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Report to Congressional Requesters

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U.S. ATTORNEYS

Laws, Rules, and Policies Governing Political Activities

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The Honorable Charles E. Grassley
Chairman, Subcommittee on Administrative
Oversight and the Courts
Committee on the Judiciary
United States Senate

The Honorable Christopher S. Bond
Chairman, Committee on Small Business
United States Senate

As you requested, this report discusses various laws, rules, and policies related to the political activities of U.S. Attorneys. For this report, we have defined political activities as consisting of the following:

- Hatch Act[1] partisan political activities: These activities are directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. Examples of Hatch Act political activities include campaigning for a candidate and attending a fund-raiser.
- Issue-oriented political activities: These activities involve responding to congressional, state, or local legislative requests for information, assistance, or testimony and commenting on matters of congressional, state, or local legislative responsibility. Examples of issue-oriented political activities include testifying before a state legislature and making comments to the public or media regarding a state proposition or referendum.

Regarding such activities, this report addresses the following questions:

- What laws and Department of Justice (DOJ) rules and policies govern U.S. Attorneys' involvement in Hatch Act partisan political activities? What types of activities are permitted and what types are prohibited? To what extent have U.S. Attorneys been involved in Hatch Act partisan political activities?

[1] In 1939, Congress passed the Hatch Act (P.L. 76-252), which broadly limited many types of partisan political activities of federal employees. Several decades later, however, the Hatch Act Reform Amendments of 1993 (P.L. 103-94) became effective on February 3, 1994, and permitted most federal employees to actively participate in partisan political campaigns, with certain restrictions. The Hatch Act, as amended, is codified at 5 U.S.C. sections 7321-7326.

- What DOJ rules and policies govern U.S. Attorneys' involvement in issue-oriented political activities? To what extent have U.S. Attorneys been involved in issue-oriented political activities?
- What statutory or other provisions govern U.S. Attorney Offices' expenditure of federal funds and resources for political activities?

Results in Brief

U.S. Attorneys are prohibited from actively participating in Hatch Act partisan political activities. Generally, many restrictive provisions currently applicable to U.S. Attorneys are not imposed by the Hatch Act. Rather, they have been established under the Attorney General's discretionary authority and are documented in Attorney General policy memorandums. These restrictions are similar to those that were imposed by statute on all federal employees before the Hatch Act Reform Amendments of 1993. For example, U.S. Attorneys are prohibited from speaking at political party functions, campaigning for candidates, or actively participating at fund-raisers. However, with prior DOJ approval, U.S. Attorneys can passively participate in certain events (e.g., attend a political fund-raiser). They can also make donations to candidates or parties of their choice, as long as the donations are not used in a promotional manner.

DOJ does not maintain or track data on U.S. Attorneys' participation in Hatch Act partisan political activities. DOJ officials said that they are not aware of any violations of Attorney General restrictions related to the Hatch Act, since at least January 1995. Also, according to an Office of Special Counsel[2] official, since at least January 1995, the office had not investigated any alleged Hatch Act violations by U.S. Attorneys, their associates, deputies, or staff.

Regarding issue-oriented political activities, before May 2000, DOJ rules and policies—as contained in the U.S. Attorneys' Manual—primarily addressed U.S. Attorneys' direct interaction with state and local legislative bodies. For example, the manual required (and still requires) that U.S. Attorney Office personnel, including the U.S. Attorney, obtain DOJ approval before providing testimony or other information not already publicly available to a state or local legislative body. Before May 2000, DOJ rules and policies did not specifically address media-related or other public communications. Consequently, according to DOJ officials, U.S. Attorneys had considerable independent authority or autonomy and wide latitude to make public comments on matters of state or local jurisdiction,

[2] The Office of Special Counsel is an independent federal agency that provides advisory opinions on Hatch Act matters and investigates allegations of Hatch Act violations.

as long as their position was consistent with that of the administration and DOJ.

In May 2000, DOJ revised the U.S. Attorneys' Manual to provide additional guidance and oversight related to public communications. For example, one revision requires U.S. Attorney Office personnel, including the U.S. Attorney, to obtain DOJ's approval before advocating passage or defeat of state or local legislation, including state or local referenda or ballot initiatives. Also, a new section to the manual—incorporating advice that previously had been given orally—discusses the need to be sensitive to comity considerations, such as the public perception or appearance of the proper role and limits of federal prosecutors and the need to give due deference to the separate constitutional powers and responsibilities of state and local officials.

Before January 2000, DOJ did not maintain or track data on the issue-oriented political activities of U.S. Attorneys at the state or local level. DOJ began to track U.S. Attorney Office inquiries related to such activities in January 2000. DOJ's summaries of inquiries show that from January 19, 2000, to March 22, 2000, U.S. Attorney Offices contacted DOJ nine times for advice and/or approval regarding activities that involved or could potentially involve state or local legislative matters. DOJ officials said that four of the nine inquiries were related to activities that required prior DOJ approval under the then-current U.S. Attorneys' Manual (e.g., testimony before a state legislative body) and would also have required prior DOJ approval under the May 2000 revisions to the manual. Since other types of U.S. Attorney Office activities did not require prior DOJ approval at that time (e.g., advocating passage or defeat of state or local legislation), the extent and nature of such activities were largely unknown. According to DOJ officials, beginning in May 2000, all activities that require prior DOJ approval under the revised U.S. Attorneys' Manual will be tracked.

Over the years, Congress has imposed various restrictions on the use of federal funds for certain political activities. The restrictions applicable to DOJ, in general, have been construed to prohibit (1) grass-roots lobbying in the form of agency appeals to the public to contact Members of Congress in support of or in opposition to pending legislation; (2) publicity of a nature tending to emphasize an agency's own importance (i.e., self-aggrandizement); and (3) covert propaganda activities, such as editorials or other materials prepared by an agency and circulated as the ostensible position of parties outside the agency. Such provisions have not been interpreted to prohibit an agency's legitimate informational activities. Public officials may report on the activities and programs of their agencies,

may justify those policies to the public, and may rebut attacks on those policies. Traditionally, policymaking officials have used government resources to explain and defend their policies.

Background

U.S. Attorneys serve as the nation's principal litigators under the direction of the Attorney General. There are 93 U.S. Attorneys stationed throughout the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. U.S. Attorneys are appointed by, and serve at the discretion of, the President of the United States, with the advice and consent of the U.S. Senate. Each U.S. Attorney is the chief federal law enforcement officer of the United States within his or her particular jurisdiction. U.S. Attorneys conduct most of the trial work in which the United States is a party and have the following responsibilities:

- the prosecution of criminal cases brought by the federal government,
- the prosecution and defense of civil cases in which the United States is a party, and
- the collection of debts owed the federal government that are administratively uncollectible.

DOJ's Executive Office for U.S. Attorneys (EOUSA) provides general executive assistance, administrative support, and other operational support to U.S. Attorney Offices, and coordinates the relationship of other DOJ organizational units and other federal agencies with U.S. Attorney Offices.

In 1939, Congress passed the Hatch Act to limit certain types of political activities of certain federal employees. The Hatch Act provisions were premised, in general, on the concept that an impartial workforce free from political coercion is essential to the fair and effective operation of the government. More recently, however, the Hatch Act Reform Amendments of 1993 (effective Feb. 4, 1994) generally permit most federal employees to take an active part in partisan political management and partisan political campaigns. While federal employees are still prohibited from seeking public office in partisan elections, most employees are free to participate, while off duty and outside of a federal office, in the partisan campaigns of the candidates of their choice. For example, most federal employees are allowed to participate in the following types of partisan activities:

- campaigning for or against candidates in partisan elections,
- distributing campaign literature in partisan elections,
- attending and being active at political rallies and meetings,
- signing nominating petitions,

- assisting in voter registration drives, and
- making campaign speeches for candidates in partisan elections.

Under the Hatch Act Reform Amendments of 1993, certain DOJ employees (i.e., career members of the Senior Executive Service and employees of DOJ's Criminal Division and the Federal Bureau of Investigation) continue to be subject to greater statutory restrictions, similar to those imposed before the 1993 amendments.

As the chief federal law enforcement officers of the United States within their respective jurisdiction, U.S. Attorneys coordinate their activities with state and local law enforcement officials. U.S. Attorneys have established Law Enforcement Coordination Committees in an attempt to (1) move past territorial and jurisdictional concerns of federal, state, and local law enforcement entities; (2) open the lines of communications; and (3) make the most efficient use of law enforcement resources. Also, since federal and state laws and jurisdictions may overlap, coordination and interaction regarding laws and policies is needed. On occasion, state and local legislatures and law enforcement officials request that U.S. Attorneys provide information or comment on law enforcement issues.

Hatch Act Activities

Since October 1994, the Attorney General has issued a series of policy memorandums to subject U.S. Attorneys and other DOJ political appointees to greater restrictions on partisan political activities, similar to those imposed by statute before the Hatch Act Reform Amendments of 1993. With prior DOJ approval, U.S. Attorneys can passively attend certain partisan political events. DOJ does not maintain data on U.S. Attorney Office requests or DOJ approvals related to U.S. Attorney participation in such events.

DOJ Policies Related to Hatch Act Activities

In October 1994, the Attorney General issued a policy memorandum that outlined the specific restrictions on political participation imposed by the amended Hatch Act. Also, the Attorney General used the 1994 memorandum to set forth additional restrictions on U.S. Attorneys and other political appointees, similar to those in effect before the 1993 Reform Amendments. According to the Attorney General, "The need to ensure the appearance and reality of the neutral enforcement of the law requires that our appointees be subject to the additional restrictions . . ."

The 1994 Attorney General memorandum prohibits U.S. Attorneys and other DOJ political appointees from taking an active part in partisan political management or partisan political campaigns. More specifically,

U.S. Attorneys and other DOJ political appointees may not participate in the following types of partisan political activities:

- distributing campaign literature;
- canvassing for votes in support of or in opposition to a candidate;
- endorsing or opposing a candidate in a political advertisement, broadcast, campaign literature, or similar material;
- serving as an officer of a political party;
- addressing a convention, caucus, rally, or similar gathering; or
- actively participating in a fund-raising activity.

U.S. Attorneys and other DOJ political appointees may register and vote as they choose and may make donations to candidates or parties of their choice (as long as the donations are not used in a promotional manner).

Since 1994, the Attorney General has issued additional memorandums to clarify the 1994 memorandum and impose further restrictions on U.S. Attorneys and other DOJ noncareer appointees.[3] Most recently, for instance, an October 1998 Attorney General memorandum imposed restrictions regarding appearances at public events—including travel associated with such events—that might be construed as partisan in nature. For example, activities that are clearly political, and thus prohibited, include speaking at party functions and campaigning for candidates. Active participation in a fund-raiser is also prohibited without exception.[4]

With prior DOJ approval, the 1998 memorandum permits U.S. Attorneys to passively participate in certain events (e.g., attend a political fund-raiser). Prior approval is also required for activities such as making a speech or grant announcement in a state shortly before a general election, primary, or caucus or for attending an event that may involve appearing with a candidate for partisan office. When prior approval is required, U.S. Attorneys and other Senate-confirmed political appointees must obtain such approval from the Deputy Attorney General.

The 1998 Attorney General memorandum supplements and does not supplant the 1994 memorandum. All of the restrictions set forth in the Attorney General's 1994 memorandum are still in effect.

[3] Appendix I of this report contains the chronology of Attorney General policy memorandums related to Hatch Act political activities of U.S. Attorneys.

[4] Active participation includes (1) appearing on the program, on the dais, or in the receiving line of a political event or (2) allowing one's name to be used in connection with the promotion of the event.

According to DOJ officials, in 2000, the Attorney General plans to issue two memorandums on political activities; and these memorandums will supercede all previous memorandums, including the one from 1994. DOJ officials told us that (1) one memorandum will be addressed to DOJ career employees and will list all of the restrictions that apply to their activities and (2) the other memorandum will be addressed to DOJ political appointees, including U.S. Attorneys, and will list all of the restrictions applicable to their political activities. The officials noted that the Attorney General is expected to continue to allow political appointees to attend fund-raisers and national political conventions in a passive capacity with prior approval.

Data on U.S. Attorney Involvement in Hatch Act Activities

DOJ does not maintain or track data on U.S. Attorney requests or DOJ approvals related to U.S. Attorneys' participation in Hatch Act political activities. According to DOJ officials, there have been very few U.S. Attorney requests to attend political fund-raisers or national political conventions. The officials noted, however, that more requests are expected later in 2000.

DOJ officials said that they are not aware of any violations of Attorney General restrictions related to the Hatch Act, since at least January 1995. Also, according to an Office of Special Counsel official, since at least January 1995, the office had not investigated any alleged Hatch Act violations by U.S. Attorneys, their associates, deputies, or staff.

Issue-Oriented Political Activities

U.S. Attorney issue-oriented political activities at the state and local levels are primarily governed by the U.S. Attorneys' Manual. In May 2000, DOJ revised the manual to specifically cover public communications on criminal justice matters or other policy matters that involve state or local issues. Historically, DOJ has not maintained or tracked data on issue-oriented political activities of U.S. Attorneys. In January 2000, however, DOJ established a system to begin tracking U.S. Attorney inquiries that seek prior approval of issue-oriented political activities at the state and local levels.

Until Recently, DOJ Guidance Did Not Address Certain Public Communications

The U.S. Attorneys' Manual contains DOJ rules and policies regarding U.S. Attorneys' participation in issue-oriented political activities at the state and local levels, including certain activities or situations that require prior DOJ approval. Until revisions were adopted in May 2000, the manual primarily addressed U.S. Attorneys' participation in legislative hearings or other direct interactions with state and local legislative bodies. For example, the manual required and still requires that state and local legislative requests to U.S. Attorney Office personnel for any type of "information, assistance

or testimony" that is not already publicly available "must be cleared" with DOJ.[5] According to DOJ officials, these requests include activities such as testifying at a state hearing or providing opinions or other information on a state bill being considered.

Before May 2000, the U.S. Attorneys' Manual did not specifically address media-related or other public communications on criminal justice matters or other policy matters that involved state or local issues. For example, the manual did not specifically require or encourage U.S. Attorneys to contact DOJ for advice or approval before commenting on or advocating (to the public or media) passage or defeat of state or local legislation, including referenda or ballot initiatives. Consequently, according to EOUSA officials, U.S. Attorneys had considerable independent authority or autonomy and wide latitude to publicly comment on state or local issues, as long as their position was consistent with the position of the administration and DOJ.

An Example of the Wide Latitude to Comment Publicly on State or Local Issues

A widely publicized example of U.S. Attorneys' latitude to comment publicly on state or local issues occurred in early 1999. More specifically, U.S. Attorneys in one state publicly opposed a state proposition that would have allowed individuals to carry concealed firearms. In September 1999, DOJ's Office of the Inspector General issued a report on the U.S. Attorneys' activities. According to the Inspector General's report, activities undertaken by a U.S. Attorney (who is no longer in office) included

- drafting and mailing a memorandum/editorial to 102 newspapers throughout the state summarizing his opposition to the proposition;
- mailing a letter to 709 law enforcement officers summarizing his opposition to the proposition;
- making 10 to 12 appearances on radio and television shows and about the same number of public appearances, which included open debates with pro-gun advocates and interviews about his position;
- attending public meetings with various groups where he spoke about his position; and
- providing an 800 number to the U.S. Attorney's Office so law enforcement officials could ask questions about the impact of the proposition.

[5] Public information that can be provided without DOJ approval includes (1) administrative information, such as office locations, operational hours, address and phone information, the proper person to contact for different types of matters, and general procedures; (2) documents that are already of public court records and not under seal or otherwise restricted, such as filed indictments, briefs, etc; (3) news releases or other materials meant for public distribution; and (4) the time and place for the next public court hearing, if already announced.

Although the U.S. Attorney sought and obtained DOJ approval to express his opposition to the proposition (without discussing the specifics of what was going to be said or how it was going to be communicated), DOJ officials stated that the policies in effect at that time did not obligate the U.S. Attorney to ask for permission or solicit DOJ advice before opposing the proposition or engaging in related activities. An EOUSA official—after reviewing the published newspaper editorial and the letter mailed to law enforcement officers—concluded that these communications were "ill advised and unwise" but were not illegal or in violation of any current code.

Recent Revisions to DOJ Guidance on U.S. Attorney Participation in Issue-Oriented Political Activities

In May 2000, DOJ revised the U.S. Attorneys' Manual to provide additional guidance and oversight regarding U.S. Attorney Office personnel, including the U.S. Attorney, involvement in issue-oriented political activities at the state and local levels. That is, the recent revisions establish more comprehensive prior-approval requirements to cover public communications, such as advocating passage or defeat of state or local legislation, including referenda or ballot initiatives. The revisions are contained in sections 1-8.070, 1-8.075, and 1-8.080 of the manual.

Section 1-8.070 (State and Local Legislation)

Section 1-8.070 (State and Local Legislation) of the U.S. Attorneys' Manual was revised to require that U.S. Attorney Office personnel, including the U.S. Attorney, obtain DOJ approval before advocating passage or defeat of state or local legislation, including referenda or ballot initiatives. The revised section reads in part as follows:[6]

"USAO [United States Attorney Office] personnel should not advocate passage or defeat of state or local legislation, including state or local referenda or ballot initiatives, without prior approval to do so by the Department. Each separate written statement or proposed testimony on pending state or local legislation or referenda must be submitted to the Department through CTD [Office of the Counsel to the Director, EOUSA] for review and approval."

According to DOJ officials, section 1-8.070 requires U.S. Attorney Office personnel, including U.S. Attorneys, to obtain DOJ approval before advocating an issue-oriented position concerning state or local legislation either (1) specifically and directly to a state or local legislative body or (2) generally in any public communications (e.g., in public meetings or media contacts).

[6] The requirements incorporated into sections 1-8.070 and 1-8.075, regarding state and local legislative and other matters, do not apply to the U.S. Attorney's Office for the District of Columbia, which has unique jurisdictional obligations as the local prosecutor for the District of Columbia.

Section 1-8.075 (Comity Considerations)

Section 1-8.075 (Comity Considerations) of the U.S. Attorneys' Manual was added—based on advice that previously had been given orally—to cover the public perception or appearance of the proper role and limits of federal prosecutors and the need to give due deference to the separate constitutional powers and responsibilities of state and local officials. The new section reads as follows:

"Whenever you make any public communication on criminal justice or other policy matters that touch on local or state concerns, whether you are required to seek approval or not under USAM [U.S. Attorneys' Manual] 1-8.070, you should be sensitive to comity considerations. The substance and manner of such communications should be designed to enhance and not impede Federal, state, local law enforcement relations, be sensitive to the public appearance of the proper role and limits of Federal prosecutors, and give due deference to the separate constitutional powers and responsibilities of state and local officials. The substance of any such communication should be consistent with Department policy in that area, be distributed in an appropriate fashion, factual in nature and be based on general law enforcement concerns, views and experience. For example, in testifying to a state legislative committee on a pending state bill, the impact of the proposal on law enforcement considerations should be addressed without specifically urging the passage or defeat of the particular bill that may be under consideration. Please feel free to consult CTD [Office of the Counsel to the Director, EOUSA] on any questions you may have in this regard."

According to DOJ officials, "public communication" in section 1-8.075 covers (1) comments made directly to a state or local legislative body and (2) comments made to the public (e.g., during public meetings or media contacts).

Section 1-8.080 (Legislative Requests or Proposals)

Section 1-8.080 (Legislative Requests or Proposals) of the U.S. Attorneys' Manual was expanded to cover personal proposals or personal views to the public regarding a legislative proposal or referendum. The expanded section reads in part as follows:

"If any USAO [U.S. Attorney Office] personnel wish to make a purely personal proposal or offer personal views on a legislative proposal or referendum to Congress, a state legislature, local legislature, or the public that could appear to reflect on their official duties or Department responsibilities, they are encouraged to contact CTD [Office of the Counsel to the Director, EOUSA] for applicable considerations."

For U.S. Attorneys, however, it is more difficult to draw a distinction between "official" and "personal" views, according to representatives of the Office of the Counsel to the Director, EOUSA. That is, the representatives said that since U.S. Attorneys are so closely identified with their official duties, it is difficult for these appointees to speak unofficially or to make purely personal proposals or offer personal views on issues.

Data on U.S. Attorney Involvement in Issue-Oriented Activities

Before January 2000, DOJ did not maintain or track data on the issue-oriented political activities of U.S. Attorneys at the state or local level. According to EOUSA officials, the number of U.S. Attorney Office requests for advice/approval to get involved in state or local issues usually increases during an election year (or primary season) and during the first few months of each calendar year (since many state legislatures are in session during that time period). EOUSA officials estimated that they have historically received an average of two or three U.S. Attorney inquiries per month during January through March and an average of one or no inquiries per month during the rest of the year.

In January 2000, EOUSA began to track—by saving and archiving e-mail messages—U.S. Attorney Office inquiries related to issue-oriented political activities at the state and local levels. EOUSA summaries of inquiries show that from January 19, 2000, to March 22, 2000, U.S. Attorney Offices contacted DOJ nine times for advice and/or approval regarding activities that involved or could potentially involve state or local legislative matters.[7] Each of the nine inquiries was from a different federal judicial district. According to EOUSA officials, four of the nine inquiries were related to activities that required prior DOJ approval under the then-current U.S. Attorneys' Manual and would also have required prior DOJ approval under the May 2000 revisions to the manual. For example, in one federal judicial district, a state senator asked the U.S. Attorney or his representative to testify before a state legislative committee that was conducting hearings on a proposed hate crimes bill.

EOUSA officials noted that one of the five inquiries that did not require prior DOJ approval under the then-current U.S. Attorneys' Manual would likely have required prior DOJ approval under the May 2000 revisions to the manual. More specifically, in one federal judicial district, the head of the state's drug enforcement agency asked the U.S. Attorney for his opinion regarding proposed state legislation that would direct the state agency to dispense confiscated marijuana for medical purposes. (The state's voters previously passed a medical marijuana referendum, which the U.S. Attorney opposed.) Under the May 2000 revisions to the U.S. Attorneys' Manual, prior DOJ approval would have been required if the U.S. Attorney intended to advocate passage or defeat of the proposed state legislation.

[7] Appendix II of this report presents a summary of each of the nine inquiries, including a description of the inquiry, the advice given, and the ultimate action taken.

The nine inquiries recorded by EOUSA may not constitute all issue-oriented political activities by U.S. Attorneys during the approximately 2-month period indicated. Because many types of U.S. Attorney issue-oriented political activities at the state or local level generally did not require prior DOJ approval at that time, the extent and nature of such activities was largely unknown. For instance, as previously mentioned, until May 2000, U.S. Attorneys were not required to obtain DOJ approval before taking a public position on matters of state or local legislative authority, as long as the position was consistent with that of the administration and DOJ and did not involve testimony to a state or local legislature. According to DOJ officials, beginning in May 2000, all activities that require prior DOJ approval under the revised U.S. Attorneys' Manual will be tracked.

DOJ officials said that, in the past 10 years, they were aware of only two public controversies related to the issue-oriented political activities of U.S. Attorneys at the state or local level. In one controversial situation, U.S. Attorneys in one state publicly opposed a state proposition that would have allowed individuals to carry concealed firearms. In the other controversial situation, a U.S. Attorney publicly opposed a proposed state bill to legalize certain types of gambling. DOJ views the relatively few public controversies as an indication that such activities are not a widespread problem or concern.

Applicable Restrictions on the Use of Federal Funds for Political Activities

Over the years, Congress has imposed two types of restrictions on the use of appropriated funds for certain types of political activities—one criminal and the other civil. First, 18 U.S.C. 1913 makes the use of appropriated funds to lobby Congress a criminal offense. The second type of lobbying restriction, usually appearing in regular appropriations acts, is civil in nature and, in general, prohibits the use of appropriated funds for certain lobbying activities.

18 U.S.C. 1913 (The Anti-Lobbying Act)

In 1919, Congress enacted what is now 18 U.S.C. 1913, making the use of appropriated funds to lobby Congress a criminal offense.[8] Because 18 U.S.C. 1913 is a criminal statute, DOJ and the courts are responsible for

[8] 18 U.S.C. 1913 provides, in pertinent part, that: "No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business."

enforcing it. DOJ has construed 18 U.S.C. 1913, as it applies to activities by executive branch employees, to prohibit the use of appropriated funds for substantial "grass roots" lobbying campaigns of telegrams, letters, and other private forms of communication designed to encourage members of the public to pressure members of Congress to support administration or department legislative or appropriations proposals.[9] Section 1913 does not address activities designed or intended to influence members of state or local legislative bodies.

Further, regarding the extent to which 18 U.S.C. 1913 imposes constraints on activities by executive branch employees that relate to legislative matters, a 1995 memorandum from DOJ's Office of Legal Counsel to the Attorney General and Deputy Attorney General[10] provided, in part, that:

- "The Department of Justice consistently has construed the Anti-Lobbying Act as not limiting the lobbying activities personally undertaken by the President, his aides and assistants within the Executive Office of the President, the Vice President, cabinet members within their areas of responsibility, and other Senate-confirmed officials appointed by the President within their areas of responsibility."
- "Under the Anti-Lobbying Act, government employees may communicate with the public through public speeches, appearances and published writings to support Administration positions . . ."
- A "substantial" grass-roots lobbying campaign is one that involves the expenditure of $50,000 or more.

Appropriations Act Language

The second type of lobbying restriction, usually appearing in annual appropriations acts, is civil in nature and, in general, prohibits the use of appropriated funds for certain lobbying activities. These acts have provided a number of different standards, with varying degrees of specificity and coverage. On occasion, we have been asked to determine whether certain agency activity has violated annual appropriations act lobbying restrictions.

One common form of appropriations act restriction involved in our decisions prohibits the use of funds for "publicity or propaganda purposes." Two provisions applicable to DOJ for fiscal year 2000, for example, prohibit the use of appropriated funds for publicity or

[9] Memorandum for Dick Thornburgh, Attorney General, from William P. Barr, Assistant Attorney General, Office of Legal Counsel, September 28, 1989.

[10] Memorandum for the Attorney General and the Deputy Attorney General from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, April 14, 1995.

propaganda purposes not authorized by Congress.[11] Neither provision specifies a forum within the United States (e.g., Congress and/or state or local legislatures) to which the restrictions apply. Our decisions have not addressed the applicability of this type of provision to activities directed toward state or local legislative bodies.

We have construed similar language, as it has appeared in other appropriations acts, as prohibiting publicity of a nature tending to emphasize an agency's own importance—which we have labeled as "self-aggrandizement"—and covert propaganda activities carried out by covered agencies. We have defined covert propaganda as materials such as editorials or other articles prepared by an agency or its contractors at the behest of the agency and circulated as the ostensible position of parties outside the agency.

Such language does not prohibit an agency's legitimate informational activities. Public officials may report on the activities and programs of their agencies, may justify those policies to the public, and may rebut attacks on those policies. We have also held that the executive branch has a duty to inform the public regarding government policies and, traditionally, policymaking officials have used government resources in explanation and defense of their policies.

Another version of the appropriations act restrictions is the restriction on the use of appropriated funds "for publicity or propaganda purposes designed to support or defeat pending legislation." For example, section 627 of the Treasury and General Government Appropriations Act, 2000 (P.L. 106-58), as it applies to DOJ, prohibits the use of funds for publicity or propaganda purposes designed to support or defeat legislation pending before Congress.[12]

[11] In DOJ's fiscal year 2000 appropriation (P.L. 106-113), section 601 provides that: "No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by Congress." Section 632 of the Treasury and General Government Appropriations Act, 2000 (P.L. 106-58), provides that: "No part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofore authorized by the Congress." By virtue of the "this or any other act" language, this provision is expressly applicable to appropriations contained in all appropriations acts for fiscal year 2000, including those of the Department of Justice.

[12] More specifically, section 627 provides that: "No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before Congress, except in presentation to the Congress itself." By virtue of the "this or any other act" language, this provision is expressly applicable to appropriations contained in all appropriations acts for fiscal year 2000, including those of the

We have construed similar "pending legislation" restrictions, as they have appeared in other appropriations acts, as applying primarily to indirect or "grass-roots" lobbying and not to direct contact with Members of Congress. In other words, the statute has been interpreted to prohibit appeals to members of the public, suggesting that they in turn contact their elected representatives to indicate support of or opposition to pending legislation, thereby expressly or implicitly urging the legislators to vote in a particular manner.

Our decisions have recognized the legitimate interests of an agency in communicating with the public and with legislators regarding its policies and activities. We have further recognized that if a given policy or activity is affected by pending or proposed legislation, any discussion of that policy or activity by officials will necessarily refer to such legislation, either explicitly or by implication, and presumably will be either in support of or in opposition to it. Thus, an interpretation of a "pending legislation" statute that strictly prohibited expenditures of public funds for dissemination of views on pending legislation would preclude virtually any comment by officials on agency or administration policy or activities.

As stated earlier, antilobbying provisions contain a number of different standards, with varying degrees of specificity and coverage. For example, while the section 627 language relates to legislation pending before Congress and does not address activities designed to support or defeat legislation pending before state or local legislative bodies, appropriations act language for the Legal Services Corporation prohibits the use of appropriated funds to assist "attempts to influence the passage or defeat of any legislation, constitutional amendment, referendum, initiative, or any similar procedure of the Congress or a State or local legislative body."[13]

In general, with respect to issue-oriented political activities, the provisions applicable to DOJ regarding the use of appropriated funds for certain lobbying activities have been construed to allow officials to communicate to the public and with legislators to support and provide information on

Department of Justice. In construing language similar to that found in the above section 627, we have found that such language makes it clear that the prohibition does not apply to communications directly to Congress, and that the listing of specific materials and presentations further explains what the Congress means by publicity or propaganda purposes.

[13] The Legal Services Corporation's fiscal year 2000 appropriation (P.L. 106-58) incorporates language providing that: "None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity . . . that attempts to influence the passage or defeat of any legislation, constitutional amendment, referendum, initiative, or any similar procedure of the Congress or a State or local legislative body."

administration positions, with the exception of conduct in the form of grass-roots lobbying, certain types of publicity (i.e., self-aggrandizement), and covert propaganda.

According to an EOUSA official, U.S. Attorneys are entitled to use DOJ time, money, and personnel to comment or take public positions on state or local issues when representing the department's position on issues.

Scope and Methodology

To determine what laws, rules, and policies govern U.S. Attorneys' involvement in Hatch Act partisan political activities and issue-oriented political activities, we interviewed officials from relevant DOJ component offices—EOUSA, Office of Intergovernmental Affairs, Office of Legislative Affairs, Office of Legal Counsel, and Ethics Office—and reviewed policy memorandums and other documentation. We also interviewed officials from the Office of Special Counsel—an independent federal agency that provides advisory opinions on Hatch Act matters and investigates allegations of Hatch Act violations—and reviewed Hatch Act-related documentation they provided us. Further, we reviewed Hatch Act provisions, federal antilobbying laws, and our previous reports and decisions.

To determine the extent to which U.S. Attorneys had been involved in Hatch Act partisan political activities and issue-oriented political activities, we interviewed DOJ officials and relied on case summaries they provided us. We also asked the Office of Special Counsel for information on Hatch Act violations by U.S. Attorneys. Further, we interviewed an official from DOJ's Office of the Inspector General and reviewed an Inspector General report on the political activities of two U.S. Attorneys in one state.

As agreed with your offices, we did not directly contact all 93 U.S. Attorneys. Rather, based on geographic proximity to locations of our headquarters and field office staff, we interviewed three U.S. Attorneys (District of Columbia, Northern District of Texas, and Eastern District of Virginia). During these contacts, we obtained each U.S. Attorney's perspectives on relevant rules and policies regarding Hatch Act and issue-oriented political activities.

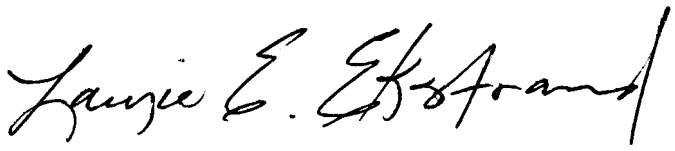
To the extent possible throughout our review, we tried to supplement or corroborate interview or testimonial information by obtaining and reviewing policy and/or actual practice documentation, such as manuals, reports, letters, and memorandums. We performed our work from January to May 2000 in accordance with generally accepted government auditing standards.

Agency Comments

On June 23, 2000, we provided a draft of this report for review and comment to DOJ. On July 7, 2000, DOJ's Audit Liaison Office (Justice Management Division) orally advised us that (1) the draft report had been reviewed by senior representatives of DOJ's Executive Office for U.S. Attorneys and Ethics Office and (2) these reviewers generally concurred with the substance of the draft report. DOJ provided technical comments and clarifications, which have been incorporated in this report where appropriate.

As agreed with your office, unless you announce the contents of this report earlier, we plan no further distribution of this report until 15 days from the date of this letter. At that time, we will send copies of this report to Senator Robert G. Torricelli, Ranking Minority Member of the Senate Judiciary's Subcommittee on Administrative Oversight and the Courts; Senator John F. Kerry, Ranking Minority Member of the Senate Committee on Small Business; Senator Orrin Hatch, Chairman, and Senator Patrick Leahy, Ranking Minority Member, Senate Judiciary Committee; Representative Henry Hyde, Chairman, and Representative John Conyers, Ranking Minority Member, House Judiciary Committee; the Honorable Janet Reno, Attorney General; and the Honorable Elaine Kaplan, Special Counsel. Copies of this report will be made available to others upon request.

Please contact me on (202) 512-8777 if you or your staff have any questions about this report. Key contributors to this assignment were Danny R. Burton, R. Eric Erdman, Geoffrey R. Hamilton, and Michael Kassack.



Laurie E. Ekstrand
Director, Administration
of Justice Issues

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Abbreviations

DOJ	Department of Justice
EOUSA	Executive Office for United States Attorneys

Chronology of Attorney General-Imposed Restrictions on the Political Activities of U.S. Attorneys

This appendix presents a chronological summary of Attorney General-imposed restrictions on the political activities of U.S. Attorneys. That is, the appendix briefly discusses the substance of policy memorandums issued by the Attorney General in 1994, 1996 (two memorandums), and 1998. All of the restrictions set forth in the Attorney General's 1994 memorandum remain in effect. The restrictions in the two 1996 memorandums generally were incorporated into the 1998 memorandum, which also established some additional restrictions. Thus, the 1994 and the 1998 memorandums currently constitute the Department of Justice's (DOJ) basic guidance. According to DOJ officials, in 2000, the Attorney General plans to issue two memorandums on political activities—one for DOJ career employees and one for DOJ political appointees—which will supercede all previous memorandums.

1994 Attorney General Policy Memorandum

In her October 1994 policy memorandum, regarding restrictions on political activities by DOJ employees, the Attorney General stated the following:

"As employees of the Department of Justice, we have been entrusted with the authority to enforce the laws of the United States, and with the responsibility to do so in a neutral and impartial manner. For the public to retain its confidence that we are adhering to our responsibility, we must ensure that politics—both in fact and in appearance—does not compromise the integrity of our work."

The 1994 memorandum (1) outlined statutory restrictions on political activities that are applicable to all DOJ employees and (2) set forth additional Attorney General-imposed restrictions that are applicable to U.S. Attorneys and other political appointees.

Statutory Restrictions Applicable to All DOJ Employees

Although the Hatch Act Reform Amendments of 1993 permit most federal employees to take an active part in partisan political management and partisan political campaigns, certain statutory restrictions remain in effect. The Attorney General's 1994 policy memorandum outlined statutory restrictions on political activities that are applicable to all DOJ employees. More specifically, the memorandum noted that DOJ employees may not do the following:

- use their official authority or influence to interfere with or affect the result of an election, 5 U.S.C. 7323 (a) (1);
- solicit, accept, or receive a political contribution, 5 U.S.C. 7323(a) (2), except for a political contribution to a multicandidate political committee from a fellow member of a federal labor organization or certain other employee organizations, as long as the solicited employee is not a

subordinate and the activity does not violate the provision below related to "engaging" in political activity;

- solicit, accept, or receive uncompensated volunteer services from an individual who is a subordinate, 5 C.F.R. 734.303(d);
- allow their official titles to be used in connection with fund-raiser activities, 5 C.F.R. 734.303(c);
- run for nomination or election to public office in a partisan election, 5 U.S.C. 7323(a) (3);[1]
- solicit or discourage the political activity of any person who is a participant in any matter before the department, 5 U.S.C. 7323(a) (4);
- engage in political activity (to include wearing political buttons) while on duty, while in a government-occupied office or building, while wearing an official uniform or insignia, or while using a government vehicle, 5 U.S.C. 7324(a); or
- make a political contribution to their employer or employing authority, 18 U.S.C. 603.

The statutory restrictions applicable to all DOJ employees are also contained in the U.S. Attorneys' Manual.

Additional Restrictions Applicable to U.S. Attorneys

Under the Hatch Act Reform Amendments of 1993, certain DOJ employees (i.e., career members of the Senior Executive Service and employees of DOJ's Criminal Division and the Federal Bureau of Investigation) continue to be subject to greater statutory restrictions, similar to those that were imposed by statute on all federal employees before the 1993 amendments. The Attorney General determined, as a policy matter, that DOJ should continue its practice of imposing these kinds of additional restrictions on U.S. Attorneys and other political appointees.[2] According to the Attorney General, "The need to ensure the appearance and reality of the neutral enforcement of the law requires that our appointees be subject to additional restrictions . . ."

The Attorney General's 1994 policy memorandum set forth the additional restrictions on U.S. Attorneys and other political appointees. More specifically, political appointees may not do such things as

[1] In certain designated communities, including Washington, D.C., and its suburbs, an employee may run for office in a local partisan election (but only as an independent candidate) and may receive, but not solicit, contributions, 5 U.S.C. 7325.

[2] Political appointees include all presidential appointees, senate-confirmed presidential appointees, noncareer members of the Senior Executive Service, and Schedule C appointees.

- distribute fliers printed by a candidate's campaign committee, a political party, or a partisan political group;
- serve as an officer of a political party; a member of a national, state, or local committee of a political party; an officer or member of a committee of a partisan political group; or be a candidate for any of these positions;
- organize or reorganize a political party organization or partisan political group;
- serve as a delegate, alternate, or proxy to a political party convention;
- address a convention, caucus, rally, or similar gathering of a political party or partisan political group in support of or in opposition to a candidate for partisan political office or political party office, if such address is done in concert with such a candidate, political party, or partisan political group;
- organize, sell tickets to, promote, or actively participate in a fund-raising activity of a candidate for partisan political office or of a political party or partisan political group;
- canvass for votes in support of or in opposition to a candidate for partisan political office or a candidate for political party office, if such canvassing is done in concert with such a candidate, political party, or partisan political group;
- endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material if such endorsement or opposition is done in concert with such a candidate, political party, or partisan political group;
- initiate or circulate a partisan nominating petition; and
- act as recorder, watcher, challenger, or similar officer at polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office.

The Attorney General's additional restrictions applicable to all political appointees are also contained in the U.S. Attorneys' Manual.

1996 Attorney General Policy Memorandums

In 1996, the Attorney General issued two memorandums to all DOJ political appointees (i.e., senate-confirmed presidential appointees, presidential appointees, noncareer members of the Senior Executive Service, and Schedule C appointees) further restricting their political activities.

February 1996 Memorandum

First, in February 1996, the Attorney General issued a memorandum that required all noncareer employees (including U.S. Attorneys) to seek prior approval for any public activities—including any travel associated with such activities—that might be construed as partisan in nature (e.g., attending political fund-raisers or national party conventions). According to the Attorney General, in determining whether an activity is political or

official, all relevant factors should be considered, including, but not limited to, the identity of the sponsor of the event, the group, or organization being addressed; other participants; and whether the speech being delivered is partisan and political in nature or DOJ's position on matters for which DOJ is responsible. The Attorney General advised that noncareer employees should be particularly cautious if an event calls for an appearance with an individual who is actively engaged in seeking elective office. U.S. Attorneys were to obtain approval from the Deputy Attorney General.

July 1996 Memorandum

In July 1996, the Attorney General issued a memorandum that prohibited U.S. Attorneys and other senate-confirmed presidential appointees from attending partisan political fund-raisers. This policy did not, however, prohibit those officials from making donations to candidates or parties of their choice (as long as the donations are not used in a promotional manner). The Attorney General also noted that absent special circumstances, approval will not be granted for senate-confirmed presidential appointees to attend national political conventions.

1998 Attorney General Policy Memorandum

The restrictions in the two 1996 memorandums generally were incorporated into the Attorney General's 1998 memorandum, which also established some additional restrictions. That is, the October 1998 Attorney General's memorandum imposed additional restrictions on noncareer appointees (including U.S. Attorneys), regarding appearances at public events—including travel associated with such events—that might be construed as partisan in nature. Activities that are clearly political and thus prohibited include speaking at party functions or campaigning for candidates. Active participation in a fund-raiser is also prohibited without exception.[3]

U.S. Attorneys and other senate-confirmed presidential appointees must obtain DOJ approval before attending a political fund-raising event in a passive capacity. Prior approval is also required for activities such as making a speech or grant announcement in a state shortly before a general election, primary, or caucus or before attending an event that may involve appearing with a candidate for partisan office. U.S. Attorneys and other senate-confirmed presidential appointees must obtain approval from the Deputy Attorney General.

[3] Active participation includes (1) appearing on the program, on the dais, or in the receiving line of a political event or (2) the participant allowing his/her name to be used in connection with the promotion of the event.

2000 Attorney General Policy Memorandums

According to DOJ officials, in 2000, the Attorney General plans to issue two memorandums on political activities, and these memorandums will supercede all previous memorandums, including the one from 1994. DOJ officials told us that (1) one memorandum will be addressed to DOJ career employees and will list all of the restrictions that apply to their activities and (2) the other memorandum will be addressed to DOJ political appointees, including U.S. Attorneys, and will list all of the restrictions applicable to their political activities. The officials noted that the Attorney General is expected to continue to allow political appointees to attend fund-raisers and national political conventions in a passive capacity with prior approval.

U.S. Attorney Office Inquiries to DOJ Regarding Issue-Oriented Political Activities

From January 19, 2000, to March 22, 2000, U.S. Attorney Offices contacted DOJ's Executive Office for U.S. Attorneys (EOUSA) nine times for advice and/or approval regarding activities that involved or could potentially involve state or local legislative matters. This appendix presents EOUSA summaries of the nine U.S. Attorney Office inquiries.

Four Inquiries Required DOJ Approval

According to EOUSA officials, four of the nine U.S. Attorney Office inquiries were related to activities that required prior DOJ approval under the then-current U.S. Attorneys' Manual and would also have required prior DOJ approval under the May 2000 revisions to the manual. The four inquiries were received from U.S. Attorney Offices in four separate federal judicial districts. A brief summary of each inquiry is presented in the following sections.

Inquiry No. 1

Description of the inquiry: The U.S. Attorney was asked to endorse gun control legislation pending in a state legislature.

Advice given: In conformance with DOJ's usual practice to avoid, on comity grounds, direct statements of support or opposition to specific state bills, the U.S. Attorney and DOJ agreed that endorsement of the pending legislation would be inappropriate.

Ultimate action: No endorsement of the specific bill was made.

Inquiry No. 2

Description of the inquiry: The U.S. Attorney Office sought authorization to testify concerning the federal perspective on proposed state legislation involving alcohol-related driving offenses. The testimony purportedly would help to resolve an inconsistency in the proposed state legislation—that is, to address a situation regarding one location in the state where persons arrested for alcohol-related driving offenses would not have points assessed on their drivers' licenses.

Advice given: If the U.S. Attorney is invited to testify, DOJ will review the pending legislation and the proposed testimony.

Ultimate action: Pending at the time of our review.

Inquiry No. 3

Description of the inquiry: A state senator asked the U.S. Attorney or his representative to testify before a state legislative committee conducting hearings on a proposed hate crimes bill. The prospective testimony of the U.S. Attorney—consistent with the position the office took at a community hate crimes symposium in 1999—supports the idea of strong hate crimes legislation, without committing to a specific bill.

Advice given: It is appropriate to testify on the hate crimes problem generally and the need for aggressive enforcement and effective legislation, without commenting on specific state legislation.

Ultimate action: Testimony was offered.

Inquiry No. 4

Description of the inquiry: The U.S. Attorney was asked to testify before the Criminal Justice Committee of the state legislature concerning federal enforcement in the area of illegal enticement of children via the Internet. The U.S. Attorney would not be asked to comment on potential state legislation in this area and would discuss only federal enforcement efforts and factual matters pertaining to the federal criminal justice system.

Advice given: DOJ officials concurred that the U.S. Attorney's appearance before the state legislature to discuss this topic strictly from the federal enforcement perspective would be appropriate.

Ultimate action: The U.S. Attorney testified.

Five Inquiries Did Not Require DOJ Approval

According to EOUSA officials, five of the nine U.S. Attorney Office inquiries were related to activities that did not require prior DOJ approval under the then-current U.S. Attorneys' Manual. The five inquiries were received from U.S. Attorney Offices in five separate federal judicial districts. Also, these five districts did not include any of the four districts discussed above.

EOUSA officials said that although the five inquiries in this category related to activities that involved or could potentially involve state legislative matters, at the time the inquiries were made, the activities did not involve providing testimony or other assistance directly to a state legislative body. Therefore, EOUSA officials concluded that the activities did not require prior DOJ approval under the then-current U.S. Attorneys' Manual. The officials noted that one of the five inquiries (see inquiry no. 4 below) related to activities that would likely have required prior DOJ approval under the May 2000 revisions to the manual. A brief summary of each inquiry is presented in the following sections.

Inquiry No. 1

Description of the inquiry: The American Civil Liberties Union and the Urban League asked the U.S. Attorney to attend a meeting on racial profiling for the specific purpose of "demanding" that the state's governor sign a state bill that would require law enforcement officers to collect data regarding the race and ethnicity of persons stopped and searched.

	Advice given: Maintaining the appropriate appearance of neutrality during an apparently partisan session on state legislation would be extremely difficult, and it was therefore recommended that the U.S. Attorney decline the invitation to attend. **Ultimate action**: The U.S. Attorney declined to attend.
Inquiry No. 2	**Description of the inquiry**: The state's governor sought to appoint an Assistant U.S. Attorney as one of seven members of the state's Fair Employment and Housing Commission, which meets four times annually to render decisions on employment and fair housing complaints. The commission also issues or reviews proposed state regulations to implement antidiscrimination statutes, and reviews proposed antidiscrimination legislation. **Advice given**: Participation by an Assistant U.S. Attorney on a state board that renders decisions, rather than acting strictly as an advisory body, is inadvisable because it raises a comity question. The Assistant U.S. Attorney would be acting as a state functionary while holding a federal office. There is also the question of the propriety of rendering independent decisions in the civil rights area where federal and state enforcement roles are distinct. **Ultimate action**: The offer was declined.
Inquiry No. 3	**Description of the inquiry**: A city mayor asked the U.S. Attorney to play a role in a gun violence reduction initiative. That is, the mayor asked the U.S. Attorney to participate with a state prosecutor in a gathering of local mayors to formulate a zero-tolerance firearms enforcement policy. **Advice given**: It was advised that participation by the U.S. Attorney be limited to law enforcement issues and that any appearance of involvement in local political matters be strictly avoided. **Ultimate action**: Participation was approved.
Inquiry No. 4	**Description of the inquiry**: The head of the state's drug enforcement agency asked the U.S. Attorney for his opinion regarding proposed state legislation that would direct the state agency to disperse confiscated marijuana for medical purposes. The state's voters previously passed a medical marijuana referendum, which the U.S. Attorney opposed. Under current federal law, it would be a crime for the agency to disperse marijuana.

	Advice given: It is proper for a U.S. Attorney to relay DOJ's position on an issue if asked by a state official. In this case, the position is that marijuana distribution is still illegal under federal law, notwithstanding what occurs in a specific state. **Ultimate action**: The U.S. Attorney has relayed DOJ's position to the state's drug enforcement agency.
Inquiry No. 5	**Description of the inquiry**: The state legislature asked the U.S. Attorney to serve in his official capacity on a task force or commission being created to study proposals to reduce mandatory minimum sentences for drug users and to exempt some convicted criminals from having to disclose their offenses to potential employers. The commission's study could result in recommendations for changes in state laws. **Advice given**: The U.S. Attorney was advised not to accept the appointment; however, the U.S. Attorney was also advised that he could answer questions based on law enforcement experience, as long as he did not address specific state legislation. **Ultimate action**: The U.S. Attorney made himself available for consultation.

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