



Ethical Guidance for United States Attorneys

An important part of every local gun violence initiative is community outreach and public awareness. Project Safe Neighborhoods (PSN): America's Network Against Gun Violence, the local gun crime task force lead by the newly-appointed United States Attorneys, should seek to promote the enforcement message of this initiative through all available means within the legal and ethic considerations associated with being a government employee, government attorney, and United States Attorney. Accordingly, United States Attorneys should read, understand, and apply all ethical guidance provided in the PSN Resource Guide.

While the United States Attorneys' Offices are prohibited from forming a charitable foundation to pay for such an outreach campaign, it is envisioned that the United States Attorneys Offices will work closely with a charitable foundation to accomplish the task of disseminating this message to the community. In February 2001, the Executive Office for United States Attorneys (EOUSA) distributed a memorandum, dated January 8, 2001, entitled *Legal and Ethical Guidance in Crime Prevention Coalitions*, which is appended to this document. Each United States Attorney involved in the local gun violence initiative should read and follow this guidance closely.

The following guidance refers to United States Attorneys. Some of the issues will apply only to the United States Attorneys by virtue of their status as Presidential appointees and as the head of their Offices. However, most of the ethics and general policy determinations described in this document are applicable to all Department of Justice employees, and thus, apply to the staffs of the United States Attorneys' Offices as well.

Working Closely with Charitable Foundations

As indicated in the January 8, 2001 memorandum, "[p]romoting crime prevention initiatives enhances the presence of the Department of Justice in communities around the country. . . . A key factor in the overall success of crime prevention initiatives is the establishment of coalitions with the community and law enforcement as well as strong and real working relationships with other public and private entities." It is envisioned that this strong relationship with private entities such as nonprofit organizations established under 26 U.S.C. § 501(c)(3) will assist the United States Attorneys in promoting the local gun violence initiative. By working in conjunction with nonprofit organizations the United States Attorney's Offices can effectively communicate the Department's message regarding Project Safe Neighborhoods.

Regulations and Department policy, however, preclude the United States Attorney's Offices from establishing such nonprofit organizations. The United States Attorney's Offices can neither draft the

bylaws for such nonprofit organizations nor sit on the board of directors. In addition, the United States Attorneys should not participate in budget decisions of a coalition, including decisions regarding the expenditure of funds and the day-to-day operations of the coalition.

The United States Attorney's Offices may work in conjunction with such organizations keeping in mind that *The Standards of Conduct of Executive Branch Employees* and *The Supplemental Standards of Conduct for Department of Justice Employees* may limit the scope of such involvement. United States Attorneys may convene meetings with other potential participants to discuss program initiatives, event planning and other related matters. In addition, the United States Attorneys can provide public information and statistics to the coalitions and educate them on the role of federal law enforcement to further advance the success of the cooperative effort.

b) Grants and Participation in the Department's Grant Process

United States Attorneys may provide public information regarding sources of Federal funding and respond to inquiries regarding the grant application process. In addition, United States Attorneys may draft a letter of recommendation to the Office of Justice Programs (OJP) supporting a grant application. This fact-based letter should identify the applicant's accomplishments and may express a United States Attorney's views on whether government program funds should be granted to a particular applicant. (Grant reviewers accord more weight to United States Attorney letters indicating that a grant applicant should be denied, than recommendations to award a grant.)

Pursuant to 18 U.S.C. § 205, United States Attorneys are prohibited from communicating with or appearing before any federal agency on behalf of the nonprofit organization. Thus, United States Attorneys cannot sign proposals for state, local or federal law enforcement agencies to obtain grants from OJP or call OJP about a grant application, unless specifically permitted by law. A Department of Justice rule prohibits an employee from engaging in any outside activity that involves a matter in which the Department is or represents a party. 5 CFR 3801.106(b). This rule would prohibit a United States Attorney from even drafting a proposal or grant application that is to go to OJP. United States Attorneys, however, may review the proposal as part of their official duties to ensure that the discussion of the law or the role of the United States Attorney's Office is accurate.

c) Fundraising and Participation in Non-Profit Organizations

Federal employees cannot engage in any fundraising in their official capacities. This includes active and visible participation in the promotion and presentation of an event, sitting at a head table (unless giving an official speech) and standing in a receiving line. Combined Federal Campaign (CFC) is the only fundraising activity in which the Department has authorized federal employees to engage in their official capacities. 5 C.F.R. § 2635.808(b). A United States Attorney however may attend a fundraising event by the community outreach team or the crime prevention coalition, but his or her attendance cannot be used to promote the event.

Regulations that establish Standards of Conduct for Executive branch employees, found at 5 C.F.R. §§ 2635.101 to 2635.902, permit employees to engage in outside activities so long as such activities do not interfere with their official responsibilities. 5 C.F.R. § 2635.802. Additionally, the regulations prohibit an employee from accepting compensation for teaching, speaking, or writing related to their official duties. 5 C.F.R. § 2635.807(a). A United States Attorney therefore may give an official speech at a fundraising event but the speech cannot request donations or other support for the organization. 5 CFR 2635.808(a)(3).

Under the ethics rules, a United States Attorney cannot sign a fundraising letter, the Justice Department's seal cannot be on the letterhead of the coalition, and the United States Attorney cannot allow his or her name and title to be used in fundraising communications. It may be permissible for the coalition to mention the involvement of the United States Attorney's Office in the body of the letter if it is part of a fact-based list of coalition members.

Any decisions to expend or obligate funds from the "expense" portion of the United States Attorney's Offices' appropriations must further their prosecutive and defensive mission. 31 U.S.C. § 1301(a). There must be a direct connection between the expenditure and the mission of the United States Attorneys' Offices; such connection would make the expenditure a necessary one. Therefore, where the United States Attorney determines that the purchase of promotional items will directly further crime prevention efforts, United States Attorney's Offices are authorized to purchase the following items if the total cost of the items does not exceed \$1,000 and the items include a crime prevention message: sticker badges, pens or pencils, baseball caps, coffee mugs and T-shirts.

d) Public Service Announcements and Dealing with the Media

United States Attorney's Offices may participate in Public Service Announcements (PSA) with other coalition members when doing so will further the Department's mission and if the PSA accurately reflects the Office's role. **As of February 9, 2001, all PSAs must be approved by the Office of Public Affairs.** United States Attorney's Offices should not participate in PSAs used for fundraising purposes. United States Attorney's Offices may present PSAs to community leaders and groups or make them available for viewing by interested organizations, such as educators, doctors, and clergy. United States Attorney's Offices should avoid direct contact with the media regarding air time for PSAs because, even though there are Federal Communication Commission requirements for PSAs, the air time is a valuable gift that should not be solicited by the United States Attorney's Offices. Other members of the coalition may call the media to request that the advertisements be aired, but the United States Attorney's Offices should not distribute instructions on how to obtain air time for the PSA or give the appearance of being the organizer of efforts to influence media decision makers to run the PSAs.

Certain types of PSAs also raise questions about the privacy rights of defendants and victims. The Privacy Act, 5 U.S.C. § 552a, provides that an agency shall not disclose any record that is contained in a system of records. Thus, the Privacy Act regulates the government's release of individually identifiable

records, including photographs and videos. Photographs of defendants convicted of gun crimes that are admitted as exhibits at trial or in the public record can be used in PSAs, but courts have prohibited release of photographs or other records if the information has become “practically obscure,” which typically has been interpreted to apply to records more than two years old. Thus, it appears to be acceptable to use footage of arrestees, if their faces are blocked, and to use photographs of individuals convicted of firearms offenses within the last two years. If permission is granted by a victim or victim’s family, their photographs may also be used.

A related issue is the use of “exclusive” rights to media coverage. While there are advantages to giving local media exclusives, in terms of their commitment to airing a particular message or recurring series, the general rule is that United States Attorney’s Offices cannot give preferential treatment to TV news stations or other media outlets. One acceptable means to disseminate information regarding the gun violence initiative is to provide local media outlets with a consistent stream of information about prosecutions and sentences under the enhanced firearms strategy. One United States Attorney’s Office dedicated a paralegal to review gun prosecutions under project Exile. The paralegal was tasked to compose a narrative of the successful prosecution and underlying facts of the offense, mindful of the victim’s privacy interests, and then forward the narrative to the appropriate media outlets. If the media was interested in the case, it could obtain an arrest photograph from the appropriate law enforcement agency and run a story, perhaps as part of a continuing spotlight on gun crime. This free press coverage increased public awareness that the United States Attorney’s Office was prosecuting local gun crimes and individuals were receiving lengthy sentences. Another way to broaden such an effort would be to emphasize the role of federal, state, and local law enforcement agencies in gun prosecutions.

The ethical issues covered in this policy are not exhaustive. Therefore, United States Attorneys are encouraged to contact EOUSA Legal Counsel’s Office for consultation and assistance.