



NAAUSA NEWS

FOR MEMBERS OF THE NATIONAL ASSOCIATION OF ASSISTANT UNITED STATES ATTORNEYS

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NAAUSA is Hard at Work Protecting AUSAs

by Steven H. Cook, AUSA EDTN, Vice President, NAAUSA

Ensuring the safety and security of every AUSA and their family is one of NAAUSA's foremost goals. AUSAs increasingly are high-profile targets of threats and physical assaults because of the persons and groups they bring to justice. The recent brutal and premeditated attack upon an AUSA in a Brooklyn courtroom testifies to the daily dangers that AUSAs face. In fact, the situation is worsening. EOUSA recently informed NAAUSA that 199 reported threats were made against AUSAs in 2007, up from 62 five years earlier. Because of these increasing dangers, NAAUSA is working hard to expand and improve the security of AUSAs on several fronts.

The New Court Security Law

First, NAAUSA successfully urged Congress to extend to AUSAs (and United States Attorneys) the coverage of several new protections in recently enacted judicial security legislation, the "Court Security Act of 2007", P.L. 110-177, signed into law on January 7, 2008.

For example, the new law makes it a Federal criminal offense to knowingly make personal information about an AUSA or a member of the AUSA's immediate family publicly available, such as on the internet, with the intent to threaten, intimidate, or incite the commission of a violent crime against the AUSA or the family member. (The same protections are extended to judges, law enforcement, public safety officers, jurors, witnesses and other court officers.) The law considers "personal information" to

cover the Social Security Number, the home address, home phone number, mobile phone number, personal email, or home fax number of an AUSA or immediate family member. An individual who violates this provision may be fined and subject to imprisonment up to five years.

"The results of the NAAUSA security survey confirm the fact that career AUSAs, those that are in the job 20 years, will be threatened or assaulted at some point during their service to the country."

— AUSA Steven H. Cook

In addition, Congress created a Federal criminal offense to file a fictitious lien against real or personal property owned by an AUSA and others. In drafting this provision, Congress sought to tamp down the increase in the malicious recording of fictitious liens against federal judges,

AUSAs and federal law enforcement officers by persons seeking to intimidate and harass them. An individual who violates this provision may be fined and subject to imprisonment up to ten years.

The law also expands the prohibition of weapons barred in federal courts to include not only firearms, but also "any dangerous weapon" and makes the violation of that provision subject to fine and up to two years of imprisonment.

Equally important, the law requires the Department of Justice to report to Congress on the adequacy of current measures to protect AUSAs, including personal security training, secure parking and the role of the Marshals Service in protecting AUSAs. The report was due April 3. As this newsletter went to press, the Department of Justice had not yet filed its report.

NAAUSA Survey on AUSA Security

To better understand AUSA attitudes and priorities for further improvements in current security measures, NAAUSA surveyed AUSAs beginning in March 2008. Nearly 1300 AUSAs, one quarter of all AUSAs, completed the survey. Sixty-seven percent were NAAUSA members. The results of the survey are reported on pages 9 and 10.

Here are the major findings of the AUSA survey:

- Almost one of every two respondents have been threatened or assaulted at

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The NAAUSA News provides members of the National Association of Assistant United States Attorneys with information on legal, congressional and federal employee developments affecting AUSAs.

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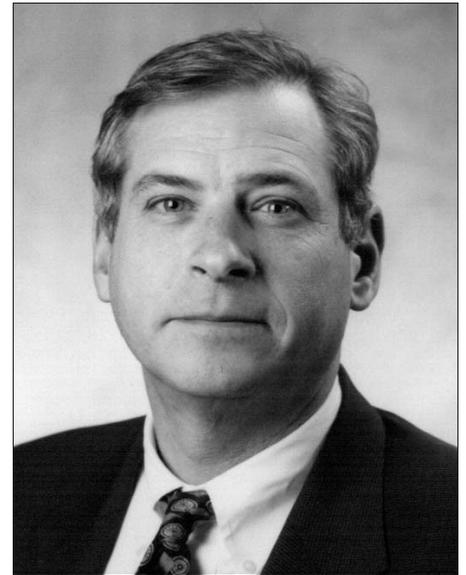
The NAAUSA News reports on views of Assistant United States Attorneys in their capacity as members of NAAUSA and not as employees of the Department of Justice.

Assistant United States Attorney David Glen Dake Dies in Tennessee

AUSA David Glen Dake of Knoxville, Tennessee, age 56, passed away April 1, 2008, after a short struggle with renal cancer. A veteran prosecutor of 21 years with the U.S. Attorney's Office, Eastern District of Tennessee, AUSA Dake handled many major organized crime and drug-trafficking cases. He served for several years as Chief of the Criminal Division of the U.S. Attorney's Office and served briefly as an interim U.S. Attorney. Most recently, he was the Anti-Terrorism Advisory Council (ATAC) Coordinator and Supervisor of the District's Counter-Terrorism Unit. He was a member of NAAUSA for 14 years, joining in April 1994.

AUSA Dake received his Doctorate of Jurisprudence from the University of Tennessee College of Law in 1976. He worked in private practice from 1976 to 1981. For the following six years he served in the Knox County District Attorney's Office as a criminal prosecutor, focusing on career criminal and child abuse cases.

AUSA Dake is survived by his wife of 28 years, Jayne Elizabeth Hutson Dake; his



four daughters, Cameron, 25, of Knoxville; Mary Claire, 23, a senior at the University of Memphis; Catelyn, 20, a sophomore at Carson-Newman College; and Cathryn Jayne, 18, a senior at Farragut High School. David will be deeply missed by his family and friends.

Melson Pays Respects



NAAUSA members in the Eastern District of Tennessee express their appreciation to EOUSA Director Ken Melson for his caring act and thoughtfulness in traveling to the EDTN to meet with the David Dake family and USAO staff following David's recent untimely death. Pictured above is Mr. Melson and EDTN U.S. Attorney James "Russ" Dedrick.

What if the IG Took Over the Authority to Investigate Allegations of Attorney Misconduct Currently Relegated to OPR?

By Debra L. Roth, Shaw, Bransford, Veilleux & Roth, P.C.¹

NAAUSA has opposed legislation in the Congress that would permit the Department of Justice's Inspector General to investigate allegations of misconduct against Department attorneys, including AUSAs. The review of such allegations of misconduct within the Department is currently carried out by the Office of Professional Responsibility (OPR). The following article provides background information on the legislation before the Congress and explains why the extension of investigative authority to the Inspector General over allegations of DOJ attorney misconduct is unwarranted and would create bad public policy.

It might just happen. Pending in Congress is legislation that would remove a statutory restriction placed on the Justice Department's Inspector General which bars the IG from investigating allegations of misconduct against Department attorneys and instead requires referral to the Department's Office of Professional Responsibility.

The controversial provision is contained in the "Improving Government Accountability Act" (H.R. 928), a measure proposing changes in the authority and activity of Inspectors General throughout the government. The House of Representatives approved the legislation on October 3, 2007. A similar provision in a Senate bill (S. 2324), was approved by the Senate Committee on Homeland Security and Governmental Affairs, but struck during final passage on April 3, 2008, through approval of an amendment offered by Sen. Jon Kyl (R-AZ). The House and Senate are now preparing to conference and resolve differences between the two bills toward enactment of a final measure.

NAAUSA's Washington representative, Bruce Moyer, has been actively working with DOJ officials and Congressional staff to revise the IG legislation to preserve OPR authority to investigate allegations of misconduct by AUSAs. NAAUSA and DOJ worked together on the recently passed Senate bill that main-

tains the status quo.

Why is Congress interested in making this change (or more precisely what does Congress say is its rationale for the change) and what could it mean to line attorneys? As you might imagine, it's not exactly clear, but here's some food for thought.

I. The backdrop is as follows. Congress created department-level Inspector Generals by way of the Inspector General Act of 1978. The thrust of the Act was to create an independent watchdog at each department that would be responsible for conducting audits and investigations to prevent and detect fraud, waste, and abuse in the

programs and operations of each department².

Since then, there have been a number of amendments to the Act to manage the interplay between existing internal audit, investigation and inspection units within DOJ agencies and the Department's IG. As for DOJ attorneys, the Act has contained a provision for a number of years requiring DOJ's IG to refer to the Office of Professional Responsibility allegations of misconduct involving "attorneys, investigators, or law enforcement personnel, where the allegations relate to the exercise of the authority of an attorney to investigate, litigate, or provide legal

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First NAAUSA Dues Increase in Five Years

The NAAUSA Board of Directors has approved a dues increase of \$.50 a pay period or \$13.00 a year for AUSAs with five or more years of service and \$.25 a pay period for AUSAs with less than five years of service, or \$6.50 a year. New annual dues rates will be \$143.00 and \$84.50 effective July 1, 2008.

The last dues increase was in 2003 and since that time postage has increased from \$.38 to \$.42 for letters, newsletter printing costs have increased by 25%, and travel costs have risen substantially. Hotel rooms in DC,

which used to be around \$150.00 a night are now always over \$220.00 a night. Airfares to Washington DC have also increased substantially, and travel of NAAUSA Board members to meet with Congressional and DOJ staff is an essential part of NAAUSA's advocacy efforts on behalf of AUSAs.

The 10% increase is less than the change in the consumer price index (CPI) since 2003. According to the Bureau of Labor Statistics website (www.bls.gov/CPI/#data), an item that cost \$130.00 in 2003 would cost \$151.78 today.

History of NAAUSA Dues

Period	Dues Per Pay Period	Annually	AUSAs with less than 5 years
1994-1999	\$3.00	\$ 78.00	No special rate
2000-2002	\$3.50	\$ 91.00	No special rate
2003-2007	\$5.00	\$130.00	\$3.00 pay period, \$78.00/yr
2008	\$5.50	\$143.00	\$3.25 pay period, \$84.50/yr

NAAUSA is working to increase advertising in the NAAUSA News and on the website and is pursuing corporate support and affinity programs to increase revenue and reduce the percentage of total revenue that is from membership dues.

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advice ...”³ There is a single exception to this legislative mandate. If the attorney is employed by OPR, the IG is not required to refer the allegation of wrongdoing to OPR for investigation, thereby authorizing the IG to conduct an investigation itself⁴.

Stated more simply, if the allegation against a DOJ attorney boiled down to one of alleged professional misconduct, the law prohibited the IG from investigating it. In those cases, the IG was required to refer it to OPR. However, allegations outside the category of professional misconduct, such as travel voucher or time and attendance fraud, or misuse of a government or other government property, were all fair game for the IG. And the IG indeed has conducted its share of investigations into these types of allegations against DOJ attorneys. The special category of professional misconduct allegations though was relegated to an

office within DOJ –the Office of Professional Responsibility– where its cadre of personnel developed a subject matter expertise in allegations of professional misconduct.

The proposed amendment now pending in Congress would eliminate the statutory bar on the IG and therefore allow it to investigate allegations against DOJ attorneys of professional wrongdoing. Keep in mind that this amendment is part of a major proposed legislative bill designed to address concerns that the current structure of the entire IG statutory framework does not go far enough to safeguard IG independence. If passed, this bill will be a significant reform to the IG community. Because it’s a relatively minor piece of the overall IG reform puzzle, the proposal dealing with DOJ’s OPR may or may not become part of any final approved piece of legislation.

II. So what are the reasons given for

the proposed change to the relationship between DOJ’s IG and OPR? The Senate Committee Report of February 14, 2008 from the Senate Committee on Homeland Security and Governmental Affairs gives the following reasons. It first notes that no other IG has a statutory limitation barring it from investigating allegations against its career lawyers. But what other federal agency is composed mostly of attorneys? What other federal agency has as its main mission acting as the attorneys for the United States? This reason seems way out of context.

The second reason in the Committee report is that OPR does not operate with the same structural independence as the IG and that OPR’s reports are rarely made public. But the Committee offers no data or even anecdotal information that the reporting structure of OPR has compromised its ability to act fairly or without undue influence. If you’ve ever been

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NAC Reception Hosts/Hostesses Needed

NAAUSA has held two well attended receptions for AUSAs attending NAC classes this year, and plans four more. Receptions require a least one NAAUSA member on-site to volunteer to host. The receptions are held at the Inn at USC across from the NAC. All of the logistical arrangements are already made – there is no work required of the NAAUSA coordinator. NAAUSA members who are going to the NAC are asked to call the office 800-455-5661, or send an email to dennis@naausa.org to volunteer to host a reception.

NAAUSA Protects AUSA Privacy

As part of NAAUSA’s AUSA security initiatives, effectively immediately, AUSAs who join NAAUSA and pay their dues by payroll deduction no longer need to provide their complete nine-digit Social Security Number (SSN) to anyone when they join NAAUSA. Now, only the last four digits of the SSN are required.

through a full-blown OPR investigation, you surely will not feel that OPR is somehow serving any interest other than a zealous, competent, and thorough review of the allegations against you.

Furthermore, the point about OPR reports not being made public is misleading. I went on the IG's website to write this article and it had no reports of misconduct investigations available for public review. Rather, the IG's website publishes its audits and inspections of agency programs – not its investigations into alleged employee misconduct. You'd have to file a Freedom of Information Act request for those IG investigative reports, just like you'd have to do in order to obtain an OPR report. But OPR's website does publish annual reports in which it reports the number of complaints received, the allegations by categories, statistics on the number and types of findings of misconduct and disciplinary actions, and details of the investigations and inquiries it conducted and closed with findings of no misconduct.

The final reason from the Committee is that the current bar on the IG "can lead to unproductive duplication effort between the OIG and OPR when an investigation implicates matters within the IG's jurisdiction as well as some aspects of attorney conduct." Again, no data or anecdote that such duplication has ever occurred. And what really is the chance of that happening or happening to an extent that it needs a legislative fix? Indeed, OPR's last annual report states that in some instances it did not act on a complaint other than to refer it to another DOJ component for action.

The only anecdote in the Committee report about the interplay between the IG and OPR may be the best insight into the real driver behind this proposed amendment: "It is troubling, for instance that the investigations into the U.S. attorney firing scandal was initially referred to OPR; the OIG was allowed to participate only after objecting to the Department leadership." In that vein, the Committee notes its belief that the IG should be the one to investigate matters involving high ranking Department attorneys or widespread policies or practices at the Department. And, that it "does not anticipate or intend" that eliminating the bar on the IG will have the IG investigating routine attorney misconduct cases

"involving line attorneys that are the core of OPR's work."

But the proposed legislative amendment doesn't say any of this. The proposal is simply to delete the entire subparagraph of the statute (section 8E(b)(3)) which requires the IG to refer attorney misconduct allegations to OPR. Once deleted, section 8E(b)(2) remains and it says the IG can investigate any allegations of wrongdoing against DOJ employees or in its "discretion" refer the allegations to OPR or an internal affairs office. No new language is being proposed to create a statutory delineation that the IG has jurisdiction over allegations involving high-ranking DOJ attorneys while OPR continues its role in overseeing allegations of professional misconduct against line attorneys. Rather, the Committee report says that it expects that the IG and OPR will work out a protocol for determining which cases the IG will refer to OPR. But without a legislative mandate, it seems to me its all fair game for the IG.

III. What could it mean to DOJ's line attorneys if this or any like amendment is passed now or in the future? Just assume that by legislation or internal protocol the IG becomes responsible for investigating its choice of professional misconduct allegations against all – not just high-level– DOJ attorneys. Well, the IG uses criminal investigators whose instincts and training are to look for potential crimes. OPR uses attorneys as investigators who are trained to apply the ethics and professional rules of conduct. Their backgrounds and focal points are alarmingly different. Surely these distinctions have a real potential for achieving different investigative results. No word about this in the Senate Report. Are IG agents or other professionals of the IG truly proficient or capable of becoming proficient in the ethical concepts and rules of professional conduct associated with an OPR review? If there was any real concern about duplication of efforts, Congress would address how authorizing the IG to conduct investigations previously relegated to OPR could result in a significant duplication of institutional know-how.

OPR was established in 1975. Its stated purpose: to ensure that DOJ attorneys perform their duties in accordance with the highest professional standards expected of the nation's principal law enforcement agency. To that end, OPR has

amassed an "expertise and integrity" in how it conducts its reviews, so says even the Senate Committee that proposed the amendment. Their expertise is in the ethical and professional rules of conduct that govern the practice of law by each DOJ attorney, rules that are specific to just attorneys, which is the obvious reason why DOJ and no other Department has an office like OPR to review allegations against attorneys. OPR is akin to an internal Bar for DOJ. Whereas attorneys in private practice are subject to Bar investigations and proceedings for allegations of professional misconduct (conducted by trained Bar counsel), DOJ attorneys first face OPR.

Notably, no one in this debate points to the cadre of medical doctors employed by the Department of Veterans Affairs. Physicians, like attorneys, are also licensed and governed by ethical and professional rules, regardless of whether they are in private practice or employed by the federal government. VA physicians accused of professional misconduct up to and including medical malpractice are not subject to an investigation by the VA's IG. Instead, the VA employs a set of processes and proceedings (akin to those used in the private sector for reviewing such allegations against private physicians), which at its heart involves those trained in medicine. That's not the IG.

The IG serves a real purpose at DOJ – a department with a large contingency of employees involved in law enforcement. But the role of an attorney is distinguishable, as is seen by the fact that all attorneys must be licensed by a state Bar, and therefore must abide by a set of ethical and professional rules. It seemed obvious to create an office within DOJ to address the unique allegations that arise against a whole cadre of its employees. OPR by all accounts has done that job well. So without any data to the contrary, if it's not broken –why fix it?

References

- 1 Debra L. Roth is a partner with the law firm where she has practiced law since 1989.
- 2 Inspector General Act of 1978, Title 5 Appendix 3, § 2.
- 3 Inspector General Act of 1978, Title 5 Appendix 3, § 8E(b)(3).
- 4 *Id.*

Representative Artur Davis Prepares Point by Point Rebuttal to OPM's Criticism of NAAUSA Retirement Bill

On February 7, 2008, the Office of Personnel Management (OPM) wrote to the Chairman of the House Judiciary Committee, Rep. John Conyers (D-MI), expressing opposition to the AUSA retirement provisions of H.R. 2878, the "Enhanced Financial Recovery and Equitable Retirement Treatment Act of 2007." The sponsor of the legislation, Rep. Artur Davis (D-AL), refuting each of OPM's criticisms, recently responded to OPM's opposition to the measure through the following letter to House Judiciary Committee Chairman John Conyers.

Also in February, NAAUSA provided a proposed substitute version of H.R. 2878 to the House Judiciary Subcommittee on Crime, Terrorism and Homeland Security, addressing the concerns raised at the Subcommittee's November 1, 2007 hearing that were raised by the public defenders and others. The proposed substitute version also improves the efficiency

of the collections process, providing AUSAs with equitable, enhanced retirement benefits whose costs are revenue-neutral. The Subcommittee has not yet announced a date to markup and approve H.R. 2878. A similar measure, S. 1729, remains pending before the Senate Judiciary Committee.

—♦♦♦♦♦—
"June 3, 2008

Dear Chairman Conyers:

I am writing to respond to the views of the Office of Personnel Management on HR. 2878, the "Enhanced Financial Recovery and Equitable Retirement Treatment Act of 2007, as expressed in its February 7 letter. I believe there are serious and significant flaws in OPM's analysis of the legislation that damage the validity of its objections and conclusions.

As you know, H.R. 2878 would satisfy two important purposes. First, through a series of reforms set forth in Title I of the bill, the measure will significantly enhance the federal government's capacity to collect court judgments, fines and restitution, and assist in the collection of billions of dollars that are currently going uncollected. The legislation responds to criticism by the Government Accountability Office that the Department of Justice is not pursuing the collection of debts and penalties aggressively enough. Equally important, Title II of the legislation will strengthen the retirement benefits of Assistant United States Attorneys to improve the government's capacity to retain skilled and experienced federal prosecutors. It is deserving of passage for the following reasons.

First, Title II of the measure seeks to bring fairness to the retirement benefits of

Welcome to New Board Members

Stephen Andersson, AUSA NDIL

After graduation from the University of Chicago Law School in 1980, Stephen Andersson began work as an Assistant District Attorney in the Kings County District Attorney's Office in Brooklyn, New York. In 1983, he joined the United States Attorney's Office in Nebraska, and served in the Organized Crime and Drug Enforcement Task Force. In 1989, Mr. Andersson joined the Department of Justice's Organized Crime Strike Force in Chicago, Illinois as a Special Attorney. In 1990, that office was merged with the United States Attorney's Office for the Northern District of Illinois, and he has since served in that office in the Organized Crime Section. During 2006 and 2007, he served as the Rule of Law Coordinator and Department of Justice Rule of Law Adviser for the Baghdad Provincial Reconstruction Team. He currently serves as the Deputy Chief of the Public Corruption/Organized Crime

Section.

Andersson said, "I have a strong interest in seeing the NAAUSA continue its work towards the passage of an enhanced retirement program for AUSAs. I believe that such a program will both properly reward AUSAs for their good work, and encourage experienced AUSAs to stay in their offices."

Karen Escobar, AUSA EDCA

Karen Escobar has been an OCDEF Attorney in the Eastern District of California for 18 years. Her federal experience includes one year at the Office of Enforcement Operations, Criminal Division, US Department of Justice, and two years at the US Senate Legal Counsel. In addition, she was a state prosecutor in Montgomery County, Maryland for 2 years.

"As a Board member, I hope to assist in advancing our common interests, especially the AUSA retirement legislation," Escobar said. "The dedicated efforts of

public servants should be recognized and justly rewarded – not merely after several years of service through lucrative job offers from the private sector."

James P. Hagarty, AUSA EDWA

James Hagarty was in private practice in an admiralty firm in Seattle from 1984-1989 and was a state prosecutor from February, 2000 to October 31, 2001, including a partial term as the elected County Prosecutor from January 1, 1999 to October 21, 2001. He has been an Assistant United States Attorney since October, 2001.

"As a new Board member, my goals are to push for the AUSA retirement legislation," Hagarty commented. "AUSAs have a poor retirement package when compared to counterparts in the state system. I would like to be more hands on with respect to moving the legislation. I would also like to see the security issue addressed, and measures enacted to protect AUSAs."

the five thousand Assistant United States Attorneys (AUSAs) who serve our nation. It applies to AUSAs the same pension formula applied to level their law enforcement counterparts in the FBI, Secret Service, DEA, U.S. Marshals Service, Bureau of Prisons and Department of Homeland Security. This is simply a matter of fairness, given the critical role that AUSAs play in the civil and criminal enforcement of our nation's laws. AUSAs are the only members of the federal law enforcement community who are denied the enhanced benefits of law enforcement officer retirement. This disparity extends to all AUSAs whether performing civil or criminal law enforcement responsibilities. During the entire period covering the investigation, arrest, trial, imprisonment and parole of a federal criminal, the only employees in the federal criminal system with whom the criminal has contact that does not possess LEO status are the judge who has sentenced him and the AUSA who has prosecuted him. All other federal employees, including the investigator, the pretrial services officer, the deputy U.S. Marshal, the probation officer, the prison staff, and finally the parole officer, are designated "law enforcement officers" for the purposes of retirement. And even the federal judiciary possesses an enhanced retirement system.

AUSA's play a significant role in the nation's law enforcement system. They

guide the investigation, prepare and present witnesses to the grand jury, draft the indictment and present it to the grand jury, review and approve search and seizure warrants and supervise the seizure of assets. In addition, AUSAs litigate the pretrial motions, try the case face-to-face with the violators, and upon conviction, defend the verdict from post-trial motions and appeals.

Second, OPM contends that the duties performed by Assistant United States Attorneys are not consistent with either the letter or the spirit of the definition of law enforcement officer. OPM's concern is misplaced. OPM's concern is misplaced. As stated above, the legislation responds to the inequity in retirement benefits between AUSAs and law enforcement officers, and simply treats AUSAs – for the narrow purpose of retirement benefits – in the same manner and to the same extent as law enforcement officers, nothing more.

Third, OPM correctly recognizes that law enforcement retirement provisions are part of the federal government's comprehensive human capital management structure. Indeed, the merit system principles of the federal human capital management structure recognize the importance of fairness and even-handed treatment of all employees. Additionally, Congress from time to time in expanding and improving that management structure has established special provisions relating to appointment, pay and retirement in order to satisfy and enhance the government's needs to recruit and retain the finest public servants. The enhancement of the retirement benefits of AUSAs will improve the capacity of the Department of Justice to retain AUSAs in ways that improved pay cannot. The Department of Justice in the most comprehensive survey of its AUSAs and their quality of work life found that while only 28.7% of AUSAs indicated that they would remain an AUSA under current salary and benefits programs, three times as many -- over 87% -- said that a law enforcement officer retirement package would make a career as an AUSA more attractive.

The growing need for retention of AUSAs is demanded by the increasing difficulty and scope of the civil and criminal cases that AUSAs manage and litigate. The size, length and complexity of litigation performed by AUSAs has grown significantly over the past twenty years, requiring a mastery of science, technology, finance and other disciplines in addition to law.

The federal government can no longer afford to assign these complex cases to relatively inexperienced attorneys. Such experience is important both to the litigation itself and to make the proper decisions about which cases should be prosecuted and how they should be handled. The growing complexity of civil and criminal litigation and the increasing need for continuity within the U.S. Attorney ranks demand as never before the retention of more deeply experienced career attorneys.

At present, few federal prosecutors remain on the job for 20 years, the minimum years of service required for retirement with full benefits at age 50 as a law enforcement officer. The average length of service of an AUSA is approximately 8 years. The premature departure of AUSAs represents a "brain drain" that federal law enforcement can ill afford. Increases in AUSA pay levels are unlikely to come close to approaching the salaries of litigation-specialty attorneys in the private sector and only minimally helpful in stemming AUSA attrition. The enhancement of retirement benefits, on the other hand, is more likely to aid in the retention of AUSAs.

Fourth, OPM contends that "to extend the special retirement provisions to Assistant U.S. Attorneys would greatly complicate the situation vis-à-vis other groups of employees who have long been

See **Davis Response**, page 8

If NAAUSA Never Existed

If NAAUSA never existed, AUSAs would not be protected against false liens and the public disclosure of restricted personal information. NAAUSA convinced Congress to extend these protections to AUSAs in 2007 court and judicial security legislation, P.L. 110-177, as well as require DOJ to report to Congress on the adequacy of current measures, including personal security training, secure parking, and the role of the U.S. Marshals Service, in protecting AUSAs.

If NAAUSA Never Existed

If NAAUSA never existed, legislative measures would not have been introduced in Congress, and revised to meet Congressional and DOJ concerns, to equitably enhance the retirement benefits of AUSAs to levels similar to those received by federal law enforcement officers – a benefit that would increase an AUSAs' annuity by as much as 30 percent. NAAUSA's recent legislative proposals have satisfied the costs of the improved benefit through reforms in the collection of judgments and restitution.

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seeking law enforcement retirement coverage.” The timing of OPM’s argument, indeed, is most perplexing, since Congress at the end of the last session in the omnibus appropriations legislation erased the inequity in retirement benefits that existed between customs and border protection officers employed by the Department of Homeland Security and other law enforcement officers.

Fifth, OPM contends that H.R. 2878 would result in substantial increases in future employment costs to DOJ, as well as a substantial retirement unfunded liability. This is simply false. The legislation has been purposefully and carefully drafted to generate increased collections to be deposited in an Enhanced Financial Recovery Fund, sufficient to pay for not only the increased future AUSA retirement costs borne by the Department of Justice, but also the full retroactive costs carried by the Civil Service Retirement and Disability Fund. The Department of Justice does not appear to contest the projections of the revenues generated by H.R.

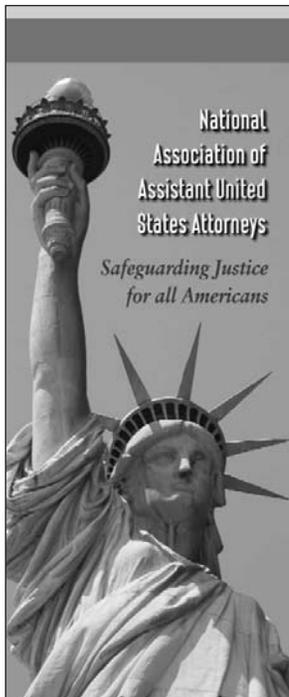
2878, which are based upon the Department’s historical trends. According to those projections, and assuming the effective date of the legislation is delayed for two years following enactment, the Fund will post a balance of \$136 million, sufficient to immediately satisfy the increased retirement costs. During each fiscal year thereafter, all current costs and retroactive costs will be fully paid. While current law permits the retroactive cost to be paid over thirty years, NAAUSA’s calculations suggest that the full retroactive cost could be satisfied in as few as ten years. If that is correct, after ten years and excess funding could be returned to departments and agencies participating in the Enhanced Recovery Fund and to the Treasury’s General Fund. In conclusion, because of the major collection reforms established by HR 2878 and the significant additional revenues generated, more funds would flow into the General Fund than before, even after the satisfaction of the current and retroactive costs of enhanced retirement benefits to Assistant United States Attorneys.

Thus, H.R. 2878 is a win-win for the Department of Justice and its Assistant United States Attorneys. The legislation will put an end to the inequitable treatment federal prosecutors currently receive. It will bring their retirement benefits into line with thousands of other employees in the federal law enforcement community. It will reduce the rate of attrition by AUSAs and bolster the Department of Justice’s litigation expertise, especially in increasingly complex and demanding trial cases. Finally, it will generate new revenues recouped by overdue collection reforms for the General Treasury, as well as offset the costs of the enhanced AUSA retirement benefit. This is sound legislation that strengthens law enforcement, improves public safety, and does the right thing for valued public servants.

Thank you, Mr. Chairman, for your continued support of this legislation and its underlying purposes.

Sincerely,
Artur Davis
Member of Congress”

New NAAUSA Membership Brochure Released



After many months of work and input from the NAAUSA Executive Committee, the first new NAAUSA membership brochure in over 10 years is being distributed to delegates and the NAC. The brochure was made possible by the generous donation of Gardner Malin, an attorney placement firm in Shaker Heights, OH. NAAUSA members who would like copies of the brochure to recruit their colleagues to join the association should contact NAAUSA headquarters at 800-455-5661.

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- Security Clearances

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NAAUSA Security Survey Results

The results of the NAAUSA security survey, completed by nearly 1,300 AUSAs, will help to guide NAAUSA advocacy for continued improvements to assure the safety of AUSAs and their families. The leading response to each survey question is in bold.

1. How would you rate the importance of each of the following AUSA security improvements?				
	Very important	Somewhat important	Not too important	Not at all important
Secure parking	78.6%	16.5%	4.1%	0.8%
Home alarm systems	42.2%	37.8%	17.3%	2.7%
Deputization to carry firearms	35.3%	28.3%	23.8%	12.6%
Annual personal security training	43.2%	40.1%	13.1%	3.6%

2. Have you, or a member of your immediate family, ever been threatened or assaulted because of your job as an AUSA?	
	Response Percent
Yes	45.5%
No	54.5%

3. Has any other AUSA in your office been threatened or assaulted because of their job?	
	Response Percent
Yes	81.1%
No	2.2%
Don't Know	16.6%

4. Should the Department of Justice make training on personal security issues (including issues like home security measures, family safety, mail handling, counter-surveillance and self-defense tactics) available to all AUSAs?	
	Response Percent
Yes	91.2%
No	2.0%
Don't Know	6.8%

5. If you answered "yes" to question 4, how often should the Department of Justice require personal security training (as is currently done for sexual harrasment)?	
	Response Percent
Annually	74.8%
Twice a year	10.4%
More than twice a year	0.8%
Never	5.3%
No opinion	8.7%

6. Considering cost and other factors which impact the likelihood of implementation, how much of a priority should it be?					
	Absolute top priority	High priority	Priority, but not a high priority	Not really a priority	Not a priority at all
Make home alarm systems available to every AUSA carrying a high vulnerability caseload regardless of the existence of a preexisting threat	22.2%	36.5%	26.3%	12.4%	2.5%
Make home alarm systems available to all AUSAs	8.5%	22.3%	33.4%	26.7%	9.0%
Authorize AUSAs to carry firearms for personal protection if they carry high vulnerability case loads and have obtained the requisite training to carry firearms.	31.0%	23.8%	20.0%	15.2%	10.0%
Provide secure parking to every AUSA carrying a high vulnerability caseload regardless of the existence of pre-existing threat	57.3%	27.5%	11.3%	2.7%	1.2%
Provide secure parking to all AUSAs	38.7%	31.5%	19.3%	7.3%	3.1%
Provide personal security training to all AUSAs	32.6%	34.8%	23.4%	7.3%	1.8%

7. Have you ever been deputized by DOJ to carry a firearm?	
	Response Percent
Yes	7.0%
No	93.0%

8. Have you ever made a request to the Department of Justice to be deputized to carry a firearm and had the request turned down?	
	Response Percent
Yes	4.2%
No	79.9%
Not applicable	15.9%

9. Are you currently deputized by the Department of Justice to carry a firearm?	
	Response Percent
Yes	1.8%
No	98.2%

10. Should AUSAs, who carry high vulnerability caseloads and are trained and demonstrate proficiency in the use of firearms, be authorized by the Department of Justice to carry a firearms for personal and family protection - if they so choose?	
	Response Percent
Yes	80.6%
No	7.5%
Not applicable	11.9%

11. What is your specialty?	
	Response Percent
Criminal	81.5%
Civil	20.1%
Appellate	2.9%

12. How long have you been an AUSA?	
	Response Percent
Less than 5 years	18.0%
5-10 years	22.4%
11-15 years	13.6%
16-20 years	22.7%
21-25 years	14.1%
More than 25 years	9.2%

13. What is your gender?	
	Response Percent
Male	65.5%
Female	34.5%

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some point during their tenure as an AUSA.

- Over 80 percent of respondents reported that at least one AUSA in their office had been threatened or assaulted.
- Secure parking was rated the most important security improvement needed, by 95 percent of the survey respondents. More than half of the respondents said that secure parking should be provided to every AUSA carrying a high-vulnerability workload, regardless of pre-existing threat.
- Slightly over eighty percent of respondents believed that DOJ should make training available to all AUSAs on per-

sonal security issues (including issues like home security measures, family safety, mail handling, counter-surveillance and self-defense tactics). Three-fourth of the respondents said this should be required on an annual basis with the same regularity as applied to sexual harassment training.

- Nearly as many – exactly eighty percent – regarded home alarm systems as a necessary AUSA security improvement.
- Eighty percent of the respondents believed that AUSAs who carry high vulnerability caseloads should be authorized by DOJ to carry firearms, if they so choose, if they are trained and demonstrate a proficiency in the use of

firearms.

AUSAs in Pennsylvania and Texas provided the most completed surveys.

When asked to suggest additional security improvements, AUSAs also recommended:

- Removing information from local property listings, drivers licenses, etc.
- Requiring the Bureau of Prisons to notify an AUSA of the release of any inmate who has previously threatened the AUSA.
- Providing escort guards to accompany AUSAs to unsecure parking late at night.

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Federal Employees Sick Leave Benefit Legislation Introduced

Congressman Jim Moran, (D-VA) has introduced legislation, H.R. 5573, providing federal employees under the FERS retirement system the ability to cash out their remaining sick leave at retirement. When he introduced the bill, Rep. Moran said "Our current use-it or lose-it system under FERS hurts productivity and increases training costs. We need to be incentivizing the accrual of sick leave, not keeping a policy in place that encourages people to call in sick in the weeks leading up to retirement."

According to the Office of Personnel Management (OPM) the current use-it or lose-it policy costs the government \$68 million a year.

The FERS retirement system, created by Congress in 1986, does not include an unused sick leave benefit. However, federal employees under the old Civil Service Retirement System

(CSRS) retirement system (those who joined the civil service prior to 1986) are currently able to convert unused sick leave at retirement into an increase in their annual annuity.

A Congressional Research Service

If NAAUSA Never Existed

If NAAUSA never existed, AUSAs would not have an advisory opinion from DOJ, or P.L. 104-177, acknowledging the general right of AUSAs to communicate with Congress in their personal capacities on the need for changes in the laws of the United States.

report in August 2007 found that sick leave balances are lower for FERS employees than CSRS employees. Independent studies by the Bureau of Prisons and the Internal Revenue Service have reached the same conclusion, with OPM confirming it in its own analysis. In a recent survey of FERS and CSRS employees, 85% of CSRS employees said they conserved as much sick leave as possible. On the other hand, 75% of FERS employees said they would use as much sick leave as possible during their last years.

H.R. 5573 would provide a lump-sum payout to employees under the FERS system for unused sick leave upon their retirement. Employees would receive 15 percent of the value of all the accrued sick leave at their final salary up to \$10,000. The benefit would take into account for all hours of accrued sick leave exceeding 500 hours.