



U.S. ATTORNEY: THE SERVANT OF THE LAW

BY **SANFORD C. COATS** AND **CHRIS M. STEPHENS**

“The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.”

Berger v. United States, 295 U.S. 78, 88 (1935) (Southerland, J.).

For more than 225 years, U.S. attorneys have played a special role as “servant[s] of the law” in our country’s justice system. A U.S. attorney has a diverse portfolio of formal prosecution, litigation, and appellate responsibilities and is also involved in a host of community outreach and anti-violence projects. Those honored to serve as U.S. attorneys often consider their tenure to be a highlight of their professional careers.

This article traces the history of the U.S. attorney, describes a U.S. attorney’s responsibilities and caseload, summarizes the role of assistant U.S. attorneys (AUSAs), and includes reflections from former and current U.S. attorneys.

History

Our nation’s federal court system includes 94 judicial districts, and 93 U.S. attorneys serve in these districts throughout the United States, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands.¹ A U.S. attorney is appointed by and serves at the pleasure of the president of the United States, and must be confirmed by the Senate. U.S. attorneys generally change with each administration.

The position of a U.S. attorney predates the U.S. Department of Justice. Article III of the Constitution created our judicial system of a Supreme Court and “inferior courts.” The Judiciary Act of

1789 soon followed with the creation of the office of the Attorney General. That act also called for the president to appoint to each judicial district “a meet person, learned in the law to act as an attorney for the United States.”² Under the Judiciary Act of 1789, this appointed attorney in each district had the duty to prosecute “all delinquents for crimes and offenses cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned.”³

The Judiciary Act of 1789 did not actually use the term U.S. attorney. These officers were often called district attorneys in early statutes and court decisions. Older lawyers will remember them being called U.S. district attorneys. Only in 1948 did Congress clarify and codify the term U.S. attorney.⁴

In our country’s early days, the U.S. attorney had little oversight and answered only to the president. In 1830, Congress authorized the solicitor of the Treasury to control U.S. attorneys.⁵ Congress later shifted this control to the attorney general. In 1870, Congress established the Department of Justice (DOJ) with the attorney general as its head.⁶ Interestingly, until 1896 a U.S. attorney was paid based on fees he collected from the cases he prosecuted,⁷ and until 1953 a U.S. attorney could keep a private law practice while holding office.⁸

On April 6, 1953, the attorney general created the executive office for U.S. attorneys (EOUSA) to assist and supervise offices of the U.S. attorneys. EOUSA operates as a close liaison between DOJ in Washington, D.C., and the 93 U.S. attorneys. Among other roles, EOUSA maintains the U.S. attorneys’ manual and other internal DOJ litigation guidance, and it supervises the training of all DOJ legal personnel.⁹

Duties and Responsibilities

A U.S. attorney is charged with litigating cases on behalf of the United States in federal courts, under the direction of the attorney general. Federal law sets out three basic statutory responsibilities for U.S. attorneys: (1) “prosecute for all offenses against the United States”; (2) “prosecute or defend, for the Government, all civil actions, suits, or proceedings in which the United States is concerned”; and (3) “institute and prosecute proceedings for the collection of fines, penalties, and forfeitures” that are owed to the federal government and cannot be administratively collected.¹⁰

Criminal

Each U.S. attorney is the chief federal law enforcement officer within her or his judicial district. Criminal investigations and prosecutions are a large part of a U.S. attorney’s duties and often are the most visible part of the job. The scope of criminal duties is broad, and includes, but is not limited to, national security, civil rights violations, public corruption, violent crime, human trafficking, financial fraud, cybercrime, drugs, illegal immigration, and crimes against children.

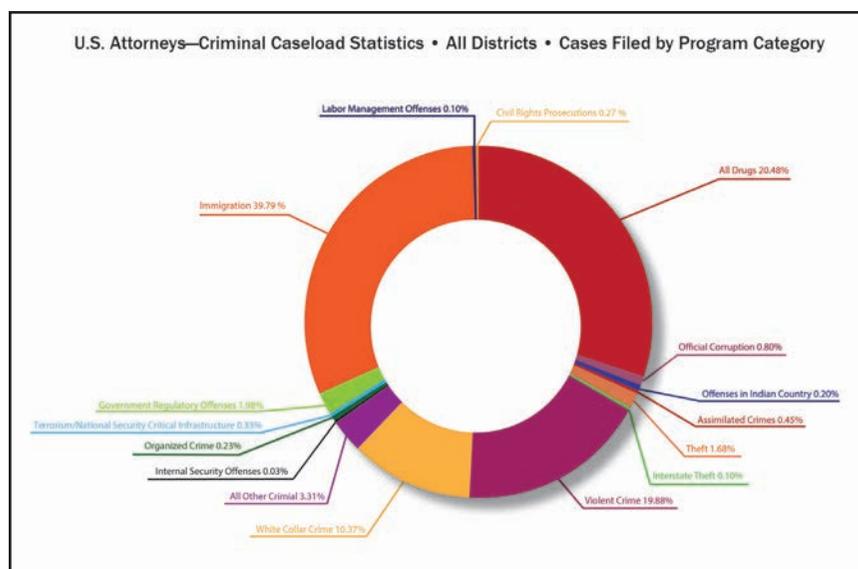
The criminal division is generally the largest unit in each U.S. attorney’s office. Larger offices have specialized criminal sections to deal with particular types of federal crimes. Smaller offices have general criminal practitioners who carry caseloads involving many different sorts of federal crimes. A notable exception to the general rule of *federal* law enforcement is the U.S. attorney’s office for the District of Columbia. That office prosecutes criminal cases in its federal district court and the District of Columbia Superior Court. As a result, that office prosecutes thousands of cases—much like a state district attorney’s office—under the District of Columbia Code.¹¹

Regardless of organization, each U.S. attorney’s office partners with federal, state, and local law enforcement to bring to justice those who have committed federal crimes. EOUSA’s annual statistics offer a glimpse of U.S. attorneys’ caseload. During the fiscal year ending Sept. 30, 2014, the U.S. attorneys’ offices filed 56,218 criminal cases against 74,379 defendants in federal district courts.¹² The chart below breaks down the filed criminal cases by program category. More than a third of filed cases were immigration offenses, and nearly 20 percent of filed criminal cases involved violent crime.¹³

During fiscal year 2014, the U.S. attorneys’ offices around the country terminated 59,555 cases against 80,174 defendants.¹⁴ Only three percent—a total of 2,430—of the terminated cases went to trial. Of these trials, 2,201 were jury trials, and 229 were bench trials.¹⁵ For the 80,174 defendants terminated during fiscal year 2014, nearly 93 percent—74,392—pled guilty or were found guilty. Charges were dismissed against 4,337 defendants, and 312 defendants were found not guilty.¹⁶ The conviction rate on filed cases by U.S. attorneys’ offices has remained above 90 percent since 2001.¹⁷

These statistics do not include the sizeable criminal caseload

that U.S. attorneys’ offices handle before federal magistrate judges and federal grand juries. In fiscal year 2014, U.S. attorneys filed criminal cases against 78,279 defendants in magistrate judge proceedings.¹⁸ Magistrate judges handle—among other criminal matters—applications for search warrants and arrest warrants, initial appearances, preliminary hearings, pretrial motions, and misdemeanor trials. Many of these magistrate judge proceedings involve the same defendants later appearing in federal district court cases. In fiscal year 2014, U.S. attorneys terminated 735 defendants after a court or jury trial before magistrate judges.¹⁹ In addition, the U.S. attorneys’ offices are generally involved with more than 40,000 matters involving federal grand jury proceedings each year.²⁰



Civil

A U.S. attorney's responsibilities in the civil arena are diverse and vital to protect the federal government's interests yet are sometimes overlooked. Each office has a civil division that represents the United States when it is a party to a civil case. The civil practice of law by U.S. attorneys' offices is vibrant, effective, and central to their success.

Civil cases include defensive cases where the United States is sued and is named a defendant in a civil case. A U.S. attorney's defensive cases run the gamut of general civil litigation, including commercial litigation, torts, employment discrimination, land disputes, prisoner litigation, Social Security litigation, and bankruptcy.

Civil divisions also bring affirmative civil enforcement actions, known as ACE cases, to recover money lost through waste, fraud, or abuse. These civil prosecutions often run parallel to criminal investigations. A U.S. attorney's office often determines that it should pursue a matter civilly, as an ACE case, instead of filing a criminal charge. The ACE practice includes qui tam cases in which citizens bring civil fraud actions on behalf of the United States and a U.S. attorney determines whether to intervene.

Civil cases usually represent approximately one-half of the total pending cases and matters for U.S. attorneys.²¹ In fiscal year 2014, the U.S. attorneys' offices filed or responded to a total of 83,970 civil cases.²² U.S. attorneys receive civil cases as referrals from several federal agencies—most commonly from some component of the Internal Revenue Service, the Department of Housing and Urban Development, or DOJ. This next chart breaks down by cause of action those civil cases filed or responded to in fiscal year 2014.

Of the 92,541 civil cases in fiscal year 2013, nearly 6 percent were affirmative civil litigation, and 82 percent were defensive civil cases. The remaining 13 percent were other civil cases, such as bankruptcy, federal program litigation, or commercial litigation.²³

Collections and Asset Forfeiture

A U.S. attorney also collects debts owed to the United States, recovers restitution for victims in criminal cases, and forfeits money and property as illegal proceeds from criminals. Forfeited assets from criminal activity can be restored to the victim, or they can be used by enforcement to help, for example, with training and inves-

tigation expenses. The collections and asset forfeiture practices of each office vary. All offices, though, have a financial litigation unit and an asset forfeiture unit, and some have combined these teams into one asset recovery unit. For context, U.S. attorneys had 6,358 criminal asset-forfeiture cases pending, along with 2,801 civil asset-forfeiture cases pending, at the end of fiscal year 2014.²⁴ Each year, the U.S. attorneys' offices collectively recover billions of taxpayer dollars and monies forfeited from criminal activity.

Appellate

The U.S. attorneys' offices also handle most of DOJ's appellate work before the federal circuit courts around the country. These appeals include affirmative and defensive appeals in criminal, civil, and collections cases. Each U.S. attorney has an appellate coordinator who oversees the office's written and oral appellate advocacy. These appellate chiefs work closely with DOJ's office of the solicitor general for consistency among U.S. attorneys' positions on issues before district and circuit courts. In most appellate units, AUSAs write appellate briefs and conduct oral arguments on behalf of the federal government.

Approximately two-thirds of appeals relate to criminal matters brought by defendants after sentencing. In fiscal year 2014, 8,541 criminal appeals and 3,853 civil appeals were terminated.²⁵ The largest category of criminal appeals related to narcotics defendants.²⁶

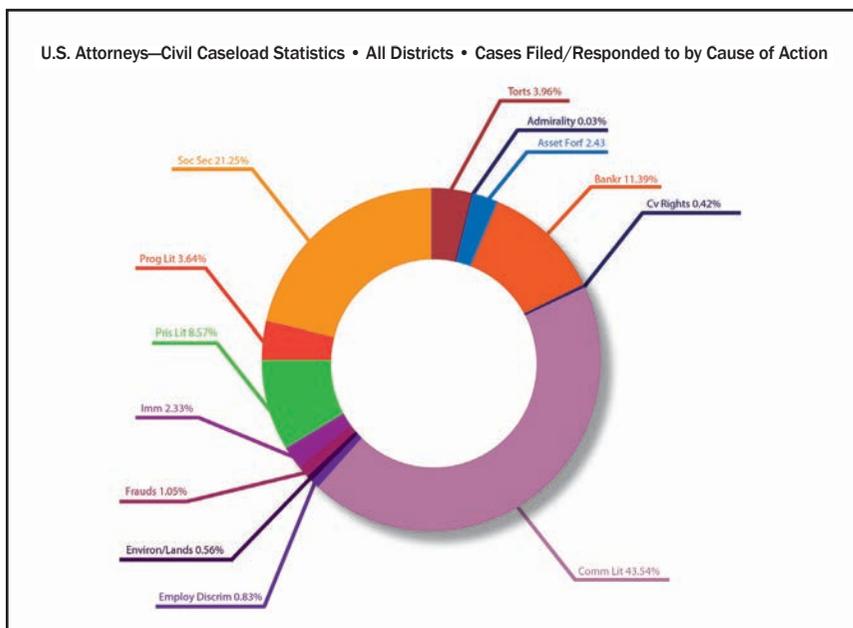
Other Duties

Beyond their litigating responsibilities, U.S. attorneys are also often involved with civic endeavors and diverse community efforts to make their districts better places to live. For example, many U.S. attorneys direct anti-violence projects specific to the needs of their federal district. Generally, these anti-violence programs come in two categories: prevention and reentry.

Prevention efforts center on outreach to schools and other youth programs to keep young people away from gangs and other criminal activity. A great way, of course, to put our criminal divisions out of business is to help future generations not to engage in criminal activity. U.S. attorneys' prevention work is done in conjunction with local, state, and federal groups, including local police departments and nongovernmental organizations.

Reentry efforts are targeted at those who have been convicted of a crime, have finished their time in state or federal prison, and are returning to society upon release. The primary objectives of a successful reentry program are to educate convicted felons of federal firearms laws and to help with educational opportunities, housing, and, most important, employment. Reentry efforts are directed at reducing recidivism and, consequently, the crime rate.

For example, the U.S. attorney's office in the Western District of Oklahoma has two current partnerships directed at successful reentry for felons. In its probation and parole reentry program (P-PREP), the office collaborates with local, state, and federal law enforcement agencies, as well as nongovernmental entities, to educate recently released state parolees and probationers about the legal consequences of drug and gun crimes. Since March 2011, P-PREP has hosted more than 2,000



state parolees and probationers. P-PREP is reducing violent and gun-related crimes by convicted felons as they return to society.

Another partnership in the Western District of Oklahoma is the court-assisted recovery effort (CARE) program. CARE helps to re-integrate into the community felons on post-conviction supervision who struggle with drug and alcohol addiction. The CARE team includes a federal judge, the U.S. attorney's office, the federal public defender's office, probation officers, and treatment providers. Participants must satisfy extensive CARE requirements, including regular court appearances, counseling, and sobriety, to remain in the program. After successfully completing CARE, participants can apply to the court for a shorter term of supervised release or probation.

Role of Assistant U.S. Attorneys

A chief responsibility of any U.S. attorney is to hire, direct, and supervise the AUSAs in each judicial district. While the president appoints each U.S. attorney, AUSAs and support staffs in each office hold career positions not subject to political appointment. In other words, U.S. attorneys come and go with each administration, but the remaining personnel in a U.S. attorney's office stays in place. This continuity provides a core of institutional knowledge by wonderful, gifted, and committed public servants.

More than 5,500 AUSAs currently work in U.S. attorneys' offices, and they bring diverse backgrounds to their public service. Many have considerable trial experience as former state or local prosecutors. Other AUSAs become federal prosecutors after judicial clerkships, work in private practice, or the attorney general's Honors Program. AUSAs are rarely hired immediately or soon after law school; most have at least a few years of legal experience. And AUSA positions are highly competitive. This is best exemplified by the hundreds of applications each office receives when there is an opening for an AUSA position.

Of course, courtroom and trial experiences are a significant attraction to many AUSAs, especially younger attorneys. Another great benefit for AUSAs is the outstanding legal training through DOJ. For example, new prosecutors often attend a two-week trial advocacy program at DOJ's National Advocacy Center (NAC) in Columbia, South Carolina. New AUSAs must complete extensive sessions on discovery issues, and all AUSAs must complete annual training in professional responsibility and government ethics. Top-notch NAC training and online DOJ resources help AUSAs to sharpen their litigation skills, remain updated on case law developments, and learn practice tips from other judicial districts.

Finally, out-of-office dynamics of a judicial district can sometimes affect the demographic profile of a U.S. attorney's office. For example, in many districts with lower costs of living, AUSAs are more likely to become career prosecutors who stay in the same office and retire after several decades of government service. That profile is perhaps less common in larger legal markets, where the cost of living is higher and the disparity between private and public practice is more pronounced. The U.S. attorneys' offices in those districts may have more turnover and a younger overall profile as AUSAs move in to private or corporate practice after valuable DOJ experiences.

Reflections of U.S. Attorneys

As with AUSAs, U.S. attorneys come to federal service from varying backgrounds and experiences. Many are former AUSAs, and some served in one or more DOJ components. Others have worked in state government as prosecutors or judges. Still others come to be a U.S. at-

torney after distinguished careers in the private sector. The result is a diverse group of individuals serving as U.S. attorneys around the country.

A general consensus among current and former U.S. attorneys is that it is the best job they will ever have. David L. Russell, former U.S. attorney for the Western District of Oklahoma and current senior U.S. district judge, has commented that if he could have received a lifetime appointment to be a U.S. attorney, he would have accepted it. The job is multifaceted, challenging, and never dull.

Several U.S. attorneys reflected on their experiences for this article. Ann Tompkins, U.S. attorney for the Western District of North Carolina, wrote:

Behind my desk is a framed copy of the famous quote from Justice Sutherland, in *Berger v. United States* (1935). This is the first thing I see when I walk to my desk to sit down every day. It is a weathered and yellowed copy that has been passed down from one United States Attorney to another for many decades. But, the words are as fresh and meaningful today as when they were written in 1935. The U.S. Attorney is "a servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones ..."

As U.S. attorney, I have tried to live these words and instill them into every assistant U.S. attorney.

Tompkins described how her role as "community convener" has taken on additional significance during her tenure. She considers it her duty to convene citizens—young and old—and encourage them to be community problem solvers. Her philosophy is that U.S. attorneys are public servants first, and that community engagement in its many forms is a central part of the job. According to Tompkins, U.S. attorneys—when fully engaged—add crime prevention, leadership development, and reentry to their docket of criminal law enforcement. This is the right role for U.S. attorneys in the communities in which they serve.

John F. Walsh, the U.S. attorney for the District of Colorado, described his job as "a service job—a service to the public in the broadest sense." He added: "And that means taking responsibility for [the] 'big picture' of justice and fairness, as well as assessing individual cases and litigation decisions." On Walsh's desk is a quote from Attorney General Edward Levi, who served under President Gerald Ford: "We must never forget one essential truth: Enforcement must spring from the faith of citizens. ... People must believe, if not in the wisdom of a particular law, at least in the fairness and honesty of the enforcement process."

Finally, Peter F. Neronha, U.S. attorney of the District of Rhode Island, wrote: "What makes the job of United States Attorney so rewarding is its breadth. I've always thought that the phrase, 'Stay in your lane,' was an important part of doing any job effectively. But this job has so many lanes. There are so many different kinds of criminal and civil cases that our offices prosecute, bring or defend. And yet the cases are only part of the job. Building strong relationships among local, state and federal law enforcement, and the many communities we serve, is equally important. Every day brings a new challenge, a new decision to be made."

Across the street from the U.S. attorney's office in Oklahoma City

is the Oklahoma County Courthouse. Inscribed on the facade is a quote from Thomas Jefferson: "Equal and exact justice to all men, of whatever state or persuasion, religious or political." This aptly describes the goal of the work of the U.S. attorney. We are bestowed and trusted with great power and responsibility, and we strive daily to dispense justice equally.

Conclusion

Those honored with the opportunity to serve as U.S. attorneys take the job very seriously and with a true sense of public trust. Although each U.S. attorney has an individualized approach to executing the duties of the position, all adhere to a fundamental principle of service to the judicial system and the citizens of the district and the United States. U.S. Attorney Walsh summed up the sentiments of all U.S. attorneys: "I feel honored every day I get up and am given the opportunity to lead this U.S. attorney's office, full of such highly talented, dedicated and effective public servants." ☺



Sanford C. Coats is the U.S. attorney for the Western District of Oklahoma. He is a graduate of the University of Oklahoma College of Law and was an assistant U.S. attorney (AUSA) from 2004 to 2009. In December 2009, he was confirmed by the U.S. Senate as U.S. attorney for the Western District of Oklahoma. Coats is a former president of the Oklahoma City Federal Bar Association (FBA) Chapter, and he was co-chair of the 2009 FBA Annual Meeting and Convention in Oklahoma City. Chris M. Stephens is an AUSA in the Western District of Oklahoma. He is a Yale Law School graduate, former president of the Oklahoma City FBA Chapter, and current FBA Tenth Circuit vice president. Stephens has worked as an AUSA in Oklahoma City since 2008.



Endnotes

¹The District of the Northern Mariana Islands and the District of Guam have separate districts but share a single U.S. attorney.

²1 Stat. 73, 93. Notable among President Washington's first appointments was John Marshall, who later served as the chief justice of the Supreme Court.

³*Id.*

⁴28 U.S.C. § 541; *History of the Federal Judiciary*, Federal Judicial Center, available at www.fjc.gov/history/home.nsf/page/admin_03_05.html.

⁵*Bicentennial Celebration of the United States Attorneys, 1789-1989*, EOUSA, at 5, available at www.justice.gov/sites/default/files/usao/legacy/2011/11/23/bicn_celebration.pdf.

⁶16 Stat. 162.

⁷*History of the Federal Judiciary, supra*. Congress changed the compensation system to salaries, based on the attorney general's concern that U.S. attorneys would pursue unsupported and harassing suits. *Id.*

⁸*Bicentennial Celebration of the United States Attorneys, supra*, at 5.

⁹*Mission and Functions, Offices of the United States Attorneys*, United States Department of Justice, available at www.justice.gov/usao/mission-and-functions.

¹⁰28 U.S.C. § 547(1), (2) & (4).

¹¹*United States Attorneys' Annual Statistical Report, Fiscal Year 2013*, EOUSA, at 14, available at www.justice.gov/sites/default/files/usao/legacy/2014/09/22/13statrpt.pdf.

¹²*United States Attorneys' Annual Statistical Report, Fiscal Year 2014*, EOUSA ("2014 Annual Statistical Report"), at Table 1, available at www.justice.gov/usao/resources/annual-statistical-reports.

¹³EOUSA's statistical reports are available online dating back to late 1950s. These reports offer insight into how U.S. attorneys' case-loads and types of case filings have changed. *See* Offices of the United States Attorneys, Annual Statistical Reports, available at www.justice.gov/usao/resources/annual-statistical-reports.

¹⁴*2014 Annual Statistical Report, supra*, at Table 1.

¹⁵*Id.* at Table 2.

¹⁶*Id.*

¹⁷*Id.*; *United States Attorneys' Annual Statistical Report, Fiscal Year 2011*, by U.S. Department of Justice Executive Office for U.S. Attorneys, at 9, available at www.justice.gov/sites/default/files/usao/legacy/2012/02/23/11statrpt.pdf.

¹⁸*2014 Statistical Report, supra*, at Table 1.

¹⁹*Id.* at Table 2A

²⁰*2013 Annual Statistical Report, supra*, at 9 (showing 41,324 criminal matters for fiscal year 2013). Not all grand jury proceedings result in the U.S. attorney's office asking a grand jury to indict a person or entity. Some defendants waive their right to indictment by a grand jury and plead guilty to a criminal information filed without involvement of the grand jury.

²¹*Id.* at 23.

²²*2014 Annual Statistical Report, supra*, at Table 5.

²³*2013 Annual Statistical Report, supra*, at 24.

²⁴*2014 Annual Statistical Report, supra*, at Table 16.

²⁵*Id.* at Table 7.

²⁶Certain types of cases are more likely to be appealed. For example, drug cases were 21.8 percent of terminated cases in fiscal year 2013, but they accounted for 31.6 percent of the criminal appeals. In contrast, immigration cases—at 38.6 percent of cases filed in fiscal year 2013—only made up 17.8 percent of the criminal appeals that year. *2013 Annual Statistical Report, supra*, at 11, 38.