether to conduct an "inquiry" versus a full investigation. That determination is dependent on the seriousness of the allegation, its source, its specificity, the extent its susceptible to verification, and its apparent credibility. OPR reports in its March 7, 2006 procedures that the "vast majority" of complaints received by OPR are determined not to warrant investigation.

When OPR decides to proceed with an investigation, OPR sends the attorney a letter notifying him or her of the allegation

under investigation and requests a personal, written response. The response must also include a list of each jurisdiction in which the attorney maintains bar membership, regardless of whether the membership is inactive. OPR's procedures and its letter requests to each attorney admonish the attorney under investigation not to seek assistance from any other Department employee in preparing his or her response (including editing or revising it), and not to interview other witnesses or ask a witness to prepare a written statement. OPR does encourage responding attorneys to provide back up documentation with the response.

OPR clearly does not prohibit an attorney under investigation from having outside assistance of counsel in preparing the response. And many clients -who are obviously accomplished attorneys in their own right- have found the objective insight and advice from private counsel to be quite beneficial at this stage to see past his or her own subjective view of the allegation and manner of responding. And I believe a complete and candid response that appreciates all of the nuances raised by the allegation is critical to shortening the life of the investigation, i.e, by providing all the necessary information that would negate the need for an OPR interview. More importantly, if OPR does not view the written response as conclusive, then like in most federal investigations, the person under investigation really only gets one shot to tell his or her story. So any subsequent re-casting of your story in an OPR interview may very well be viewed with suspicion. Thus, I view the personal written response to OPR to be the single most important point in the OPR process. It will either resolve the matter in your favor, or if unresolved, be the basis for your interview.

That written response is viewed with similar importance by OPR. Thus, if after receiving your written response OPR cannot resolve the matter, OPR moves to interviewing witnesses, including the complaining witness and the responding attorney. Like most investigative entities, OPR interviews most if not all other witnesses before interviewing the attorney accused of wrongdoing.

In the end, OPR makes findings of fact and conclusions as to whether professional misconduct has occurred. OPR can find two classes of professional misconduct: 1) an intentional violation of "an obligation or standard imposed by law, applicable rule of professional misconduct, or Departmental regulation or policy;" or 2) reckless disregard of an obligation to comply with that obligation or standard. OPR can also find that the attorney "used poor judgment or made a mistake." However, per OPR's procedures, such a finding does not amount to professional misconduct.

If OPR does not substantiate the allegation, OPR issues a letter to the attorney with that finding.

If OPR finds misconduct or an act of poor judgment, it prepares a report and forwards it to the Director of the EOUSA. If OPR finds an act of misconduct, the report will contain a recommended range of disciplinary actions to be considered by the attorney's supervisors. If OPR finds an act of poor judgment, no recommendation is made. Instead, the attorney's supervisor is to decide the appropriate action if any.

If you were wondering why OPR asks responding attorneys to provide their bar memberships, that's because in those cases where OPR finds intentional or reckless professional misconduct, it ordinarily advises bar disciplinary authorities in the jurisdiction where the attorney is licensed of its findings. The exception being that OPR will not make a bar

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From Liability Insurance page 8

referral if it determines "that the matter involves purely federal or Department concerns and no bar disciplinary rule appears to be implicated." (Emphasis added). Should your state bar open an inquiry/investigation into the DOJ referral, the Wright & Co. policy also provides legal defense and representation coverage in those proceedings.

In closing, I like to remind my clients that with the formidable powers held by those in federal law enforcement, comes the system of holding those with such powers accountable. For AUSA's, the OPR process is that system, and it's a system that by all appearances seems to work well. I have seen it ferret out serious acts of professional misconduct and also completely vindicate falsely accused attorneys without finding some minor, peripheral allegation to substantiate. In comparison to the other internal investigating entities in our federal system, DOJ's Office of Professional Responsibility is notably efficient and even-handed. That said, it remains an internal investigative process, the results of which could pose potential exposure to your career.



From Lobbying page 5

risking their and their families' lives. Funding cutbacks are now requiring some AUSAs to conduct pretrial interviews with witnesses over the phone or in the hallway just prior to trial. Moreover, being at the witness' home/workplace invariably creates the opportunity to more readily secure supporting documentation, photographs, business records, emails and additional witnesses that improve the corroboration of testimony. These opportunities are squandered when funding for travel is cut. As one AUSA said, "Being pennywise and pound-foolish has cost us already and threatens investigative and prosecutive success, system-wide."

Number of AUSA positions authorized - FY 2006569
 Number of AUSA positions filled (as of July 6, 2006) . .5311
 Number of AUSA positions vacant382

Total FTE vacancies in US Attorney's offices, FY 2004 . .198
 Total FTE vacancies in US Attorney's offices, FY 2005 . .465
 Total FTE vacancies in US Attorney's offices, May 2006 .765

FY 2004 - FY 2007 Appropriations History

FY 2004 Appropriation \$1,525,035
 (FY 2004 included two rescissions totaling almost \$16 million)

FY 2005 Appropriation \$1,541,649
 (FY 2005 included two rescissions totaling over \$20 million)

FY 2006 Appropriation \$1,588,565
 (FY 2006 included two rescissions totaling over \$20 million, a \$15,955 rescission is restored as part of the 2007 request)

FY 2007 Appropriation Request \$1,664,400
 (Includes 149 new positions and \$23 million for terrorism, national security and enforcing federal laws)

The 2004, 2005 and 2006 rescissions resulted in reductions to the budgets of the USAOs of over \$40 million. Since 70% of the USAO budget is for staffing costs, these reductions are partly responsible for the lack of funds to fill vacant positions.



SENATORS GRAHAM AND KERRY FORM SENATE PROSECUTOR'S CAUCUS

Senators Lindsey Graham (R-SC) and John Kerry (D-MA) has sent a Dear Colleague letter to members of the Senate to form a Senate Prosecutor's Caucus. The Senate Prosecutor's Caucus will identify specific actions Congress can take to help prosecutors improve the justice system. Among the issues of concern to the Caucus will be:

Student Loans/Retention

More than 50% of chief prosecutors/supervisors report that between 1 and 5 prosecutors have left their office in the past 12 months. These offices report that 32% of the attorneys who left their offices in the past year did so because of law school loan payments.

Federal Role in Training Prosecutors

Federal grant programs can play a significant role in helping train prosecutors. For example:

Methamphetamine Abuse

Prosecutors are facing a methamphetamine crisis that is sweeping the country. The Prosecutor's Caucus will address issues surrounding methamphetamine production and treatment and prevention programs which can help alleviate the burden facing prosecutors.

Criminal Recidivism

Congress can play a more active role in helping communities cope with the record numbers of prisoners reentering society every year. Reducing rates of recidivism will help prosecutor's leverage their limited resources.

HISTORY OF NAAUSA ACTIVITIES IN SUPPORT OF AUSAs

1989 - AGAC AUSA Career Retention Subcommittee makes recommendations, including designating AUSAs as law enforcement officers for retirement purposes, to AG to improve AUSA retention

1990 - 1992 Although 75% of AUSAs participated in the survey of the AGAC AUSA Career Retention Subcommittee, no action is taken on ANY of the Committee's recommendations

1993 - AUSA Participants in the AGAC AUSA Career Retention Subcommittee, concerned over the lack of DOJ action on the Committee's recommendation's, form NAAUSA

1994 - 1995 - DOJ "shuts down" NAAUSA based on alleged "violations" of 18 U.S.C. § 205

1996 - NAAUSA joins with other federal employee groups to seek legislation to allow federal employee organizations to represent their members before agencies and Congress. Congress passes corrective legislation, P.L. 104-177.

1997 - NAAUSA members and staff complete 21 page "white paper", a comprehensive justification for law enforcement retirement benefits for AUSAs

1998 - Rep. Tom Davis (R-VA) introduces legislation in the 105th Congress to provide AUSAs with the same retirement benefits as law enforcement officers, including mandatory retirement.

1999 - Congress lobbied successfully by NAAUSA to include AUSAs in legislation, P.L. 106-58, authorizing federal agencies to pay half of the cost of professional liability insurance. Congress lobbied successfully by NAAUSA to kill Senate plan to appoint ALL new AUSAs to two-year terms.

2000 - Secured 93 cosponsors in the 106th Congress (an increase of 91 above last Congress) for H.R. 583, legislation to improve AUSA retirement benefits

2001 - Coordinated letter to Congress from six former AGs opposing McDade amendment. . Rep. Davis introduces NAAUSA's AUSA retirement legislation.

2002 - 107th Congress ends with 196 cosponsors of NAAUSA's retirement legislation.

2003 - Rep Ros-Lehtinen (R-FL) introduces H.R. 2260 in the 108th Congress to provide AUSAs with improved retirement benefits.

2004 - NAAUSA contracts with federal benefit firm that wrote FERS legislation to develop costs alternatives for AUSA retirement legislation. NAAUSA secures 149 cosponsors of H.R. 2260

2005 - NAAUSA writes Congress to object to the DOJ decision to deny attorney comp time for official travel. NAAUSA meets with House Judiciary Committee staff to include AUSAs in the legislation on judicial security.

2006 - NAAUSA's comp time legislation and AUSA security legislation pass House.

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Specialty: Criminal Civil Appellate OCDETF Other (Specify) _____

Yrs. Service as AUSA: _____ U.S. House Representative: _____

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RETIREMENT BILL MEANS \$387,640 MORE FOR RETIREMENT

Many AUSAs do not realize the financial impact of a the NAAUSA retirement legislation. One AUSA said:

"I was left with the impression that it really wasn't going to make that big a difference to me... but for whatever reason I decided to use the FERS retirement calculator at www.seniors.gov/calcstart.html and discovered that the difference is actually huge! Calculating the difference just up to age 62, I will be eligible for retirement benefits [under the NAAUSA legislation] totaling \$670,456 starting at age 50 and will be eligible, at age 57, for retirement benefits under the current system of just \$282,816, a difference of \$387,640."

Other examples of the difference the NAAUSA legislation will make in the retirement annuities of AUSAs follow:

	CSRS	FERS	FERS
High-three average salary	\$125,000	\$125,000	\$100,000
Age at retirement	60	50	50
Years of service	25	20	20
Annuity w/o NAAUSA legislation	\$57,804	\$24,996 *	\$19,992 *
Annuity w/NAAUSA legislation	\$75,000	\$42,492	\$33,996

Source: Government Retirement Benefits, Inc. Alexandria VA.

*Eligibility is based on FERS early retirement provisions.

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