



U.S. Department of Justice

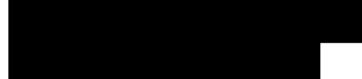
Office of Professional Responsibility

*950 Pennsylvania Avenue, N.W., Suite 3266
Washington, DC 20530
(202) 514-3365*

June 30, 2026

By Email

CREW



foia@citizensforethics.org

Re: OPR FOIA No. F24-00095 3rd Interim Response

Dear CREW:

This letter is in response to your April 24, 2024, Freedom of Information Act (FOIA) request to the Office of Professional Responsibility (OPR) seeking the following records from January 1, 1994 to the date this request is processed:

1. All records relating to former Assistant United States Attorney Terra Morehead (AUSA Morehead) at the Office of the United States Attorney for the District of Kansas (USAO Kansas), that pertain to proven or alleged violations by AUSA Morehead of any provisions of law or constitution, any provisions of the United States Attorney's Manual adopted by the Department of Justice, any ethical duties imposed upon AUSA Morehead in her capacity as a government prosecutor as set forth in the Kansas Rules Relating to Discipline of Attorneys, or any other professional misconduct.
2. All records relating to AUSA Morehead's conduct as a prosecutor for the State of Kansas or any political subdivisions thereof, that pertain to proven or alleged violations by Morehead of any provisions of law or constitution, any ethical duties imposed upon Morehead in her capacity as a government prosecutor as set forth in the Kansas Rules Relating to Discipline of Attorneys, or any other professional misconduct.
3. All records relating to any DOJ investigations, actions (including but not limited to case reassignments and disciplinary measures), or decisions not to take action, in regard to AUSA Morehead's conduct as an AUSA or prosecutor for the State of Kansas, including those relating to proven or alleged violations by AUSA Morehead of any provisions of law or constitution, any provisions of the United States Attorneys' Manual adopted by the Department of Justice, any ethical duties imposed upon AUSA Morehead in her capacity as a government prosecutor as set forth in the Kansas rules Relating to Discipline of Attorneys, or any other professional misconduct.

OPR received your request on April 25, 2024, and has assigned to it request number **F24-00095**. Please refer to that number in any correspondence pertaining to this matter.

For this third interim response, OPR processed a total of 536 pages responsive to your request. Enclosed please find 131 pages of responsive records. Of the 131 pages, four pages (Bates-numbered F24-00095 01004 to 01007) are appropriate for release without excisions, and 127 pages (Bates-numbered F24-00095 01008 to 01134) are appropriate for release with excisions made pursuant to Exemptions 3, 5, 6, and 7(C) of the FOIA, 5 U.S.C. § 552(b)(3), (b)(5), (b)(6), and (b)(7)(C). Exemption 3 protects from public disclosure matters that are specifically prohibited from release by statute; in this case, Rule 6(e) of the Federal Rules of Criminal Procedure protects information that would reveal matters occurring before the grand jury. Exemption 5 pertains to certain inter- and intra-agency communications protected by the deliberative process privilege. Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Exemption 7(C) pertains to information compiled for law enforcement purposes which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties. Please be advised that we have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

OPR determined that 32 pages (Bates-numbered F24-00095 01135 to 01166) contained information of interest to the Executive Office for U.S. Attorneys (EOUSA); four pages (Bates-numbered F24-00095 01167 to 01170) contained information of interest to EOUSA and the Office of the Inspector General (OIG); two pages (Bates-numbered F24-00095 01171 to 01172) contained information of interest to the Office of Information Policy (for the Office of the Deputy Attorney General); 14 pages (Bates-numbered F24-00095 01173 to 01186) contained information of interest to the U.S. Marshals Service (USMS); 33 pages (Bates-numbered F24-00095 01187 to 01219) contained information of interest to the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); and two pages (Bates-numbered F24-00095 01220 to 01221) contained information of interest to the Drug Enforcement Administration (DEA). We will send these pages for consult to EOUSA, OIG, OIP, USMS, ATF, and DEA pursuant to 28. C.F.R. § 16.4(d).

Because 272 pages originated with EOUSA (Bates-numbered F24-00095 01222 to 01493), OPR will refer these pages to EOUSA for processing and direct response to you.

Because nine pages originated with the OIG (Bates-numbered F24-00095 01494 to 01502), OPR will refer these pages to the OIG for processing and direct response to you.

Because 27 pages originated with the Criminal Division (CRM) (Bates-numbered F24-00095 01503 to 01529), OPR will refer these pages to CRM for processing and direct response to you.

Because two pages originated with USMS (Bates-numbered F24-00095 01530 to 01531), OPR will refer these pages to USMS for processing and direct response to you.

Because one page originated with DEA (Bates-numbered F24-00095 01532), OPR will refer this page to DEA for processing and direct response to you.

The remaining seven pages (Bates-numbered F24-00095 01533 to 01539) were withheld in full pursuant to Exemptions 5, 6, and 7(C) of the FOIA, 5 U.S.C. § 552(b)(5), (b)(6), and (b)(7)(C). Exemption 5 pertains to certain inter- and intra-agency communications protected by the deliberative process privilege. Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Exemption 7(C) pertains to information compiled for law enforcement purposes which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties. Please be advised that we have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

Although I am aware that your request is the subject of ongoing litigation and that appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal with the Office of Information Policy.

Sincerely,

Margaret McCarty

Margaret McCarty
Senior Associate Counsel

Attachment: F24-00095 Processed Page Count Chart

Cc: AUSA Sam Escher
U.S. Attorney's Office for the District of Columbia

Nikhel Sus
[REDACTED]

Lauren Bingham
[REDACTED]

Attachment to OPR's June 2026 Interim Response (F24-00095 Processed Page Count Chart)			
Monthly Interim Responses	Bates Nos.	Release in Full to CREW=RIF Release in Part to CREW=RIP Consult=C Referral=R Withheld in Full=WIF	No. of Pages Processed
April 2026	1-502	RIF=6 RIP=11 C=485 (EOUSA, DEA, ATF, USMS)	502
May 2026	503-1003	RIF=2 RIP=22 C=450 (EOUSA, DEA, ATF, USMS) R=27 (OIG, EOUSA, CRM)	501
June 2026	1004-1539	RIF=4 RIP=127 C=87 (EOUSA, OIG, OIP, USMS, ATF, DEA) R=311 (EOUSA, OIG, CRM, USMS, DEA) WIF=7	536
		Total Processed	1539



U.S. Department of Justice

Office of Professional Responsibility

*950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530*

February 25, 2014

VIA FED EX

CONFIDENTIAL

Terra D. Morehead
Assistant United States Attorney
United States Attorney's Office
for the District of Kansas
500 State Avenue, Suite 360
Kansas City, KS 66101-2433

Dear Ms. Morehead:

Enclosed please find a copy of the transcript of your January 16, 2014 OPR interview. We are providing you the transcript pursuant to the Confidentiality Agreement that you executed on January 30, 2014, a copy of which is also enclosed.

Please list any revisions or corrections you wish to make on an errata sheet, and return the errata sheet and the transcript to me via Fed Ex at your earliest convenience. If you want to submit an additional statement or additional documents that you think would be helpful in the OPR investigation, you may do so at any time.

Feel free to contact me if you have any questions or concerns.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John J. Sciortino", is written over a printed name.

John J. Sciortino
Assistant Counsel

Enclosures

STATE OF KANSAS
OFFICE OF THE DISCIPLINARY ADMINISTRATOR



GAYLE B. LARKIN
Disciplinary Administrator
MATTHEW J. VOGELSBERG
Chief Deputy Disciplinary Administrator
CRYSTALYN M. ELLIS
Director of Investigations

KATHLEEN J. SELZLER LIPPERT
ALICE L. WALKER
JULIA A. HART
AMANDA G. VOTH
Deputy Disciplinary Administrators

September 28, 2023

VIA EMAIL ONLY

Jeffrey Ragsdale, Counsel
U.S. Department of Justice
Office of Professional Responsibility
950 Pennsylvania Avenue, NW, Suite 3266
Washington, DC 20530

Re: Terra Morehead

Dear Mr. Ragsdale:

Today, I received your letter informing me of the findings made by the Office of Professional Responsibility (OPR) regarding Terra Morehead. Specifically, the letter indicates that the OPR generated a report which includes findings and conclusions that Ms. Morehead engaged in misconduct in violation of the Kansas Rules of Professional Conduct (KRPC).

As you noted in your letter, our office has a pending disciplinary case against Ms. Morehead arising out of the same conduct. The review committee for the Kansas Board for Discipline of Attorneys directed our office to file formal charges against Ms. Morehead. The hearing panel previously scheduled the case for hearing. However, the hearing was continued pending the outcome of your investigation.

Please accept this letter as my request for a copy of your report. In addition, I am requesting of a copy of any exhibits and attachments to the report as well as any other documents in your file that would support the conclusions of the report.

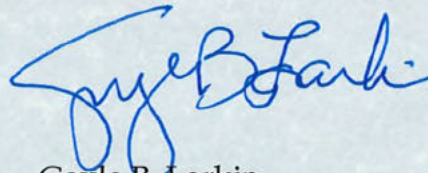
Does the report indicate the standard of proof used by the OPR in making the findings and conclusions? If not, what is the standard of proof employed in this case? Under Rule 221 (2023 Kan. S. Ct. R. at 276), our office may be able to utilize such findings in our disciplinary

case as conclusive or prima facie evidence of violations under the KRPCs, depending on the standard of proof.

Please know that any information that the OPR provides to us would be protected by Rule 237 (2023 Kan. S. Ct. R. at 309) (confidentiality and disclosure). If we admit any document into evidence as an exhibit in Ms. Morehead's attorney disciplinary case, we will first seek to have it admitted and maintained under seal pursuant to the requests included in your letter. See Rule 224(c) (2023 Kan. S. Ct. R. at 279).

Thank you for your assistance with this matter. If you have any questions, please do not hesitate to contact me. I look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gayle B. Larkin". The signature is fluid and cursive, with the first name "Gayle" and last name "Larkin" clearly distinguishable.

Gayle B. Larkin
Disciplinary Administrator

GBL:mrđ



Report Excel Quick Step Help Save/Close

General Trust Expense Invoice Ledger A/P Matter Appointments

12-262 Lawyer <all> Start Date 8/4/2015 End Date 8/4/2015

Entry #	Amount	Expl. Code
13531	50.80	Travel to/from AUSA KCK
13532	63.50	Review video and letter and meet with AUSA

From: [Drouet, Suzanne \(OPR\)](#)
To: [Cochran, Carlita \(OPR\)](#); [Boykin, Evonne \(OPR\)](#); [LaPoint, Jennifer \(OPR\)](#); [Lyles, Shanelle \(OPR\)](#)
Subject: correspondence (b) (6), (b) (7)(C)
Date: Thursday, December 9, 2021 7:57:45 AM
Attachments: [OPR-471440.DOCX.DRF](#)

The attached is ready for sending. Thanks.

SKD

From: [OPR NO-REPLY](#)
To: (b) (6), (b) (7)(C)
Subject: OPR Response Letter
Date: Sunday, December 19, 2021 4:28:33 PM
Attachments: [OPR Response to Inmate \(b\) \(6\), \(b\) \(7\)\(C\) re AUSA Terra Morehead.pdf](#)

(b) (6), (b) (7)(C)

Attached is the Office of Professional Responsibility's response to your complaint. Thank you.

This email is sent from an unmonitored mailbox that does not accept incoming mail.
Please do not reply or send email(s) to this address.

From: [Drouet, Suzanne \(OPR\)](#)
To: [Robertson, Jacqueline T \(OPR\)](#)
Subject: RE: Morehead 202100479 and 202100554
Date: Friday, June 11, 2021 1:01:35 PM

Yes, thanks.

From: Robertson, Jacqueline T (OPR) (b) (6)
Sent: Friday, June 11, 2021 12:47 PM
To: Drouet, Suzanne (OPR) (b) (6)
Subject: RE: Morehead 202100479 and 202100554

Ok, will do. I see that 202100554 is classified as a correspondence matter should it remain as is for now? Thanks,

Jacqueline

From: Drouet, Suzanne (OPR) (b) (6)
Sent: Friday, June 11, 2021 12:03 PM
To: Robertson, Jacqueline T (OPR) (b) (6); Lyles, Shanelle (OPR) (b) (6)
Cc: Cummings, John M. (OPR) (b) (6); Ingersoll, Laura (OPR) (b) (6); Ragsdale, Jeffrey (OPR) (b) (6)
Subject: Morehead 202100479 and 202100554

Please assign John to these two matters and remove Laura as the assigned counsel. Thanks.

SKD

From: (b) (6)
To: [Gonzalez, Gregory \(OPR\)](#)
Cc: (b) (6)
Subject: [EXTERNAL] Re: Conflicts issue
Date: Thursday, December 15, 2022 1:46:32 PM
Attachments: [image001.png](#)

Thanks for letting me know, Greg. Just wanted to confirm receipt.

Hope you have a good rest of the week.

Chris

(b) (6)
Brownell Landrigan, PC
1818 N Street, NW, Suite 520
Washington, DC 20036
202-822-1701
202-822-1914 (fax)
www.brolanlaw.com

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From: Gonzalez, Gregory (OPR) (b) (6)
Sent: Tuesday, December 13, 2022 9:07 AM
To: (b) (6)
Subject: RE: Conflicts issue

(b) (6)

We have decided not to go forward with the interview at this time.
I will let you know if anything changes.
Thank you,

Greg Gonzalez
Assistant Counsel
U.S. Department of Justice
Office of Professional Responsibility
950 Pennsylvania Ave. NW,
Washington, D.C. 20530

(b) (6)

(b) (6)

202-514-5050 fax



From: (b) (6)

Sent: Monday, December 12, 2022 1:32 PM

To: Gonzalez, Gregory (OPR) (b) (6)

Cc: (b) (6)

Subject: [EXTERNAL] Re: Conflicts issue

Thanks, Greg. Yes, we confirm that we represent both AUSA (b) (6), (b) (7)(C) and AUSA Morehead in this specific matter, understand that AUSA Morehead is a subject and that AUSA (b) (6), (b) (7)(C) is a witness, and respectfully request to attend AUSA (b) (6), (b) (7)(C) interview (b) (6), copied, would be attending). That time and date (12/16 at 10am EST) continues to work for her and us.

(b) (6)

(b) (6)

Brownell Landrigan, PC
1818 N Street, NW, Suite 520
Washington, DC 20036
202-822-1701
202-822-1914 (fax)
www.brolanlaw.com

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From: Gonzalez, Gregory (OPR) <(b) (6)>

Sent: Friday, December 9, 2022 11:40 AM

To: (b) (6)

Subject: RE: Conflicts issue

(b) (6)

It is unusual for a witness to have an attorney at an interview and even more unusual for that

attorney to represent both the witness and subject in the same OPR investigation. It creates potential conflict issues and raises other concerns.

Neither subjects nor witnesses have a right to an attorney for an administrative interview, although OPR generally permits it absent other considerations.

We need to clarify that you have a specific attorney/client relationship with AUSA (b) (6), (b) (7)(C) as it relates to her role as a witness in OPR's investigation of AUSA Morehead. To be clear, this investigation is entirely unrelated to the (b) (6), (b) (7)(C) litigation. So, your representation of (b) (6), (b) (7)(C) in that matter is separate from the requested interview.

Thank you

Greg Gonzalez
Assistant Counsel
U.S. Department of Justice
Office of Professional Responsibility
950 Pennsylvania Ave. NW,
Washington, D.C. 20530

(b) (6)

202-514-5050 fax



From: (b) (6)
Sent: Friday, December 9, 2022 10:03 AM
To: Gonzalez, Gregory (OPR) (b) (6)
Cc: Cummings, John M (b) (6)
Subject: [EXTERNAL] Re: Conflicts issue

Yes, we're set on that front. Thank you for checking. I'm pretty sure the time will work for (b) (6), (b) (7)(C) Will update you once I confirm with her.

(b) (6)

(b) (6)
Brownell Landrigan, PC
1818 N Street, NW, Suite 520
Washington, DC 20036
202-822-1701
202-822-1914 (fax)
www.brolanlaw.com

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From: Gonzalez, Gregory (OPR) (b) (6)

Sent: Friday, December 9, 2022 9:37 AM

To: (b) (6)

Cc: Cummings, John M (b) (6)

Subject: Conflicts issue

(b) (6),

Have you sorted out any conflicts you have with regard to our proposed interview of (b) (6), (b) (7)(C)? I just wanted to make clear that (b) (6), (b) (7)(C) is a witness in OPR's investigation of your client, Ms. Morehead.

Thank you,

Greg Gonzalez
Assistant Counsel
U.S. Department of Justice
Office of Professional Responsibility
950 Pennsylvania Ave. NW,
Washington, D.C. 20530

(b) (6)

202-514-5050 fax

seal



From: (b) (6)
To: [Gonzalez, Gregory \(OPR\)](#)
Subject: [EXTERNAL] RE: Email to PMRU from your client Terra Morehead
Date: Friday, September 15, 2023 2:55:36 PM
Attachments: [OPR Confidentiality Agreement.pdf](#)

Mr. Gonzalez,

Attached find the executed Confidentiality Agreement.

Thank you.

(b) (6)

-----Original Message-----

From: Gonzalez, Gregory (OPR) (b) (6)
Sent: Friday, September 15, 2023 1:02 PM
To: (b) (6)
Subject: RE: Email to PMRU from your client Terra Morehead

(b) (6)

Please sign and return the attached confidentiality agreement and I will get you a copy of the report.
Thank you,

Greg Gonzalez
Senior Counsel
U.S. Department of Justice
Office of Professional Responsibility
950 Pennsylvania Ave. NW,
Washington, D.C. 20530

(b) (6)

202-514-5050 fax

-----Original Message-----

From: (b) (6)
Sent: Friday, September 15, 2023 11:47 AM
To: Gonzalez, Gregory (OPR) (b) (6)
Subject: [EXTERNAL] RE: Email to PMRU from your client Terra Morehead

Mr. Gonzalez,

Please make available to me all reports and Investigative materials concerning Ms. Morehead. I would like all materials you intend to give to the State Bar.

Provided you send me the information, I will not disclose without prior written approval.

(b) (6)

| Attorney
MORRIS LAING LAW FIRM
800 SW Jackson, Ste 1310 | Topeka, KS 66612

P: (b) (6) | F: 785.232-9983

Email: (b) (6)

<https://protect2.fireeye.com/v1/url?k=1788dfef-4813e739-178ffb0e-0cc47adc5fdc-23af49635cc9ddf2&q=1&e=f486b2c7-0308-4875-9b6f-92c886a79099&u=http%3A%2F%2Fwww.morrislaing.com%2F>

Topeka | Wichita | West Palm Beach

CONFIDENTIALITY NOTICE: The information in this e-mail is confidential and may be legally privileged. If you are not the intended recipient, you must not read, use or disseminate the information.

NOTICE: The Bar Disciplinary Counsel requires all lawyers to notice all recipients of e-mail that (1) e-mail communication is not a secure method of communication, (2) any e-mail that is sent to you or by you may be copied and held by various computers it passes through as it goes from you to your intended recipient, or vice versa, (3) persons not participating in this communication may intercept this communication by improperly accessing sender's computer or recipient's computer or a computer connected to neither sender nor recipient through which the e-mail passed. You are being sent an e-mail because you have consented to receive communication via this medium. If you change your mind and want future communications to be sent in a different fashion, please notify this office immediately.

-----Original Message-----

From: Gonzalez, Gregory (OPR) (b) (6)

Sent: Thursday, September 14, 2023 3:07 PM

To: (b) (6)

Sub

(b) (6)

OPR received the email below from your client Terra Morehead requesting OPR's approval to forward our report of investigation to Kansas bar disciplinary authorities.

As you are aware, OPR provided the report to Ms. Morehead, (b) (6), and (b) (6) pursuant to a confidentiality agreement that does not authorize you to provide the report to others.

OPR's report of investigation is not the final decision from the Department on this matter until the PMRU has completed its review, affirmed OPR's findings and conclusions, and authorized OPR to report the matter to the bar authorities.

Nevertheless, OPR understands that Ms. Morehead is currently under investigation by Kansas bar disciplinary authorities for matters similar to those addressed in the OPR report of investigation.

Therefore, OPR does not object to you or Ms. Morehead notifying the bar of the fact that OPR has made adverse findings against Ms. Morehead.

However, OPR does not authorize you to provide OPR's report of investigation to anyone not covered in the confidentiality agreement. If authorized by the PMRU, OPR will provide its report to the bar.

To that end, as the bar discipline matter moves forward, (b) (6) may want to reach out to OPR to obtain the appropriate approval to review the report.

Feel free to call me at the numbers below if you have any questions or concerns.

Greg Gonzalez

Senior Counsel

Office of Professional Responsibility

(b) (6)

Sent from my iPhone

>

> -----Original Message-----

> From: Terra Morehead <(b) (6)>

> Sent: Thursday, September 14, 2023 1:25 PM

> To: Masling, Mark (ODAG)(b) (6)

(b) (6)

>

> Mr. Masling:

>

> As you know, I retired on August 31, 2023. You informed me that my departure will not moot any potential bar referral because the Professional Misconduct Review Unit authorizes bar referrals of current and former Department attorneys when it finds that their conduct implicates the governing Rules of Professional Conduct.

>

> While I do not agree with all of the facts and arguments OPR presented, I intend to self-report the OPR Report of Investigation along with the corresponding documentation, to the Office of Disciplinary Administrator of the Supreme Court of Kansas. Does the Confidentiality Agreement I signed dated June 23, 2022 (attached

> herein) prohibit me from doing so without your authorization? If so, I request such authorization. Also, I have separate local counsel working on my matters in front of the ODA, (b) (6). I also request authorization for him to review the materials in preparation for my self-reporting.

>

> Thanks in advance.

>

> Terra Morehead

From: (b) (6), (b) (7)(C)
To: [Gonzalez, Gregory \(OPR\)](#); [Cummings, John M](#)
Subject: [EXTERNAL] RE: Request for Interview by the Office of Professional Responsibility
Date: Tuesday, September 20, 2022 2:08:04 PM
Attachments: [image001.png](#)
[20220920_125149.jpg](#)
[Yahoo Mail - Re \(b\) \(6\), \(b\) \(7\) .pdf](#)
[Yahoo Mail - Re \(b\) \(6\), \(b\) \(7\) .pdf](#)
[Yahoo Mail - Re \(b\) \(6\), \(b\) \(7\) .pdf](#)
[Yahoo Mail - Re \(b\) \(6\), \(b\) \(7\) .pdf](#)
[Yahoo Mail - Re \(b\) \(6\), \(b\) \(7\) .pdf](#)

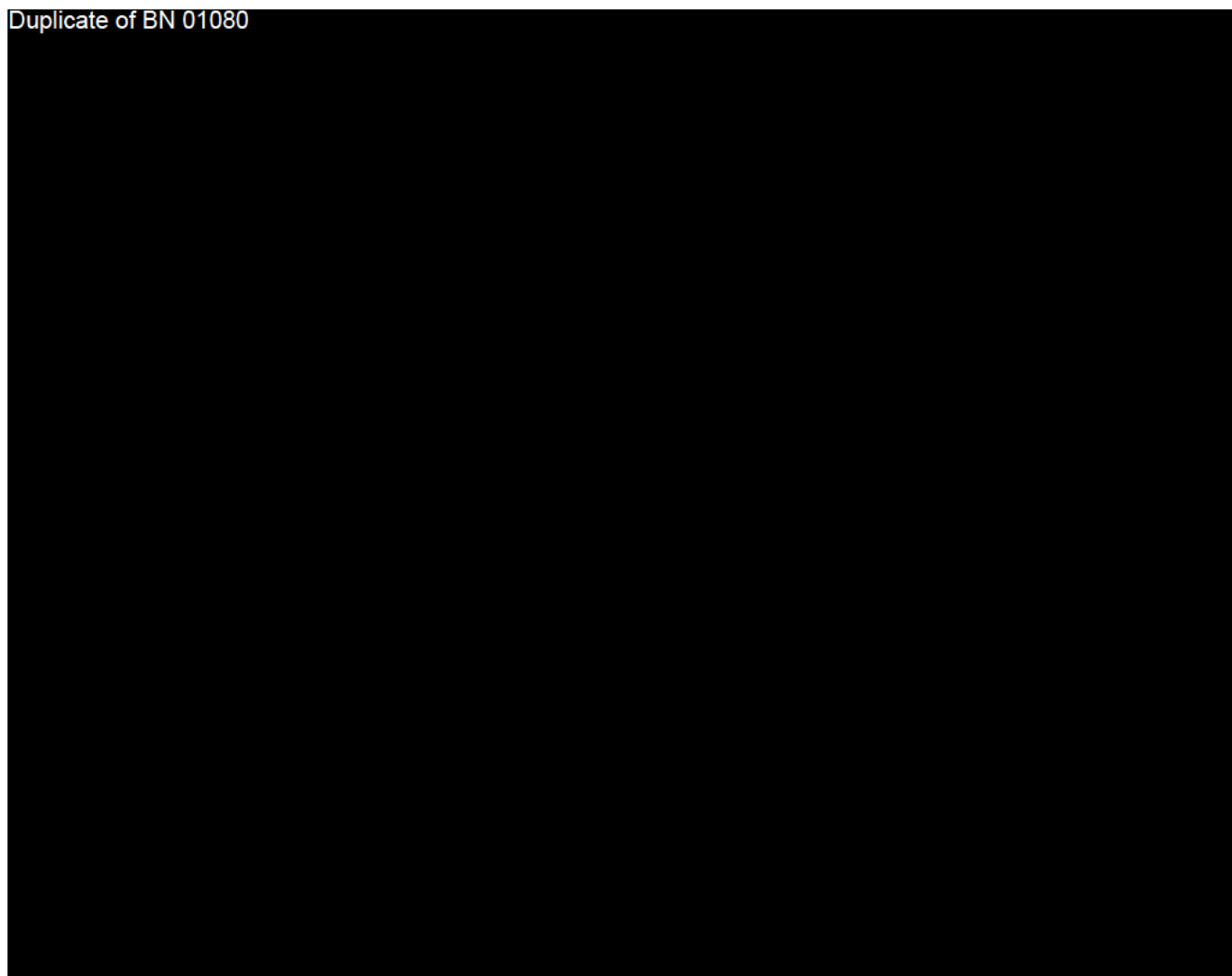
Greg

Here is the emails and information that you and I discussed. I am happy to discuss again with you once you have had an opportunity to review. Thanks for your hard work.

(b) (6), (b) (7)(C)

From: Gonzalez, Gregory (OPR) (b) (6)
Sent: Tuesday, September 20, 2022 8:40 AM
To: (b) (6), (b) (7)(C); Cummings, John M (b) (6)
Subject: RE: Request for Interview by the Office of Professional Responsibility

Duplicate of BN 01080



Re: (b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)

To: Terra.Morehead@usdoj.gov

Cc: (b) (6), (b) (7)(C)

Date: Thursday, September 24, 2015 at 01:41 PM CDT

as 12:00 tomorrow.

(b) (6), (b) (7)(C)

KS)" <Terra.Morehead@usdoj.gov>
59 AM

Subject: Re: (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) can you give me some possible dates and times?

Sent from my iPhone

On Sep 23, 2015, at 10:43 PM, (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C) <mailto:(b) (6), (b) (7)(C)> wrote:

(b) (6), (b) (7)(C) and Terra,

(b) (6), (b) (7)(C) has asked if he could review the tape of (b) (6), (b) (7)(C) falling at (b) (6), (b) (7)(C). Also I
ter that was relevant as well. How can I go about scheduling the Doctor and
to Marshalls office to review. Any help would be appreciated. Thanks

(b) (6), (b) (7)(C)

Re: RE: [REDACTED]

From: [REDACTED]

To: [REDACTED]

Date: Thursday, September 24, 2015 at 09:03 AM CDT

m trying to get some dates from doctor.

[REDACTED]

[REDACTED]

AM

Subject: RE: [REDACTED]

I can assist too if needed!

[REDACTED]

From: [REDACTED]mailto:[REDACTED]
Sent: Thursday, September 24, 2015 8:00 AM
To: Morehead, Terra (USAKS)
Cc: [REDACTED] (USAKS)
Subject: Re: [REDACTED]

't think it will take 10 minutes to review.

[REDACTED]

KS)" <Terra.Morehead@usdoj.gov>
59 AM

Subject: Re: [REDACTED]

Re: (b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)

To: Terra.Morehead@usdoj.gov

Date: Thursday, September 24, 2015 at 07:54 AM CDT

st let me know.

(b) (6), (b) (7)(C)

S)" <Terra.Morehead@usdoj.gov>
0 AM

Subject: Re: (b) (6), (b) (7)(C)

Excellent choice. Let me check with USM.

Sent from my iPhone

On Sep 24, 2015, at 7:43 AM, (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C) <mailto:(b) (6), (b) (7)(C)> wrote:

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

S)" <Terra.Morehead@usdoj.gov<mailto:Terra.Morehead@usdoj.gov>>
6 AM

Subject: Re: (b) (6), (b) (7)(C)

Who is your doctor?

Sent from my iPhone

On Sep 23, 2015, at 10:43 PM, (b) (6), (b) (7)(C) <mailto:(b) (6), (b) (7)(C)> wrote:

(b) (6), (b) (7)(C) and Terra,

Duplicate of BN 01335



Re: (b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)

To: Terra.Morehead@usdoj.gov

Date: Friday, July 31, 2015 at 10:01 PM CDT

(b) (6), (b) (7)(C)

)" <Terra.Morehead@usdoj.gov>
M

Subject: Re: (b) (6), (b) (7)(C)

His ortho consult is sometime the week of Aug 10th. Can you come by Tuesday to see the video?

Sent from my iPhone

On Jul 31, 2015, at 9:57 PM, (b) (6), (b) (7)(C)
(b) (6), (b) (7)(C) <mailto:(b) (6), (b) (7)(C)> wrote:

(b) (6), (b) (7)(C)

n. I filed a motion to continue pretrial motions in his case today. I am comfortable ly to have him evaluated but I would like to see the video and meet with him tion.

(b) (6), (b) (7)(C)

)" <Terra.Morehead@usdoj.gov<mailto:Terra.Morehead@usdoj.gov>>

Date: Fri, Jul 31, 2015 at 9:48 PM

Subject: (b) (6), (b) (7)(C)

Did you see him today?

Sent from my iPhone

(b) (6), (b) (7)(C)

From: (b) (6), (b) (7)(C)

To: terra.morehead@usdoj.gov

Date: Tuesday, August 4, 2015 at 08:27 AM CDT

orning. Are you around?

(b) (6), (b) (7)(C)

From: (b) (6)
To: [Gonzalez, Gregory \(OPR\)](#); (b) (6)
Subject: [EXTERNAL] RE: Email to PMRU from your client Terra Morehead
Date: Thursday, September 14, 2023 4:25:28 PM

Thank you for the information.

(b) (6) Attorney
G LAW FIRM
800 SW Jackson, Ste 1310 | Topeka, KS 66612
(b) (6) | F: 785.232-9983
Email: (b) (6)
<https://protect2.fireeye.com/v1/url?k=c8279449-97bcaca6-c820b0ac-ac1f6b017490-ee19d4e728bc66b1&q=1&e=8fbfc678-b29a-4841-8dc6-7b89acd8ef49&u=http%3A%2F%2Fwww.morrislaing.com%2F>
Topeka | Wichita | West Palm Beach

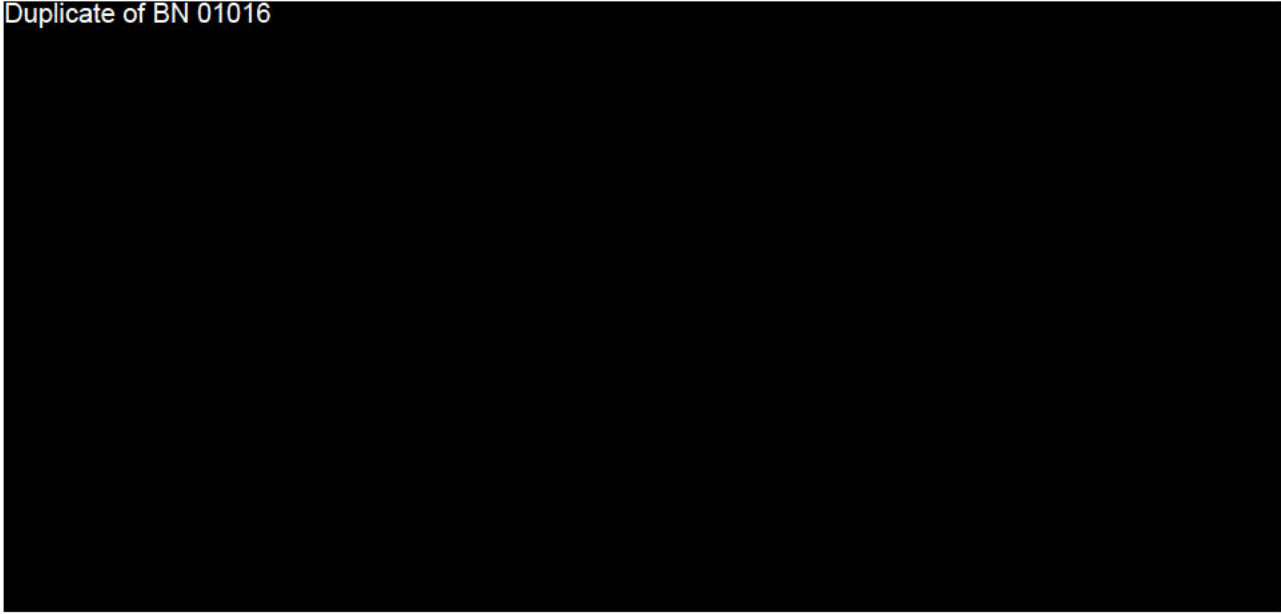
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-----Original Message-----

From: Gonzalez, Gregory (OPR) (b) (6)
Sent: Thursday, September 14, 2023 3:07 PM
To: (b) (6)
Sub

Duplicate of BN 01016



From: [Alice Walker](#)
To: [Gonzalez, Gregory \(OPR\)](#)
Subject: [EXTERNAL] RE: OPR Bar Referral - RE: Terra Morehead
Date: Thursday, September 28, 2023 2:34:39 PM
Attachments: [image001.png](#)
[image002.png](#)

Greg,

Thank you for getting this to us. I apologize for not acknowledging receipt earlier today.

I note in the letter we need to make a written request for the report. Disciplinary Administrator Gayle Larkin was working on that request today. Can she email that or does it need to be placed in the mail?

Thanks again,

Alice L. Walker, Deputy Disciplinary Administrator
Office of the Disciplinary Administrator
701 Southwest Jackson Street – First Floor
Topeka, Kansas 66603-3729

Main: 785-435-8200

Fax: 785-783-8385

(b) (6)

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State of Kansas

From: Gonzalez, Gregory (OPR)

(b) (6)

Sent: Thursday, September 28, 2023 7:53 AM

To: Gayle Larkin (b) (6)

Cc: Alice Walker (b) (6); (b) (6)

(b) (6)

Brubacher, Kate (USAKS)

(b) (6)

Masling, Mark (ODAG) (b) (6)

Subject: OPR Bar Referral - RE: Terra Morehead

Duplicate of BN 01088



From: (b) (6)
To: [Beasley, Madison V. \(OPR\)](#)
Cc: [Gonzalez, Gregory \(OPR\)](#)
Subject: [EXTERNAL] Re: OPR Letter, Report of Investigation, and Attachments
Date: Wednesday, June 21, 2023 3:20:41 PM

Thank you, Ms. Beasley. I received all three attachments.

Sincerely,

(b) (6)

(b) (6)

Brownell Landrigan, PLLC
1818 N Street, NW, Suite 520
Washington, DC 20036
202-822-1701
202-822-1914 (fax)
www.brolanlaw.com

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From: Beasley, Madison V. (OPR) (b) (6)
Sent: Wednesday, June 21, 2023 3:08 PM
To: (b) (6)
Cc: Gonzalez, Gregory (OPR) <(b) (6)>
Subject: OPR Letter, Report of Investigation, and Attachments

Good Afternoon (b) (6)

Attached is the Office of Professional Responsibility's Letter and Report of Investigation with Attachments regarding Terra Morehead.

Thank you,

Madison V. Beasley

Legal Administrative Specialist
Office of Professional Responsibility
950 Pen
Phone: (b) (6)

From: (b) (6)
To: [Cummings, John M. \(OPR\)](#); (b) (6)
Subject: [EXTERNAL] RE: OPR Request for Written Responses (Morehead)
Date: Tuesday, October 19, 2021 11:09:52 AM

John,

Terra has returned to the office and has access to the files. She is planning on responding by November 15, 2021, and, again, appreciates the extension of time.

Sincerely,

(b) (6)

(b) (6)
Brownell Landrigan, PC
1818 N Street, NW, Suite 520
Washington, DC 20036
202-822-1701
202-822-1914 (fax)
www.brolanlaw.com

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From: Cummings, John M. (OPR) (b) (6)
Sent: Monday, October 04, 2021 4:07 PM
To: (b) (6)
(b) (6)
Subject: RE: OPR Request for Written Responses (Morehead)

Chris,

I have spoken to my management and OPR will extend the deadline to November 15, 2021. Our hope is that this extension will give Ms. Morehead ample time to focus on her family before turning her attention to this matter. Please advise me when Ms. Morehead returns to the office.

Thank you,
John

From: (b) (6)
Sent: Monday, October 4, 2021 2:07 PM

To: Cummings, John M. (OPR) (b) (6)
(b) (6)
Subject: [EXTERNAL] RE: OPR Request for Written Responses (Morehead)

Thank you, John!

(b) (6)

From: Cummings, John M. (OPR) (b) (6)
Sent: Monday, October 04, 2021 11:37 AM
To: (b) (6)
(b) (6)
Subject: RE: OPR Request for Written Responses (Morehead)

(b) (6)

I am sorry to hear that. I will discuss this issue with my management and will get back to you soon.

John

From: (b) (6)
Sent: Monday, October 4, 2021 11:34 AM
To: Cummings, John M. (OPR) (b) (6)
(b) (6)
Subject: [EXTERNAL] RE: OPR Request for Written Responses (Morehead)

John,

(b) (6), (b) (7)(C)
She has been out of the office on leave (300 miles away from the office).

We are not sure exactly how long she will be out given the circumstances. This response is obviously a priority for her, and she will work on it as soon as she is able to return from leave. We simply do not know when exactly that will happen and therefore do not know what date to request for an extension.

We were hoping it would be possible to set a date based on when she returned from leave and/or notify you as soon as she returned and set a date at that point.

Thanks in advance for your consideration.

(b) (6)

From: (b) (6)
Sent: Tuesday, September 14, 2021 9:18 AM
To: Cummings, John M. (OPR) (b) (6)
(b) (6)
Subject: RE: OPR Request for Written Responses (Morehead)

Thank you very much, John. Have a great rest of the week.

(b) (6)

From: Cummings, John M. (OPR) (b) (6)
Sent: Monday, September 13, 2021 10:13 AM
To: (b) (6) nson
(b) (6)
Subject: RE: OPR Request for Written Responses (Morehead)

(b) (6)

OPR agrees to extend the deadline to October 15, 2021. The (b) (6), (b) (7)(C) files have been returned to USAO-KS so there should be no additional delays in accessing the files.

Regards,

John

From: (b) (6)
Sent: Monday, September 13, 2021 9:47 AM
To: Cummings, John M. (OPR) (b) (6)
(b) (6)
Subject: RE: OPR Request for Written Responses (Morehead)

Mr. Cummings,

Thank you for the confirmation.

As you know, OPR has instructed AUSA Morehead to provide OPR with all documents to which she refers in her written response, as well as any emails, notes, chat or text messages, memoranda, transcripts, pleadings, and other documents she believes are relevant to the OPR investigation. In preparing her response, AUSA Morehead attempted to review the documents associated with the (b) (6), (b) (7)(C) case but was unable to access the files. It is our understanding that all of the (b) (6), (b) (7)(C) files have been transferred from the United States Attorney's Office for the District of Kansas to OPR. As the requests reference events as far back as six years ago, it is difficult for AUSA Morehead to provide a meaningful response or provide all documents which she believes to be relevant without being able to review the (b) (6), (b) (7)(C) files.

Further, AUSA Morehead's family has recently experienced health issues that will require her to be out of the office during the week of September 20-24.

As such, we are respectfully request OPR to facilitate a way for AUSA Morehead to access and review these files as well as to extend the response time to three weeks from September 24 (October 15) or three weeks from when USAO Morehead is granted access to all the (b) (6), (b) (7)(C) files, whichever is longer.

Thank you in advance for your consideration.

Sincerely,

(b) (6)

(b) (6)

Brownell Landrigan, PC
1818 N Street, NW, Suite 520
Washington, DC 20036
202-822-1701
202-822-1914 (fax)
www.brolanlaw.com

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From: Cummings, John M. (OPR) (b) (6)

Sent: Wednesday, September 08, 2021 4:15 PM

To: (b) (6)

(b) (6)

Subject: RE: OPR Request for Written Responses

Dear Messrs. (b) (6) and (b) (6)

Just confirming my brief conversation with (b) (6) this afternoon during which he acknowledged your firm's receipt of the requests for written response for AUSA Terra Morehead. If you have any questions, please feel free to contact me.

Regards,

John

From: Cummings, John M. (OPR)
Sent: Friday, September 3, 2021 8:39 AM
To: (b) (6)
Subject: OPR Request for Written Responses

Dear Messrs. (b) (6) and (b) (6)

AUSA Terra Morehead has notified the Office of Professional Responsibility that you represent her in this office's investigation of potential misconduct by AUSA Morehead in (b) (6), (b) (7)(C). Please confirm receipt of this email, and feel free to contact me if you have any questions regarding the enclosed request.

Sincerely,

John M. Cummings
Assistant Counsel
United States Department of Justice
Office of Professional Responsibility
950 Pennsylvania Ave., N.W.
Washington, DC 20530

(b) (6)

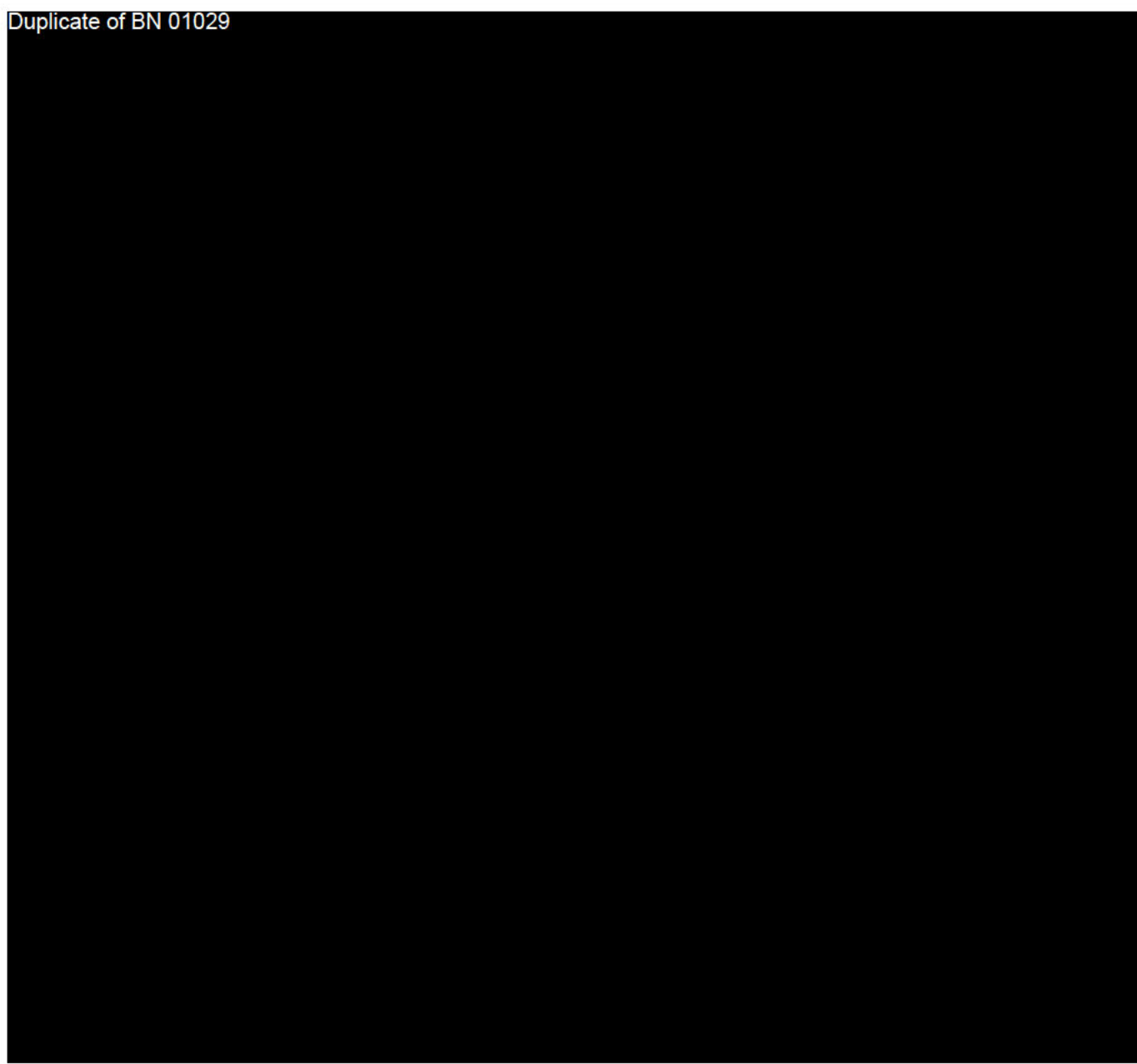
From: (b) (6)
To: [Cummings, John M. \(OPR\)](#); (b) (6)
Subject: [EXTERNAL] RE: OPR Request for Written Responses (Morehead)
Date: Tuesday, October 5, 2021 10:28:25 AM

Thanks, John! Will do.

Chris

From: Cummings, John M. (OPR) (b) (6)
Sent: Monday, October 04, 2021 4:07 PM
To: (b) (6)
(b) (6)
Subject: RE: OPR Request for Written Responses (Morehead)

Duplicate of BN 01029



From: [Alice Walker](#)
To: [Gonzalez, Gregory \(OPR\)](#)
Subject: [EXTERNAL] RE: OPR Response to DOC REQ #1
Date: Friday, January 19, 2024 11:19:33 AM
Attachments: [image001.png](#)
[image002.png](#)

Greg,

Thank you. I have received two emails from you with what looks like 6 separate attachments which I was able to open and review. I appreciate your quick assistance with this request and will let you know if I have any other questions or need anything additional.

Thanks,

Alice L. Walker, Deputy Disciplinary Administrator
Office of the Disciplinary Administrator
701 Southwest Jackson Street – First Floor
Topeka, Kansas 66603-3729

Main: 785-435-8200

Fax: 785-783-8385

(b) (6)

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State of Kansas

From: Gonzalez, Gregory (OPR) (b) (6)

Sent: Friday, January 19, 2024 9:59 AM

To: Alice Walker (b) (6)

Subject: OPR Response to DOC REQ #1

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Alice,

OPR provides the documents you requested pursuant your Office's September 28, 2023 agreement to keep OPR's report confidential, consistent with Kansas Supreme Court Rule 237, which governs confidentiality regarding disciplinary investigations and proceedings in Kansas. Please consult with OPR if it becomes necessary for you to use these documents (including OPR's report of investigation) in a public proceeding.

Due to the file size of the requested documents, I will transmit the remainder of the requested document in a separate email.

Please confirm your receipt of the documents, and feel free to reach out to OPR if you need additional information.

Thank you,

Greg Gonzalez
Senior Counsel
U.S. Department of Justice
Office of Professional Responsibility
950 Pennsylvania Ave. NW,
Washington, D.C. 20530

(b) (6)

202-514-5050 fax



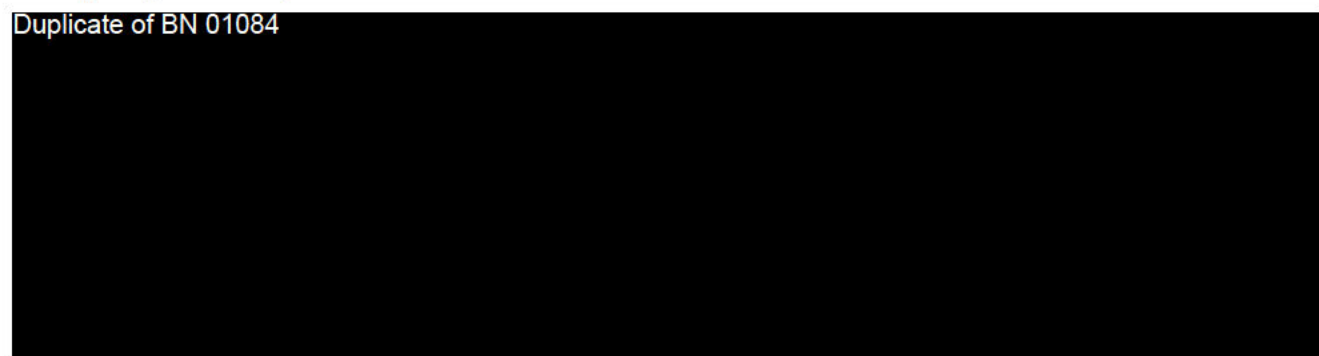
From: Alice Walker (b) (6)

Sent: Thursday, January 18, 2024 5:54 PM

To: Gonzalez, Gregory (OPR) (b) (6)

Subject: [EXTERNAL] RE: OPR Bar Referral - RE: Terra Morehead

Duplicate of BN 01084



From: (b) (6)
To: [Gonzalez, Gregory \(OPR\)](#)
Subject: [EXTERNAL] Re: U.S. Department of Justice - Office of Professional Responsibility Confidential Correspondence
Date: Friday, March 10, 2023 3:59:23 PM
Attachments: [image002.png](#)
[image003.png](#)

Thank you, Greg, and sorry for my delay in response. I did receive your email with the zip folder, and I just downloaded the files - everything appears to have been transmitted successfully. I will let you know if we come across any issue with respect to any particular file, but the overall transfer seems perfect.

And thank you for the extension of time.

(b) (6)

(b) (6)

Brownell Landrigan, PLLC
1818 N Street, NW, Suite 520
Washington, DC 20036
202-822-1701
202-822-1914 (fax)
www.brolanlaw.com

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From: Gonzalez, Gregory (OPR) (b) (6)
Sent: Friday, March 10, 2023 2:26 PM
To: (b) (6)
Subject: RE: U.S. Department of Justice - Office of Professional Responsibility Confidential Correspondence

(b) (6)

Earlier today I sent you an email with a large zip file attached.
Can you please confirm that the file made it through to you?
Thank you,

Greg Gonzalez
Senior Counsel
U.S. Department of Justice

Office of Professional Responsibility
950 Pennsylvania Ave. NW,
Washington, D.C. 20530

(b) (6)

202-514-5050 fax



From (b) (6)

Sent: Thursday, March 9, 2023 4:41 PM

To: Gonzalez, Gregory (OPR) (b) (6)

Cc: Cochran, Carlita (OPR) (b) (6)

(b) (6)

Subject: [EXTERNAL] Re: U.S. Department of Justice - Office of Professional Responsibility
Confidential Correspondence

Dear Mr. Gonzales,

Our preliminary review of the draft OPR report and the attachments plus Ms. Morehead's current work and leave schedule indicate to us that we will likely need an extension of the deadline of March 27, 2023, to be able to adequately provide our comments on this draft report.

Also, we only received Ms. Morehead's written response to OPR and her interview transcript, both documents we were already in possession of, as attachments. The report cites several documents that we are not in possession of, and I have attached the list of these documents. We would need to review these documents to provide a meaningful response to the draft report.

We therefore respectfully request copies of these exhibits and an extension to April 28, 2023, for us to provide our comments.

Thank you in advance for your consideration, and please let me know if you have any comments or questions.

Sincerely,

(b) (6)

(b) (6)

Brownell Landrigan, PLLC
1818 N Street, NW, Suite 520
Washington, DC 20036
202-822-1701
202-822-1914 (fax)

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From: Cochran, Carlita (OPR) (b) (6)
Sent: Friday, March 3, 2023 10:00 AM
To: (b) (6)
Cc: Gonzalez, Gregory (OPR) (b) (6)
Subject: U.S. Department of Justice - Office of Professional Responsibility Confidential Correspondence

Good morning,

Please find attached a March 3, 2023, letter from Office of Professional Responsibility Counsel Jeffrey R. Ragsdale regarding the draft report of investigation into allegations of professional misconduct in (b) (6), (b) (7)(C) regarding your client, Assistant United States Attorney (AUSA) Terra Morehead. The redacted report is attached.



Carlita Cochran
Legal Administrative Specialist
Office of Professional Responsibility
950 Pennsylvania Ave NW Washington DC 20530
Phone: (b) (6)

From: (b) (6)
To: [Cochran, Carlita \(OPR\)](#)
Cc: [Gonzalez, Gregory \(OPR\)](#); (b) (6)
Subject: [EXTERNAL] Re: U.S. Department of Justice - Office of Professional Responsibility Confidential Correspondence
Date: Friday, March 3, 2023 10:45:19 AM
Attachments: [image001.png](#)

Received, thank you.

Hope you have a good end of the week.

Sincerely,

(b) (6)

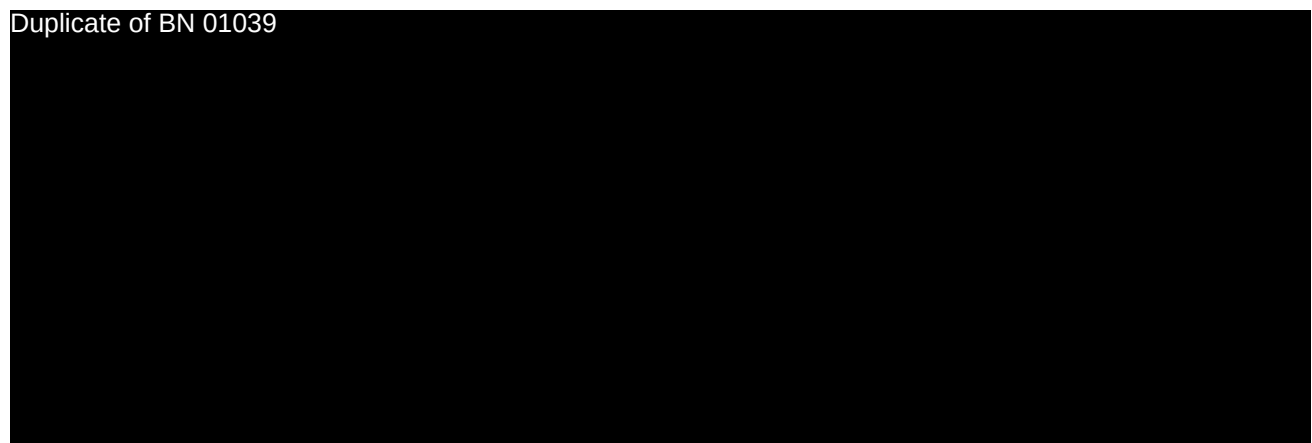
(b) (6)

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From: Cochran, Carlita (OPR) (b) (6)
Sent: Friday, March 3, 2023 10:19 AM
To: (b) (6)
Cc: Gonzalez, Gregory (OPR) (b) (6)
Subject: U.S. Department of Justice - Office of Professional Responsibility Confidential Correspondence

Duplicate of BN 01039



From: (b) (6), (b) (7)(C)
To: [Cummings, John M. \(OPR\)](#); [Gonzalez, Gregory \(OPR\)](#)
Subject: [EXTERNAL] Re: (b) (6), (b) (7)(C)
Date: Tuesday, January 25, 2022 12:39:40 PM
Attachments: [Roger Moore Email 3-8-2017.pdf](#)
[Notes 3-15-2017.pdf](#)
[Gmail - \(b\) \(6\), \(b\) \(7\)\(C\) 2019.pdf](#)

Gentlemen,

Attached are the documents you requested during our meeting.

Sincerely,

(b) (6), (b) (7)(C)


E-mail is not a secure method of communication; any e-mail sent between us may be copied and held by various computers it passes through as it is transmitted; and persons not participating in our communication may intercept our messages by improperly accessing your computer, my computer or a computer unconnected to either of us that this e-mail passes through. I am communicating to you via e-mail because you have consented to receive communications via this medium. If you change your mind and want future communications to be sent in a different fashion, please advise me at once.

BROWNELL LANDRIGAN
ATTORNEYS AT LAW

March 14, 2018

Sent via U.S. Mail and Email

Ms. Robin C. Ashton
Office of Professional Responsibility
950 Pennsylvania Avenue, N.W.
Suite 3266
Washington, D.C., 20530

Attn: Laura A. Ingersoll
Assistant Counsel

Re: *Request to Stay or Extend Deadline to Respond to Office of Professional Responsibility Inquiry*

Dear Ms. Ashton:

Please accept this correspondence on behalf of our client, Terra Morehead, as a request to stay the Office Professional Responsibility's (OPR) inquiry into the adverse judicial findings in (b) (6), (b) (7)(C) (b) (6), (b) (7)(C). The Department of Justice has initiated an appeal of these adverse findings. We therefore request that OPR stay its inquiry until the resolution of the Department's appeal.

If OPR declines to stay its inquiry, we request that OPR afford the client an additional 45 days to prepare her statement. Our understanding is that her statement is currently due this Friday, March 16, 2018. We request an extension of this deadline to Monday, April 30, 2018, in order to provide a meaningful response to OPR's specific questions.

Thank you for your time and consideration. Please do not hesitate to contact us if you have any questions.

Sincerely,

(b) (6)

Enclosure

(b) (6)

ADMITTED IN DC, MD

ADMITTED IN DC, VA

ADMITTED IN DC, MD

ADMITTED IN DC, NY

ADMITTED IN DC, NJ

BROWNELL LANDRIGAN, PC | 1818 N STREET NW, SUITE 520, WASHINGTON, DC 20036

O: (202) 822-1701 | F: (202) 822-1914 | WWW.BROLANLAW.COM

F24-00095 - 01042

DESIGNATION OF REPRESENTATIVE

I, Terra Morehead, hereby designate (b) (6) and Brownell Landrigan, PC to act as my representatives in connection with the Office of Professional Responsibility inquiry related to (b) (6), (b) (7)(C) I understand that these representatives are authorized to act on my behalf, and I expressly request that all correspondence in this matter be directed to them with a copy to me. I specifically authorize the release of information to my representation that would otherwise be protected by the Privacy Act, 5 U.S.C. § 552a.

3/5/18
Date

Terra D. Morehead
Terra Morehead



U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, NW, Suite 3266
Washington, DC 20530
(202) 514-3365

September 2, 2021

Duston J. Slinkard
Acting United States Attorney
U.S. Attorney's Office
for the District of Kansas
444 SE Quincy, Suite 290
Topeka, KS 66683

Dear Mr. Slinkard:

As you know, the Office of Professional Responsibility (OPR) has initiated an investigation into allegations of misconduct against Assistant United States Attorney (AUSA) Terra Morehead arising from her handling of the prosecution in (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

Through her attorney, OPR has requested that AUSA Morehead provide detailed information to OPR about the (b) (6), (b) (7)(C) case and her role in it. Enclosed is a copy of the letter OPR sent to AUSA Morehead. Please note that we have advised AUSA Morehead that she may, but is not required to, provide you with a copy of her written response to OPR.

OPR also would welcome any information or comments you may wish to provide by September 24, 2021. For your information, enclosed is a document describing the policies and procedures OPR follows in handling allegations of misconduct and judicial findings made against Department attorneys.

OPR appreciates your assistance in this matter. If you have any questions, please contact me or John Cummings at (b) (6) or at (b) (6)

Sincerely,

A handwritten signature in cursive script that reads "Jeffrey R. Ragsdale".

Jeffrey R. Ragsdale
Counsel

Enclosures

From: [Lyles, Shamelle \(OPR\)](#)
To: [Drouet, Suzanne \(OPR\)](#)
Cc: [Cummings, John M. \(OPR\)](#)
Subject: Complaint Involving AUSA Terra Morehead, D. Kansas (from (b) (6), (b) (7)(C) Co-Defendant of (b) (6), (b) (7)(C))
Date: Wednesday, December 8, 2021 2:41:00 PM
Attachments: [OPR-#464850-v1-RE Morehead 202100479 and 202100554.MSG.msg](#)

Suzanne,

No response letter was prepared because we were advised to assign both matters to John for handling in June 2021. See attached email thread.

I will draft a response letter to (b) (6), (b) (7)(C) Thanks.

Shamelle

From: Drouet, Suzanne (OPR) (b) (6)
Sent: Wednesday, December 8, 2021 2:31 PM
To: Lyles, Shamelle (OPR) (b) (6)
Cc: Cummings, John M. (OPR) (b) (6)
Subject: FW: New Complaint Involving AUSA Terra Morehead, D. Kansas (from (b) (6), (b) (7)(C) Co-Defendant of (b) (6), (b) (7)(C))

This is listed as an open matter on John's case list. Was a letter sent to the complainant per Bill's email below? If not, please go ahead and close out this matter with our standard letter. We're not going to include this with John's other Morehead matters.

Thanks.

SKD

From: Birney, William J (OPR) (b) (6)
Sent: Tuesday, May 4, 2021 9:06 AM
To: Lyles, Shamelle (OPR) (b) (6)
Cc: Drouet, Suzanne (OPR) (b) (6); Ingersoll, Laura (OPR) (b) (6)
Subject: FW: New Complaint Involving AUSA Terra Morehead, D. Kansas (from (b) (6), (b) (7)(C) Co-Defendant of (b) (6), (b) (7)(C))

Duplicate of BN 00506





U.S. Department of Justice

Office of Professional Responsibility

*950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530*

March 3, 2023

CONFIDENTIAL

(b) (6)

Brownell Landrigan PC
1818 N St., NW; Suite 520
Washington, D.C. 20036

Dear (b) (6) :

The Office of Professional Responsibility (OPR) has completed its investigation into allegations of professional misconduct in (b) (6), (b) (7)(C) a case prosecuted by your client, Assistant United States Attorney (AUSA) Terra Morehead. As you are aware, in (b) (6), (b) (7)(C), the court imposed a downward variance (b) (6), (b) (7)(C)

In particular, the court concluded that AUSA Morehead (b) (6), (b) (7)(C)

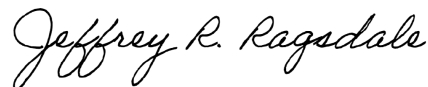
OPR has prepared a draft report in which it has preliminarily concluded that AUSA Morehead committed professional misconduct by (1) recklessly failing to provide the defense with impeachment evidence of an essential government witness prior to trial; (2) knowingly failing to correct the government witness's false trial testimony; (3) intentionally failing to provide the defense with impeachment evidence of the government witness prior to sentencing; (4) knowingly misleading defense counsel concerning the content of investigative records; (5) knowingly and intentionally making false statements at and misleading the court during the (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) hearings; and (6) intentionally misleading OPR, all in violation of her obligations under *Brady* and *Giglio*; Kansas Rules of Professional Conduct 3.3(a)(1) and (a)(3), 3.4(c) and (d), 3.8(d), 4.1(a), and 8.4(c),(d), and (g); Department policy; the court's (b) (6), (b) (7)(C) discovery order; and an attorney's general duty of candor to the court. OPR also preliminarily concluded that AUSA Morehead did not violate her disclosure obligations with regard to the production of the complete criminal histories of two government witnesses, but rather exercised poor judgment by failing to re-run the criminal histories prior to the trial and failing to document her disclosures of criminal record information to the defense.

Before OPR issues its final report in the matter, you and AUSA Morehead may review the enclosed draft report and attached exhibits, and comment on the factual recitation and OPR's analysis and conclusions related to AUSA Morehead's conduct. OPR will consider your comments and incorporate them into the final OPR report to the extent we deem it appropriate. OPR will refer any professional misconduct findings to the Department's Professional Misconduct Review Unit, which, if it upholds the findings, may impose discipline and authorize OPR to refer the matter to the appropriate state attorney disciplinary authorities.

OPR is providing the draft report for your and AUSA Morehead's review pursuant to the June 23, 2022 confidentiality agreement signed by AUSA Morehead, you, and your co-counsel (b) (6), agreeing not to disclose OPR materials without OPR's express written consent. Please note that OPR has redacted from the draft report references to the contents of sealed pleadings in (b) (6), (b) (7)(C)

Please return any comments you may have no later than March 24, 2023. If you have any questions, please contact Senior Counsel Greg Gonzalez at (b) (6) or at (b) (6)

Sincerely,



Jeffrey R. Ragsdale
Counsel

Enclosure



U.S. Department of Justice

Office of Professional Responsibility

*950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530*

March 3, 2023

CONFIDENTIAL

Duston J. Slinkard
United States Attorney
for the District of Kansas
444 S.E. Quincy, Suite 290
Topeka, KS 66683

Dear Mr. Slinkard:

The Office of Professional Responsibility (OPR) has completed its investigation into allegations of professional misconduct in (b) (6), (b) (7)(C) a case prosecuted by Assistant United States Attorney (AUSA) Terra Morehead of your office. As you are aware, in (b) (6), (b) (7)(C), the court imposed a downward variance (b) (6), (b) (7)(C)

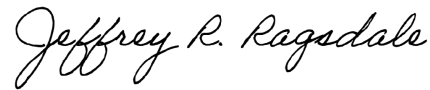
In particular, the court concluded that AUSA Morehead (b) (6), (b) (7)(C)

OPR has prepared a draft report in which it has preliminarily concluded that AUSA Morehead committed professional misconduct by (1) recklessly failing to provide the defense with impeachment evidence of an essential government witness prior to trial; (2) knowingly failing to correct the government witness's false trial testimony; (3) intentionally failing to provide the defense with impeachment evidence of the government witness prior to sentencing; (4) knowingly misleading defense counsel concerning the content of investigative records; (5) knowingly and intentionally making false statements at and misleading the court during the (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) hearings; and (6) intentionally misleading OPR, all in violation of her obligations under *Brady* and *Giglio*; Kansas Rules of Professional Conduct 3.3(a)(1) and (a)(3), 3.4(c) and (d), 3.8(d), 4.1(a), and 8.4(c),(d), and (g); Department policy; the court's (b) (6), (b) (7)(C) discovery order; and an attorney's general duty of candor to the court. OPR also preliminarily concluded that AUSA Morehead did not violate her disclosure obligations with regard to the production of the complete criminal histories of two government witnesses, but rather exercised poor judgment by failing to re-run the criminal histories prior to the trial and failing to document her disclosures of criminal record information to the defense.

Before OPR issues its final report in this matter, you may review the enclosed draft report and comment on the factual recitation and OPR's analysis and conclusions related to AUSA Morehead's conduct. We will consider your comments and incorporate them into the final OPR report to the extent we deem it appropriate.

The OPR investigation is confidential, and we therefore request that you not make copies of the draft report, or disclose its contents, except to those in your office upon whom you will rely to prepare any comments. Please provide any comments you may have no later than March 24, 2023. If you have any questions, please contact me, or Senior Counsel Greg Gonzalez at (b) (6) or at (b) (6)

Sincerely,



Jeffrey R. Ragsdale
Counsel

Enclosure

From: [Ragsdale, Jeffrey \(OPR\)](#)
To: [Robertson, Jacqueline T \(OPR\)](#); [Lyles, Shamelle \(OPR\)](#); [Ingersoll, Laura \(OPR\)](#)
Cc: [Drouet, Suzanne \(OPR\)](#)
Subject: Terra Morehead
Date: Thursday, March 25, 2021 3:54:44 PM

Can you open up a matter regarding AUSA Terra Morehead, District of Kansas and assign it to Laura? The allegation is abuse of authority and the case is (b) (6), (b) (7)(C).

Thanks.

From: [Morehead, Terra \(USAKS\)](#)
To: [Birney, William J \(OPR\)](#)
Subject: (b) (6), (b) (7)(C)
Date: Wednesday, March 24, 2021 9:51:44 AM

Mr. Birney –

This email is being sent for the purpose of self-reporting allegations of misconduct in the above referenced case that were lodged against me through a newspaper article that appeared in the Kansas City Star on (b) (6), (b) (7)(C). I adamantly deny any and all allegations of misconduct outlined in this article, and I will be prepared to address any specific allegations during any investigation by your office. I have substantial evidence and extensive information available for review concerning this prosecution, which involved a large scale drug trafficking investigation, including files specifically related to the witness, (b) (6), (b) (7)(C), and the defendant, (b) (6), (b) (7)(C), as well as the transcript from the six week jury trial. There were witnesses to the entirety of my contact with (b) (6), (b) (7)(C), to include the case agents, and his attorney. I am attaching a link to the newspaper article as a reference. Please let me know if you have any questions, and please know that I am readily available to respond to any agency inquiry.

(b) (6), (b) (7)(C)

Terra D. Morehead
Assistant U.S. Attorney
500 State Avenue, Suite 360
Kansas City, Kansas 66101
913.551.6683

From: [Cummings, John M. \(OPR\)](#)
To: [Morehead, Terra \(USAKS\)](#)
Cc: [Washington-Watson, Sheila \(OPR\)](#); [Christopher Landrigan](#); [Nicholas Johnson](#)
Subject: FW: [EXTERNAL] Terra Morehead has invited you to collaborate on Box
Date: Monday, November 15, 2021 3:46:00 PM
Attachments: [~WRD0002.jpg](#)
[image001.jpg](#)
[image002.jpg](#)

Ms. Morehead,

Unfortunately our system will not allow me to directly access the materials you sent to me through the Box application. Can you please forward your folder invite to Sheila Washington-Watson who is our IT specialist. Ms. Washington-Watson will download the materials to our system. Thank you and let me know if you have any questions.

John

From: Terra Morehead <noreply@box.com>
Sent: Monday, November 15, 2021 11:28 AM
To: Cummings, John M. (OPR) (b) (6)
Subject: [EXTERNAL] Terra Morehead has invited you to collaborate on Box

Terra Morehead has invited you to collaborate on a folder:

"I'd like to share my files with you on Box." – Terra Morehead



(b) (6), (b) (7)(C) [Response and Atta...](#)
Collaborated Folder

Accept Invite

Get [our app](#) to view this on mobile



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This is an official notification from the USAfx File Exchange system.

From: [Cummings, John M. \(OPR\)](#)
To: [Gonzalez, Gregory \(OPR\)](#)
Cc: [Drouet, Suzanne \(OPR\)](#)
Subject: FW: (b) (6), (b) (7)(C) OPR Matter
Date: Wednesday, June 1, 2022 4:44:02 PM
Attachments: [OPR-#465756-v1-FW \(b\) \(6\), \(b\) \(7\)\(C\) OPR Matter.MSG.msg](#)

Greg,

Attached are the emails in DM that I was referring to, if you were referring to a different set of emails let me know.

John M. Cummings
Assistant Counsel
United States Department of Justice
Office of Professional Responsibility
950 Pennsylvania Ave., N.W.
Washington, DC 20530

(b) (6)

MEMORANDUM

TO: File # 201400436, Assistant U.S. Attorney Terra D. Morehead

FROM: John J. Sciortino¹
Assistant Counsel

SUBJECT: Recommendation (b) (5)

Introduction

By e-mail dated April 2, 2014, Barry R. Grissom, U.S. Attorney for the District of Kansas, forwarded to the Executive Office for U.S. Attorneys (EOUSA) a letter dated March 31, 2014, from attorney (b) (6), (b) (7)(C), alleging that Assistant U.S. Attorney (AUSA) Terra D. Morehead improperly withheld favorable evidence material to the sentencing of his client in (b) (6), (b) (7)(C). In his letter, (b) (6), (b) (7)(C) specifically alleged that AUSA Morehead, in a March 18, 2014 e-mail to him, affirmatively misrepresented that (b) (6), (b) (7)(C) had not provided valuable evidence to a Kansas City, Missouri Police Department (KCPD) detective and a Jackson County prosecutor regarding an unsolved 2009 homicide -- when in fact (b) (6), (b) (7)(C) had provided substantial assistance in that investigation -- in effect falsely and wrongfully rendering him ineligible for a sentencing benefit. EOUSA in turn forwarded U.S. Attorney Grissom's e-mail and (b) (6), (b) (7)(C) letter to the Office of Professional Responsibility (OPR).

¹

Summer law intern (b) (6), (b) (7)(C) contributed a substantial first draft of this memorandum.

BACKGROUND

A. The Federal Prosecution of (b) (6), (b) (7)(C)

On February 1, 2012, (b) (6), (b) (7)(C) and his fellow (b) (6), (b) (7)(C) arrived at a Kansas City, Kansas storage locker purportedly rented by a drug dealer in order to rob him of the more than five kilograms of cocaine they believed he kept there. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C), both previously-convicted felons, brought multiple firearms to the scene. Unbeknownst to them, however, the drug dealer was the invention of an undercover Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) agent. After arrival at the storage locker, both defendants were arrested and made detailed, post-*Miranda* confessions to ATF agents.³

The case was assigned for prosecution to AUSA Morehead, the USAO's longtime Project Safe Neighborhoods firearms prosecutor.⁴ She initially charged (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) by criminal complaint, and the grand jury later indicted them on (b) (6), (b) (7)(C) with: (1) conspiracy to possess with intent to distribute five kilograms or more of cocaine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(ii), and 846; (2) use of a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c); and (3) felon-in-possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). Due the overwhelming evidence against him, (b) (6), (b) (7)(C)

² Unless otherwise indicated, the facts in this subsection come from the complaint affidavit, indictment, plea agreement and docket in the (b) (6), (b) (7)(C) case.

³ (b) (6), (b) (7)(C) was arrested at the storage unit. (b) (6), (b) (7)(C) fled from the officers, but was arrested shortly thereafter.

⁴ Morehead is a career prosecutor and has been an active member of the Kansas Bar since 1986. She was an Assistant District Attorney in Kansas City (Wyandotte County), Kansas for 14 years, prosecuting approximately 180 felony jury trials, primarily homicide and child abuse and exploitation cases. The USAO hired Morehead in 2002 to handle the office's Project Safe Neighborhoods cases in the Kansas City office, a role she has performed ever since. OPR's previous investigation of Morehead (OPR Matter No. 201300382) revealed that she is a highly aggressive and productive prosecutor with one of the heaviest caseloads of any AUSA in the district.

elected to plead guilty and cooperate in exchange for a reduced sentence. On (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) pled guilty to the conspiracy and § 924(c) counts, which, absent cooperation, together carried a mandatory minimum penalty of 15 years in prison up to a maximum of life. The written plea agreement contained the following cooperation provisions:

(b) (6), (b) (7)(C)

B. (b) (6), (b) (7)(C) Cooperation in a State Cold-Case Homicide Investigation

(b) (6), (b) (7)(C) efforts to cooperate started with proffers predating entry of his guilty plea. Local criminal defense attorney (b) (6), (b) (7)(C) was appointed to represent (b) (6), (b) (7)(C), and, after reviewing the discovery with (b) (6), (b) (7)(C) and appreciating the weight of the evidence, (b) (6), (b) (7)(C) notified Morehead on September 19, 2012 of (b) (6), (b) (7)(C) desire to cooperate.⁶ However, given the strength of the evidence against (b) (6), (b) (7)(C) Morehead did not want or need (b) (6), (b) (7)(C) cooperation against his codefendant, (b) (6), (b) (7)(C).⁷ Accordingly, (b) (6), (b) (7)(C) instead provided information regarding

⁵ Plea Agreement at 8.

⁶ E-mail from (b) (6), (b) (7)(C) to AUSA Terra Morehead (Sept. 19, 2012, 10:34 a.m.).

⁷ As noted above, (b) (6), (b) (7)(C) plotted with an undercover ATF agent, was arrested at the storage facility, and provided a detailed, Mirandized confession. Further, as Morehead explained to (b) (6), (b) (7)(C) in her July 5, 2013 e-mail: “There are just too many pitfalls with (b) (6), (b) (7)(C) testifying includ[ing] documented crimes of violence that the defense would be open to question him about.” E-mail from AUSA Terra Morehead to (b) (6), (b) (7)(C) (July 5, 2013, 11:08 a.m.).

an infamous local “cold case” homicide that occurred across the river in Kansas City, Missouri, in 2009. In that case, (b) (6), (b) (7)(C)

.⁸ A red-light camera had captured some still images of the shooter’s and victim’s vehicles; however, the images were not clear enough to lead to the killer.⁹

(b) (6), (b) (7)(C) first proffer session was on October 3, 2012. Morehead arranged for (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) to meet with ATF SA (b) (6), (b) (7)(C) but she did not attend.¹⁰ Following the meeting, (b) (6), (b) (7)(C) e-mailed Morehead: “Terra, (b) (6), (b) (7)(C) proffer went very well. I will have a report to you in a few weeks as I am headed out of town for training next week. He gave up at least two unsolved homicides. One I know we are very interested in talking with again.”¹¹

Morehead arranged for the ATF to have a follow-up meeting with (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) on October 25, 2012.¹² KCPD Detective (b) (6), (b) (7)(C), the lead detective on the (b) (6), (b) (7)(C) homicide case, also attended this second meeting.¹³ Based on our review of Morehead’s e-mail correspondence, it does not appear that she received any immediate feedback from SA (b) (6), (b) (7)(C) or Detective (b) (6), (b) (7)(C) regarding during the October 25, 2012 meeting. However, as discussed below,

⁸ (b) (6), (b) (7)(C)

⁹ *Id.*

¹⁰ See E-mail from AUSA Terra Morehead to (b) (6), (b) (7)(C) (Sept. 19, 2012, 3:35 p.m.).

¹¹ E-mail from SA (b) (6), (b) (7)(C) to AUSA Terra Morehead (Oct. 12, 2012, 2:30 p.m.). Based on Morehead’s e-mail records, it does not appear that she received a report via e-mail from (b) (6), (b) (7)(C) regarding the October 3, 2012 meeting.

¹² E-mail from AUSA Terra Morehead to SA (b) (6), (b) (7)(C) (Oct. 12, 2012, 5:06 p.m.).

¹³ Letter from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Criminal Division Chief, District of Kansas (Mar. 31, 2014).

the second proffer was of great interest in the state investigation of the (b) (6), (b) (7)(C) homicide.

On February 7, 2013, Morehead e-mailed (b) (6), (b) (7)(C) the written plea agreement for (b) (6), (b) (7)(C).¹⁴ (b) (6), (b) (7)(C) replied with the following inquiry: “Thanks Terra. I wanted to get an idea at this point if you anticipate a 5K being applied based on (b) (6), (b) (7)(C) previous cooperation, and, if so, a number you may be recommending. He’s more than willing to cooperate further if needed.”¹⁵ Morehead responded: “Yes, he would get something. Don’t know how much till the PSR is done and until I talk to the agents to see how much we used him.”¹⁶

C. Morehead’s Efforts to Assess (b) (6), (b) (7)(C) Cooperation

As (b) (6), (b) (7)(C) first scheduled sentencing date approached, on July 5, 2013 (b) (6), (b) (7)(C) e-mailed Morehead asking whether she had “[a]ny ideas regarding what [she] may be recommending based on (b) (6), (b) (7)(C) PSR and previous proffers involving the homicide.”¹⁷ Morehead responded: “No. I’m not sure anything in the proffers helped, but I will do some checking. We just have serious concerns about stuff he tells us and whether he was somehow involved.”¹⁸ Morehead then contacted ATF SA (b) (6), (b) (7)(C) to inquire about (b) (6), (b) (7)(C) cooperation. (b) (6), (b) (7)(C) replied (incorrectly, as discussed below) that the information (b) (6), (b) (7)(C) provided “was close to the truth but he couldn’t ID the targets.”¹⁹ (b) (6), (b) (7)(C) concluded, “I don’t think it will help at

¹⁴ E-mail from AUSA Terra Morehead to (b) (6), (b) (7)(C) (Feb. 7, 2013, 12:28 p.m.).

¹⁵ E-mail from (b) (6), (b) (7)(C) to AUSA Terra Morehead (Feb. 7, 2013, 4:42 p.m.).

¹⁶ E-mail from AUSA Terra Morehead to (b) (6), (b) (7)(C) (Feb. 7, 2013, 4:45 p.m.).

¹⁷ E-mail from (b) (6), (b) (7)(C) to AUSA Terra Morehead (July 5, 2013, 11:21 a.m.).

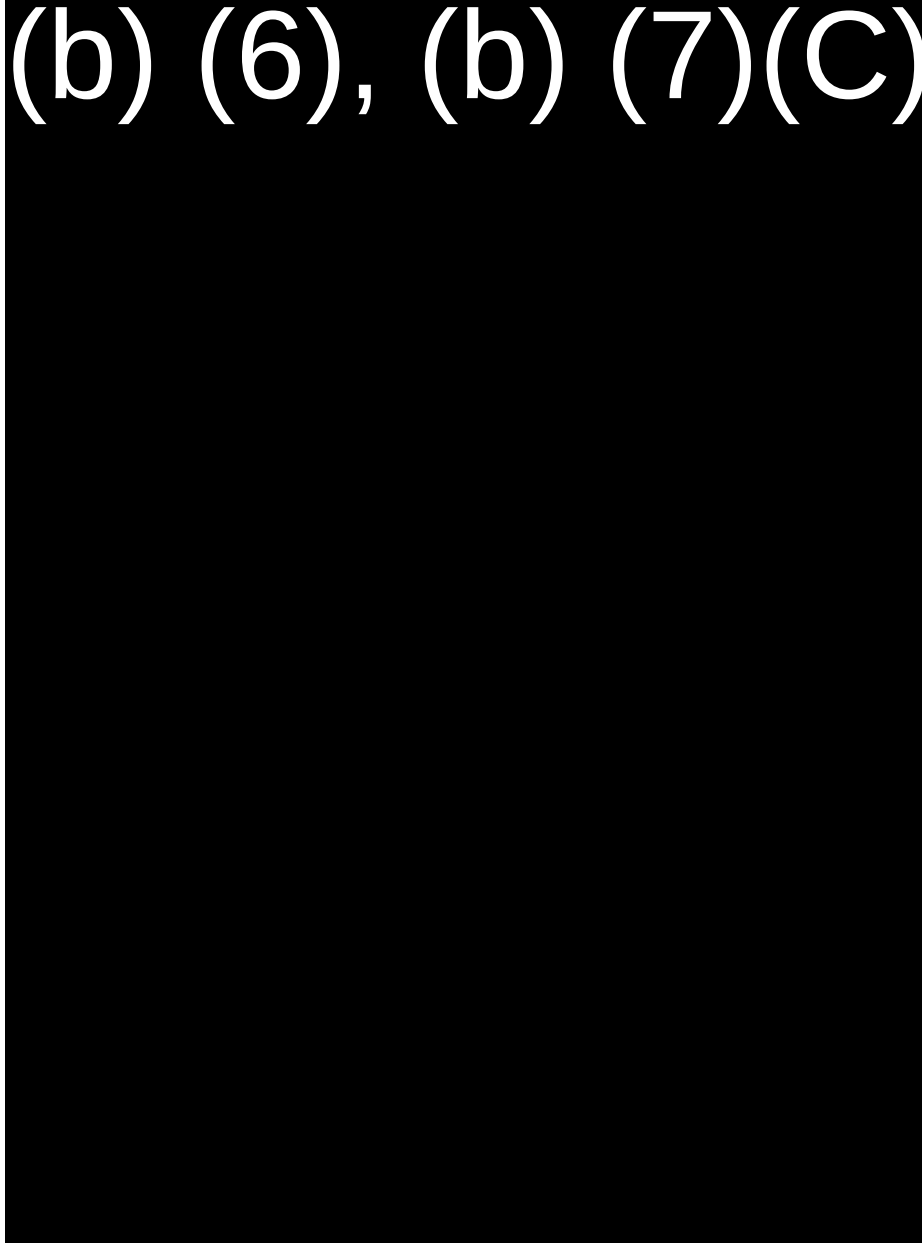
¹⁸ E-mail from AUSA Terra Morehead to (b) (6), (b) (7)(C) (July 5, 2013, 11:21 a.m.). Because it does not appear any e-mails were sent between his plea date and July 5, 2013 regarding the value of (b) (6), (b) (7)(C) cooperation, the basis for Morehead’s “serious concerns” are unclear.

¹⁹ E-mail from SA (b) (6), (b) (7)(C) to AUSA Terra Morehead (July 5, 2013, 1:28 p.m.).

this point.”²⁰

At Morehead’s request, (b) (6), (b) (7)(C) provided Morehead with a copy of (b) (6), (b) (7)(C) report of the October 25, 2012 proffer.²¹ The report, dated (b) (6), (b) (7)(C) outlines the information (b) (6), (b) (7)(C) provided regarding the (b) (6), (b) (7)(C) homicide:

(b) (6), (b) (7)(C)



²⁰ *Id.*

²¹ E-mail from SA (b) (6), (b) (7)(C) to AUSA Terra Morehead (July 9, 2013, 1:22 p.m.).

(b) (6), (b) (7)(C)

Upon receiving (b) (6), (b) (7)(C) report on July 9, 2013, Morehead, in a joint e-mail, contacted both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) stating: "Doesn't sound like he was very helpful/honest at all? What is the consensus on how useful his information was?"²³ Morehead received conflicting information in response. (b) (6), (b) (7)(C) replied, "Not that useful, didn't give us anything we didn't already have."²⁴ However, (b) (6), (b) (7)(C) replied, "I thought he was very helpful."²⁵ Morehead asked how (b) (6), (b) (7)(C) intended to use the information.²⁶ (b) (6), (b) (7)(C) replied that, based on the corroborating traffic camera video footage of the incident, (b) (6), (b) (7)(C) had accurately described both vehicles involved and the

²² (b) (6), (b) (7)(C) Kansas City, Missouri Police Department (KCPD) Detective, Incident Report, (b) (6), (b) (7)(C), printed July 8, 2013, 2:22 p.m.).

²³ E-mail from AUSA Terra Morehead to SA (b) (6), (b) (7)(C) and KCPD Detective (b) (6), (b) (7)(C) (July 9, 2013, 2:24 p.m.).

²⁴ E-mail from SA (b) (6), (b) (7)(C) to AUSA Terra Morehead (July 9, 2013, 2:54 p.m.). (b) (6), (b) (7)(C) did not copy (b) (6), (b) (7)(C) on his reply to Morehead. Additionally, it is unclear from (b) (6), (b) (7)(C) e-mail whether (b) (6), (b) (7)(C) was speaking about the (b) (6), (b) (7)(C) homicide or a separate matter when he responded that "it didn't give us anything we didn't already have."

²⁵ E-mail from KCPD Detective (b) (6), (b) (7)(C) to AUSA Terra Morehead (July 9, 2013, 2:30 p.m.). (b) (6), (b) (7)(C) did not copy (b) (6), (b) (7)(C) in his response to Morehead.

²⁶ E-mail from AUSA Terra Morehead to KCPD Detective (b) (6), (b) (7)(C) (July 9, 2013, 2:52 p.m.).

direction of their travel, adding that (b) (6), (b) (7)(C) testimony would be presented to the grand jury.²⁷

That same day, approximately an hour after Morehead's e-mail exchange with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) e-mailed Morehead letting her know that he also had been in contact with (b) (6), (b) (7)(C) and that (b) (6), (b) (7)(C) had told him that "the information (b) (6), (b) (7)(C) provided at . . . his two proffers was '110% helpful' to their cold case homicide investigation involving the (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)." ²⁸ Morehead replied that she thought the information was "a bit of an overstatement," and suggested they continue (b) (6), (b) (7)(C) sentencing to allow investigators time to "follow[-]up on some stuff."²⁹ (b) (6), (b) (7)(C) agreed and filed the motion for a continuance, which was granted setting a new sentencing date of (b) (6), (b) (7)(C)

On July 14, 2013, five days after hearing from (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) information was 110% helpful, Morehead contacted (b) (6), (b) (7)(C) about (b) (6), (b) (7)(C) statements.³⁰ (b) (6), (b) (7)(C) characterized (b) (6), (b) (7)(C) 110% statement as "a little embellished," but explained that the information (b) (6), (b) (7)(C) provided "does give credence to circumstances surrounding the [homicide]."³¹

On (b) (6), (b) (7)(C) a Jackson County grand jury indicted (b) (6), (b) (7)(C) on charges

²⁷ E-mail from KCPD Detective (b) (6), (b) (7)(C) to AUSA Terra Morehead (July 9, 2013, 3:09 p.m.). Morehead later explained that she believed that (b) (6), (b) (7)(C) in fact never appeared before the state grand jury, because she never received notification from the U.S. Marshals Service that Jackson County had obtained a writ for his appearance. Letter from AUSA Terra Morehead to (b) (6), (b) (7)(C) at 1 (June 23, 2014).

²⁸ E-mail from (b) (6), (b) (7)(C) to AUSA Terra Morehead (July 9, 2013, 4:00 p.m.).

²⁹ E-mail from AUSA Terra Morehead to (b) (6), (b) (7)(C) (July 9, 2013, 4:46 p.m.).

³⁰ E-mail from AUSA Terra Morehead to KCPD Detective (b) (6), (b) (7)(C) (July 14, 2013, 1:08 p.m.).

³¹ E-mail from KCPD Detective (b) (6), (b) (7)(C) to AUSA Terra Morehead (July 14, 2013, 1:27 p.m.). Morehead replied that she "figured as much," and further added "[w]hen he said '110%' - [she] thought that was a bit of an overrepresentation." E-mail from AUSA Terra Morehead to KCPD Detective (b) (6), (b) (7)(C) (July 14, 2013, 1:29 p.m.). Morehead admonished Huth about sharing information with defense attorneys, explaining that "[t]hings seem to sometimes [get] lost in translation." *Id.* (b) (6), (b) (7)(C) who was copied on Morehead's warning to (b) (6), (b) (7)(C) later responded directly to Morehead, stating, "Oh well, Det. (b) (6), (b) (7)(C) was excited when I spoke to him last." E-mail from SA (b) (6), (b) (7)(C) to AUSA Terra Morehead (July 14, 2013, 1:50 p.m.).

of second-degree murder for the killing of (b) (6), (b) (7)(C)³² News reports cited an unnamed witness who identified (b) (6), (b) (7)(C) as the shooter.³³

On February 20, 2014, Morehead contacted SA (b) (6), (b) (7)(C) to verify that she had all the reports on (b) (6), (b) (7)(C) proffers.³⁴ (b) (6), (b) (7)(C) confirmed the only report written on the proffers was (b) (6), (b) (7)(C) report dated (b) (6), (b) (7)(C), which Morehead already had in her possession.³⁵

D. The Miscommunication with the Jackson County Prosecutor

The sentencing was continued again on defense motion on (b) (6), (b) (7)(C) this time “until further order of the court,” with no date certain set. On January 22, 2014, Morehead e-mailed (b) (6), (b) (7)(C) asking for the contact information for (b) (6), (b) (7)(C), the Jackson County prosecutor assigned to the (b) (6), (b) (7)(C) homicide case, requesting the information “so I can talk to him about (b) (6), (b) (7)(C) and his cooperation.”³⁶ (b) (6), (b) (7)(C) immediately replied with (b) (6), (b) (7)(C) cell phone number.³⁷ However, Morehead didn’t get around to calling (b) (6), (b) (7)(C) until about a month later, on February 27, 2014. On that day, she reached him on his cell phone, and the two prosecutors had a brief chat. The chat was so short, in fact, that (as discussed below) (b) (6), (b) (7)(C) did not even recall it a short time

³² (b) (6), (b) (7)(C)

³³ *Id.* The article indicates that a witness identified (b) (6), (b) (7)(C) as the person who fired the shots that night. (b) (6), (b) (7)(C)

³⁴ E-mail from AUSA Terra Morehead to SA (b) (6), (b) (7)(C) (Feb. 20, 2014, 5:39 p.m.).

³⁵ E-mail from SA (b) (6), (b) (7)(C) to AUSA Terra Morehead (Feb. 21, 2014, 9:35 a.m.).

³⁶ E-mail from AUSA Terra Morehead to KCPD Detective (b) (6), (b) (7)(C) (Jan. 22, 2014, 6:48 p.m.).

³⁷ E-mail from KCPD Detective (b) (6), (b) (7)(C) to AUSA Terra Morehead (Jan. 22, 2014, 7:58 p.m.).

later. Morehead, however, credibly recalls the conversation as follows:

[Jackson County prosecutor (b) (6), (b) (7)(C)] frankly seemed clueless about who (b) (6), (b) (7)(C) was, and claimed he had never heard his name. I told him I had a proffer interview report from Detective (b) (6), (b) (7)(C) which was prepared back in October 2012 after an interview in my office. He claimed to have never seen this report, and had never heard (b) (6), (b) (7)(C) name. I was surprised by this response, and I told him Detective (b) (6), (b) (7)(C) had indicated that he thought (b) (6), (b) (7)(C) would testify at the time of the grand jury. Mr. (b) (6), (b) (7)(C) response was that obviously (b) (6), (b) (7)(C) wasn't helpful, because he hadn't been used. I asked him to verify this information and even sent him an email, while we were on the phone together, so that he had my email address.³⁸

As discussed below, however, during this brief cell phone conversation with Morehead, (b) (6), (b) (7)(C) apparently drew a complete blank on (b) (6), (b) (7)(C) and the value of his cooperation. In fact, as discussed below, (b) (6), (b) (7)(C) view of (b) (6), (b) (7)(C) cooperation mirrored Detective (b) (6), (b) (7)(C) believed (b) (6), (b) (7)(C) would be a valuable trial witness who would credibly testify that (b) (6), (b) (7)(C) was in the car seen in the traffic video, with a gun, at the time of the (b) (6), (b) (7)(C) homicide.

However, (b) (6), (b) (7)(C) did not timely follow up and convey this information to Morehead, leaving her with only the misimpression from their initial, brief cell phone conversation. After about two weeks, on March 11, 2014, Morehead sent a second e-mail to (b) (6), (b) (7)(C) in which she asked (b) (6), (b) (7)(C) whether he "check[ed] to see if (b) (6), (b) (7)(C) was helpful at all on [his] homicide case."³⁹ Again, she received no timely reply.

Having had no reply from (b) (6), (b) (7)(C) Morehead e-mailed (b) (6), (b) (7)(C) a week later, on March 18, 2014, with her decision regarding (b) (6), (b) (7)(C) cooperation:

³⁸ Morehead Apology letter at 1-2. USAO telephone records confirm that the call took place and show its duration as four minutes and 41 seconds. USAO e-mail records also confirm that Morehead sent her contact information to (b) (6), (b) (7)(C) while she was on the phone with him. E-mail from AUSA (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Jackson County Prosecutor (Feb. 27, 2014, 4:01 p.m.).

³⁹ E-mail from AUSA Terra Morehead to (b) (6), (b) (7)(C) Jackson County Prosecutor (Mar. 11, 2014, 3:31 p.m.). (b) (6), (b) (7)(C) was copied on the March 11, 2014 e-mail to (b) (6), (b) (7)(C) as well.

I just wanted you to know that I reached out to the prosecutor on the Missouri homicide case and he told me that he did not use (b) (6), (b) (7)(C) information in any manner. In fact, he had never even heard of him in connection with the investigation. I wanted you to know this prior to sentencing. I know you thought the detective had indicated the information was extremely helpful – I think your words were “110%”; however, when I reached out to the detective he said that your representation was a bit exaggerated and that he did not say that. I am not sure how this misperception occurred, all I know is that my follow up indicated his information was not used. When I reviewed the report prepared in connection with the interview, I thought it seemed that his information was a bit sketchy, especially since he didn’t initially pick anyone out and then had them come back in. The ATF agent who sat in likewise didn’t think he did that well during the interview.⁴⁰

(b) (6), (b) (7)(C), astonished, reminded Morehead by reply e-mail that that he had spoken with the detective and learned that (b) (6), (b) (7)(C) information was 110% percent helpful. Morehead responded that the detective had told her that the 110% statement was “an exaggeration,” and, while she did not doubt the detective may have said “110% helpful,” that “apparently it was not correct – [the information] was not 110% helpful.”⁴¹

E. (b) (6), (b) (7)(C) Investigation of (b) (6), (b) (7)(C) Cooperation

(b) (6), (b) (7)(C) diligently and effectively representing his client, did not take Morehead’s March 18, 2014 e-mail as the final word, and instead pursued the matter further with both (b) (6), (b) (7) and (b) (6), (b) (7).⁴² On March 25, 2014, (b) (6), (b) (7)(C) contacted (b) (6), (b) (7)(C) to inform him that Morehead was claiming (b) (6), (b) (7)(C) information about the (b) (6), (b) (7)(C) homicide was not helpful, to which (b) (6), (b) (7) responded, “You are kidding me!”⁴³ (b) (6), (b) (7)(C) stated, “[T]here is no way she [Morehead] has spoken with Mr.

⁴⁰ E-mail from AUSA Terra Morehead to (b) (6), (b) (7)(C) (Mar. 18, 2014, 10:49 a.m.).

⁴¹ E-mail from (b) (6), (b) (7)(C) to AUSA Terra Morehead (Mar. 18, 2014, 11:59 a.m.); e-mail from AUSA Terra Morehead to (b) (6), (b) (7)(C) (Mar. 18, 2014, 12:10 p.m.).

⁴² (b) (6), (b) (7)(C) conversations with (b) (6), (b) (7) and (b) (6), (b) (7) took place over the telephone. (b) (6), (b) (7) memorialized his conversations with (b) (6), (b) (7) and (b) (6), (b) (7) in e-mails, and (b) (6), (b) (7) and (b) (6), (b) (7) confirmed the accuracy of the statements in reply e-mails.

⁴³ Letter from (b) (6), (b) (7)(C) to USAO Criminal Chief (b) (6), (b) (7)(C) at 3 (Mar. 31, 2014).

(b) (6), (b) (7)(C),” and he suggested (b) (6), (b) (7)(C) contact (b) (6), (b) (7) directly. (b) (6), (b) (7)(C) reassured (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) information “was definitely valuable,” and that (b) (6), (b) (7)(C) testimony is “likely necessary in the (b) (6), (b) (7)(C) trial.”⁴⁴ (b) (6), (b) (7) conceded that his earlier assessment of (b) (6), (b) (7)(C) cooperation as “110% helpful” was “an exaggeration,” but he reiterated that “(b) (6), (b) (7)(C) testimony was indeed valuable to [the homicide] investigation” and “without a doubt helpful.”⁴⁵

On March 26, 2014, (b) (6), (b) (7)(C) duly contacted (b) (6), (b) (7)(C) and they had a very brief conversation. (b) (6), (b) (7) mistakenly told (b) (6), (b) (7)(C) that, although Morehead had left him a message, he had not yet gotten back to her. In fact, as discussed above and as USAO phone and e-mail records confirm, Morehead and (b) (6), (b) (7) spoke on February 27, 2014. Thus, (b) (6), (b) (7) appears to have forgotten about the February 27, 2014 conversation.⁴⁶ (b) (6), (b) (7)(C) was unable to speak further, but agreed to call (b) (6), (b) (7)(C) back.⁴⁷ However, (b) (6), (b) (7) did not timely return the call.

On March 28, 2014, (b) (6), (b) (7)(C) again contacted (b) (6), (b) (7)(C) regarding (b) (6), (b) (7)(C) cooperation in the (b) (6), (b) (7)(C) murder case, and this time the two had a substantive discussion. (b) (6), (b) (7) said that (b) (6), (b) (7)(C) was valuable and, in fact, stated he will need (b) (6), (b) (7)(C) to testify to the fact that he saw (b) (6), (b) (7)(C) in a car with a gun at the time of the shooting.”⁴⁸ Again forgetting about his February

⁴⁴ E-mail from (b) (6), (b) (7)(C) to KCPD Detective (b) (6), (b) (7)(C) (Mar. 25, 2014, 4:19 p.m.).

⁴⁵ *Id.*

⁴⁶ Notably, (b) (6), (b) (7) initially also told USAO Criminal Chief (b) (6), (b) (7)(C) that he had never spoken with Morehead. See E-mail from USAO Criminal Chief (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) Jackson County Prosecutor (Apr. 1, 2014, 3:35 p.m.); e-mail from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) (Apr. 2, 2014, 7:10 a.m.). However, when (b) (6), (b) (7) confronted him with Morehead’s phone records, which documented a four minute and 41 second phone call between (b) (6), (b) (7)(C) and Morehead, (b) (6), (b) (7) acknowledged speaking to Morehead after all. E-mail from FAUSA Thomas Beall to OPR Associate Counsel (May 19, 2014, 5:49 p.m.). (b) (6), (b) (7)(C) internal USAO investigation into the matter did not reveal why (b) (6), (b) (7) originally denied having the February 27, 2014 telephone conversation with Morehead or why he told Morehead that he was unfamiliar with (b) (6), (b) (7)(C). *Id.* (b) (5), (b) (6), (b) (7)(C)

⁴⁷ Letter from (b) (6), (b) (7)(C) to USAO Criminal Chief (b) (6), (b) (7)(C) at 4 (Mar. 31, 2014).

⁴⁸ *Id.*

27, 2014 telephone call with Morehead, (b) (6), (b) (7) repeated that he never spoke with Morehead.⁴⁹ Finally, (b) (6), (b) (7)(C) apologized for not contacting Morehead sooner and agreed to follow up with her regarding (b) (6), (b) (7)(C) cooperation.⁵⁰ That same day, (b) (6), (b) (7)(C) finally replied to Morehead's March 11, 2014 e-mail by stating, (b) (6), (b) (7)(C) has been helpful, I expect to call him as a witness who can place the defendant (b) (6), (b) (7)(C) with a gun and in the car at the time of the homicide."⁵¹ (b) (6), (b) (7)(C) e-mailed the same information to (b) (6), (b) (7)(C).⁵²

(b) (6), (b) (7)(C) understandably could not reconcile Morehead's March 18, 2014 e-mail, in which she unambiguously stated that she had spoken with (b) (6), (b) (7) and (b) (6), (b) (7) informed her that (b) (6), (b) (7)(C) was not a useful witness in the (b) (6), (b) (7)(C) homicide case (and in fact (b) (6), (b) (7) had never heard of (b) (6), (b) (7)(C), with the information he received from (b) (6), (b) (7) (corroborated by (b) (6), (b) (7)) that (1) (b) (6), (b) (7) had never spoken with Morehead, and (2) (b) (6), (b) (7)(C) was in fact a valuable witness. Thus, (b) (6), (b) (7)(C) reasonably concluded that Morehead had "withheld *Brady* information pertaining to mitigation at sentencing, and, in fact, created the alleged existence of aggravated circumstances."⁵³ His complaint letter of March 31, 2014 to USAO Criminal Chief (b) (6), (b) (7)(C) followed, resulting in this OPR inquiry.

Upon learning of (b) (6), (b) (7)(C) March 31, 2014 letter and OPR's resulting inquiry, on June 23, 2014, Morehead sent a (b) (6), (b) (7)(C) an apology letter. In the letter, she documented the misinformation

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ E-mail from (b) (6), (b) (7)(C), Jackson County Prosecutor, to AUSA Terra Morehead (Mar. 28, 2014, 10:19 a.m.). Morehead responded by asking (b) (6), (b) (7) about the timeline for the trial and whether (b) (6), (b) (7)(C) had been in contact with him. E-mail from AUSA Terra Morehead to (b) (6), (b) (7)(C), Jackson County Prosecutor (Mar. 28, 2014, 10:37 a.m.). (b) (6), (b) (7)(C) replied stating, "The trial is set for September 29, 2014 and [he had] talked with (b) (6), (b) (7)(C)." E-mail from (b) (6), (b) (7)(C), Jackson County Prosecutor, to AUSA Terra Morehead (Mar. 28, 2014, 10:51 a.m.).

⁵² Letter from (b) (6), (b) (7)(C) to USAO Criminal Chief (b) (6), (b) (7)(C) at 4 (Mar. 31, 2014).

⁵³ *Id.*

she had received from (b) (6), (b) (7)(C) as discussed above, and she also acknowledged, “looking back at the March 18 email I can see that you could have concluded that my efforts to look into this matter were at an end. . . .” Finally, she assured (b) (6), (b) (7)(C) that “Mr. (b) (6), (b) (7)(C) will be given any and all credit he is entitled to receive under the terms of the plea agreement that he entered with this office,” and that “neither you, nor he, will be the subject of any retribution as a consequence of your March 31 letter.”

A three-day gap separated (b) (6), (b) (7)(C) e-mail to Morehead on March 28, 2014, in which he finally replied to her and informed her of (b) (6), (b) (7)(C) valuable cooperation, and (b) (6), (b) (7)(C) complaint letter on March 31, 2014. During those three days, unfortunately, Morehead was not immediately in touch with (b) (6), (b) (7)(C) to revise her previous, mistaken determination regarding (b) (6), (b) (7)(C) cooperation. (b) (5), (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

F. Status of (b) (6), (b) (7)(C) Case

As of the date of this memorandum, a sentencing date for the (b) (6), (b) (7)(C) case has yet to be set. The docket reflects that the parties have not filed sentencing memoranda yet. (b) (6), (b) (7)(C) co-defendant, (b) (6), (b) (7)(C), entered a guilty plea on (b) (6), (b) (7)(C). His sentencing has not yet been set either.

STANDARDS OF CONDUCT

A. The Government's Obligation Under the U.S. Constitution

As set forth by the Court in *Brady v. Maryland*, the Due Process Clause of the Fifth and Fourteenth Amendments to the U.S. Constitution require the government to disclose to the defense evidence that is favorable to the accused and “material either to guilt or to punishment.”⁵⁴ The government’s good faith or bad faith is irrelevant in determining whether a *Brady* violation occurred.⁵⁵ Likewise, the duty to disclose favorable, material evidence does not depend on the accused making a request.⁵⁶ Instead, a *Brady* violation occurs when (1) the government did not disclose evidence; (2) the evidence was favorable to the accused, either because it is exculpatory or impeaching; and (3) the evidence was material to guilt or punishment.⁵⁷ Furthermore, because the government’s duty to disclose encompasses evidence known only to investigators and not to the prosecutor, a prosecutor “has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in [a] case.”⁵⁸

Although challenges under *Brady* commonly involve the failure to disclose evidence for trial, *Brady* applies with equal force at the sentencing phase.⁵⁹ Because judges enjoy discretion

⁵⁴ *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

⁵⁵ *Id.*

⁵⁶ *Strickler v. Greene*, 527 U.S. 263, 280 (1999) (citing *United States v. Agurs*, 427 U.S. 97, 107 (1976)).

⁵⁷ *Strickler*, 527 U.S. at 281-82.

⁵⁸ *Id.* at 281 (quoting *Kyles v. Whitley*, 514 U.S. 419, 437 (1995)) (internal quotation marks omitted).

⁵⁹ *Brady* 373 U.S. at 87; see also *United States v. Severson*, 3 F.3d 1005, 1013 (7th Cir. 1993) (“Due process also requires a defendant receive a fair sentencing hearing.”).

at the sentencing phase, and can consider a broad range of sentencing information, a showing of materiality for purposes of sentencing often is less stringent.⁶⁰ Thus, to the extent a judge may impose a lesser prison sentence (even if only by a few months or days) or adjust the conditions of a defendant's supervised release based on particular evidence, that mitigating evidence would be material.⁶¹

Delayed disclosure of *Brady* evidence is not per se grounds for a violation. As long as the ultimate disclosure is made "before it is too late for the defendant[] to make use of any benefits of the evidence, Due Process is satisfied."⁶²

B. Department Policy

The United States Attorneys' Manual (USAM), § 9-5.001 *et seq.*, contains the Department's policy on the disclosure of exculpatory and impeachment information. The intent of the policy is to "promote regularity in disclosure practices, through the reasoned and guided exercise of the prosecutorial judgment and discretion by attorneys for the government, with respect to the government's obligation both to disclose exculpatory and impeachment information to criminal defendants and to seek a just result in every case."⁶³ This policy not only reiterates the government's constitutional obligation under *Brady* and *Giglio*, but further recognizes "that a fair trial will often include examination of relevant exculpatory or impeachment information that is significantly probative of the issues before the court but that may not, on its own, result in an acquittal or . . . make a difference between guilt and

⁶⁰ See *Weintraub*, 871 F.2d 1257, 1265 (5th Cir. 1989) (holding undisclosed impeachment evidence, not material to the defendant's guilt, was material to the defendant's punishment).

⁶¹ *Weintraub*, 871 F.2d at 1265.

⁶² *United States v. Warhop*, 732 F.2d 775, 777 (10th Cir. 1984) (alteration in the original) (quoting *United States v. Ziperstein*, 601 F.2d 281, 291 (7th Cir. 1979)) (internal quotation marks omitted).

⁶³ USAM § 9-5.001(A).

innocence.”⁶⁴ Accordingly, the Department’s policy requires “disclosure by prosecutors of information beyond that which is ‘material’ to guilt.”⁶⁵ Moreover, the Department’s policy, unlike *Brady*, is not limited to the disclosures of “evidence,” but instead extends the disclosure requirement to “information,” regardless of whether “the information subject to disclosure would itself constitute admissible evidence.”⁶⁶

While due process requires that the disclosure of exculpatory and impeachment evidence “be made in sufficient time to permit the defendant to make effective use of that information at trial,”⁶⁷ USAM § 9-5.001(D) generally requires exculpatory information to be disclosed “reasonably promptly after it is discovered,” and impeachment information to be disclosed “at a reasonable time before trial to allow the trial to proceed efficiently.” Specific to sentencing, USAM § 9-5.001(D)(3) states that exculpatory and impeachment information “that casts doubt upon proof of an aggravating factor at sentencing, but that does not relate to proof of guilt, must be disclosed no later than the court’s initial presentence investigation.”⁶⁸

C. Rules of Professional Conduct

A determination of which rules of professional conduct apply to the conduct at issue is governed by the Department regulations at 28 C.F.R. Part 77, “Ethical Standards for Attorneys for the Government,” which implements 28 U.S.C. § 530B. These regulations provide that

⁶⁴ USAM § 9-5.001(C).

⁶⁵ *Id.*

⁶⁶ USAM § 9-5.001(C)(3).

⁶⁷ USAM § 9-5.001(D) (citing *Weatherford v. Bursey*, 429 U.S. 545, 559 (1997); *United States v. Farley*, 2 F.3d 645, 654 (6th Cir. 1993)).

⁶⁸ This language is mirrored in the *U.S. Attorney’s Office-District of Kansas Discovery Policy*, which states “exculpatory and impeachment information that casts doubt upon proof of an aggravating factor at sentencing, but not related to proof of guilt, must be disclosed no later than the initial presentence investigation report.”

government attorneys shall, in all cases, conform to the rules of ethical conduct of the court before which the particular case is pending. Because this matter involved charges filed in the U.S. District Court for the District of Kansas, the local rules of that court apply. Pursuant to Local Rule 83.6.1, attorneys practicing in the U.S. District Court for the District of Kansas must comply with the standards of professional conduct set forth in the Kansas Rules of Professional Conduct (KRPC). Morehead also is a member of the Kansas Bar and therefore subject to the KRPC as a bar member.

KRPC 3.8 addresses the “Special Responsibilities of a Prosecutor.” Specifically, KRPC 3.8(d) addresses a prosecutor’s disclosure obligations in that, under the rule, a prosecutor in a criminal case “shall”

make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor.⁶⁹

In the absence of “disciplinary case law,” the American Bar Association issued a formal opinion to interpret the scope of and obligations imposed under Rule 3.8(d), which states that, at the sentencing phase, “the duty to disclose mitigating information refers to information that might lead to a more lenient sentence.”⁷⁰ Additionally, whereas due process is satisfied as long as a disclosure under *Brady* is made before it is too late for the defendant to make use of the information, Rule 3.8(d) generally imposes a heightened duty on prosecutors to disclose favorable information “as soon as reasonably practical.”⁷¹ For sentencing, prosecutors must

⁶⁹ KRPC 3.8(d).

⁷⁰ ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 09-454 (2009).

⁷¹ *Id.*

disclose the information “sufficiently in advance of the sentencing for the defense effectively to use it and for the tribunal fully to consider it.”⁷²

KRPC 4.1(a) states, “[i]n the course of representing a client a lawyer shall not knowingly . . . make a false statement of material fact or law to a third person.” A misrepresentation under this rule can occur “if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false.”⁷³ Additionally, KRPC 8.4(c) provides, “It professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation.” Dishonest conduct includes conduct that shows “a lack of honesty, probity or integrity in principle [or a] lack of fairness and straightforwardness.”⁷⁴

ANALYSIS

A. Constitutional Obligations

(b) (5), (b) (6), (b) (7)(C)

⁷² *Id.*

⁷³ KRPC 4.1(a), Comment 1.

⁷⁴ *Tucker v. Lower*, 434 P.2d 320, 324 (Kan. 1967).

⁷⁵ *United States v. Warhop*, 732 F.2d 775, 777 (10th Cir. 1984) (alteration in the original) (quoting *United States v. Zipstein*, 601 F.2d 281, 291 (7th Cir. 1979)) (internal quotation marks omitted).

(b) (5), (b) (6), (b) (7)(C)

B. Department Policy

OPR finds professional misconduct when an attorney intentionally violates or acts in reckless disregard of a known, unambiguous obligation imposed by law, rule of professional conduct, or Department regulation or policy. (b) (5)

The essence of the Department's *Brady* policy relates to exculpatory information regarding guilt, not mitigating information regarding sentencing. For instance, USAM § 9-5.001, describing the purpose for the policy, states, "The policy is intended to ensure timely disclosure of an appropriate scope of exculpatory and impeachment information so as to ensure that the *trials* are fair."⁷⁶ Likewise, USAM § 9-5.001(C), outlining a prosecutor's disclosure obligation under the Department's policy, states:

Department policy recognizes that a *fair trial* will often include examination of relevant exculpatory or impeachment information that is significantly probative of the issues before the court but that may not, on its own, result in an *acquittal* or, as is often colloquially expressed, make the *difference between guilt and innocence*. . . . The policy recognizes, however, that a *trial* should not involve the consideration of information which is irrelevant or not significantly probative of the issues before the court and should not involve spurious issues or arguments which serve to divert the *trial process* from examining the genuine issues. Information that goes only to such matters *does not advance the purpose of trial* and thus is not subject to disclosure.⁷⁷

⁷⁶ USAM § 9-5.001(A).

⁷⁷ USAM § 9-5.001(C) (emphasis added).

The only reference in the Department's *Policy Regarding Disclosure of Exculpatory and Impeachment Information* to a prosecutor's duty to disclose information for sentencing purposes appears in USAM §9-5.001(D), the "Timing of [D]isclosure" section. Subsection 3 of that section states, "Exculpatory and impeachment information that casts doubt upon proof of an aggravating factor at sentencing, but that does not relate to proof of guilt, must be disclosed no later than the court's initial presentence investigation." (b) (5), (b) (6), (b) (7)(C)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The policy requires the disclosure of information "that casts doubt upon proof of an aggravating factor at sentencing," and the withheld information in this case does not relate to an aggravating factor, but instead the mitigating factor of substantial assistance under § 5K1.1 of the Sentencing Guidelines.

(b) (5)

C. KRPC 3.8(d)

(b) (5)

[REDACTED] KRPC 3.8(d), which, as discussed above, imposes upon a prosecutor "the duty to disclose mitigating information," *i.e.* "information that might lead to a more lenient sentence," "as soon as reasonably practical," and, in any event, "sufficiently in advance of the

sentencing for the defense effectively to use it and for the tribunal fully to consider it.”⁷⁸ (b) (5),

[REDACTED]

D. KRPC 4.1 and 8.4(c)

The remaining question is whether, in her e-mail to (b) (6), (b) (7)(C) in which she told him that (b) (6), (b) (7)(C) “information was not used” and that (b) (6), (b) (7)(C) would not be receiving a substantial assistance motion, Morehead engaged in deception towards (b) (6), (b) (7)(C) in violation of KRPC 4.1 and 8.4(c). (b) (5), (b) (6), (b) (7)(C)

[REDACTED]

(b) (5), (b) (6), (b) (7)(C)

[REDACTED]

⁷⁸ See ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 09-454 (2009).

⁷⁹ E-mail from SA (b) (6), (b) (7)(C) to AUSA Terra Morehead (July 9, 2013, 2:54 p.m.).

(b) (5), (b) (6), (b) (7)(C)

[REDACTED]

[REDACTED]

[REDACTED]

(b) (5)

CONCLUSION

Based on my review of the information described above, I recommend that (b) (5)

From: (b) (6), (b) (7)(C)
To: [Gonzalez, Gregory \(OPR\)](#)
Subject: [EXTERNAL] Re: Request for Interview by the Office of Professional Responsibility
Date: Wednesday, December 28, 2022 12:05:26 PM
Attachments: [image001.png](#)

That was it. Thanks for checking

(b) (6), (b) (7)(C)

Sent via the Samsung Galaxy S8, an AT&T 5G Evolution capable smartphone
Get [Outlook for Android](#)

From: Gonzalez, Gregory (OPR) (b) (6)
Sent: Wednesday, December 28, 2022 11:02:57 AM
To: (b) (6), (b) (7)(C)
Subject: RE: Request for Interview by the Office of Professional Responsibility

(b) (6), (b) (7)(C)

Just wanted to circle back with you and make sure that you didn't find anything in addition to what you already sent me.
Thanks!

Greg Gonzalez
Senior Counsel
U.S. Department of Justice
Office of Professional Responsibility
950 Pennsylvania Ave. NW,
Washington, D.C. 20530

(b) (6)
202-514-5050 fax



From: (b) (6), (b) (7)(C)
Sent: Tuesday, September 20, 2022 2:03 PM
To: Gonzalez, Gregory (OPR) (b) (6); Cummings, John M
(b) (6)
Subject: [EXTERNAL] RE: Request for Interview by the Office of Professional Responsibility

Greg

Here is the emails and information that you and I discussed. I am happy to discuss again with you once you have had an opportunity to review. Thanks for your hard work.

(b) (6), (b) (7)(C)

From: Gonzalez, Gregory (OPR) (b) (6)

Sent: Tuesday, September 20, 2022 8:40 AM

To: (b) (6), (b) (7)(C) Cummings, John M <(b) (6)>

Subject: RE: Request for Interview by the Office of Professional Responsibility

(b) (6), (b) (7)(C)

Just wanted to loop back with you to see if you learned any additional info from your file regarding how you learned about (b) (6), (b) (7)(C) letter to his wife/girlfriend?

Thank you,

Greg Gonzalez
Assistant Counsel
U.S. Department of Justice
Office of Professional Responsibility
950 Pennsylvania Ave. NW,
Washington, D.C. 20530

(b) (6)

202-514-5050 fax

seal



From: (b) (6), (b) (7)(C)

Sent: Monday, June 27, 2022 11:07 AM

To: Cummings, John M. (OPR) (b) (6), (b) (7)(C)

Cc: Gonzalez, Gregory (OPR) (b) (6)

Subject: [EXTERNAL] RE: Request for Interview by the Office of Professional Responsibility

Happy to talk with you. Please let me know when you would like to do it. Thanks

(b) (6), (b) (7)(C)

From: Cummings, John M. (OPR) (b) (6)

Sent: Monday, June 27, 2022 8:51 AM

To: (b) (6), (b) (7)(C)

Cc: Gonzalez, Gregory (OPR) (b) (6)

Subject: Request for Interview by the Office of Professional Responsibility

(b) (6), (b) (7)(C)

I am an assistant counsel with the Department of Justice's Office of Professional Responsibility (OPR). Along with my colleague, Gregory Gonzalez, we are investigating allegations of professional misconduct against Assistant United States Attorney Terra Morehead in connection with the prosecution of (b) (6), (b) (7)(C). As you may recall, one of your clients, (b) (6), (b) (7)(C) testified as a government witness against (b) (6), (b) (7)(C). During the course of our investigation, we learned that in September of 2015 you contacted AUSA Morehead and arranged to view a surveillance video of (b) (6), (b) (7)(C) falling or jumping from the upper tier of a detention facility and to review a letter. Attached please find a copy of that email exchange. We would like to interview you regarding any subsequent meeting you had with AUSA Morehead, and specifically what materials she provided to you in September of 2015. We are sensitive to issues surrounding attorney-client privilege, but we believe our inquiry can avoid any privileged communications or other protected matters.

We would like to interview you remotely (using Microsoft Teams, WebEx, or by phone) about the (b) (6), (b) (7)(C) case. We expect the interview will last less than one hour. You will not be placed under oath, but OPR uses a digital recorder to record its interviews.

Please let us know if you are willing to speak with us, and we will find a mutually convenient time.

Sincerely,

John M. Cummings
Assistant Counsel
United States Department of Justice
Office of Professional Responsibility
950 Pennsylvania Ave., N.W.
Washington, DC 20530

(b) (6)

From: [Gonzalez, Gregory \(OPR\)](#)
To: [Drouet, Suzanne \(OPR\)](#)
Subject: BAR REQUEST FOR INFE - RE: Morehead
Date: Friday, January 19, 2024 10:03:00 AM
Attachments: [image001.png](#)
[image002.png](#)
[1-15-17 emails with \(b\) \(6\), \(b\) \(7\)\(C\).pdf](#)
[3-7-17 emails with \(b\) \(6\), \(b\) \(7\)\(C\).pdf](#)
[8-13-15 & 8-21-15 emails with \(b\) \(6\), \(b\) \(7\)\(C\).pdf](#)
[9-24-15 emails with \(b\) \(6\), \(b\) \(7\)\(C\).pdf](#)
[10-13-15 email from \(b\) \(6\), \(b\) \(7\)\(C\).pdf](#)
[OPR-#494148-v1-Morehead Final Report Exhibits.PDF](#)

Suzanne,

It looks like the bar is moving forward with a hearing against Morehead.

They have asked us for additional materials, which I attached to this email.

Note, that some of the emails above are already inserted into the report as JPGs.

1. August 13, 2015 email from defense counsel-Pg. 10 footnote 31
2. August 21, 2015 emails—Pg. 10 footnote 31
3. September 24, 2015 emails from (b) (6), (b) (7)(C) to Morehead-Pg. 11 footnotes 37, 38, and 39
4. January 25, 2017 emails between (b) (6), (b) (7)(C) and Morehead-Pg. 16 footnotes 73, 74, and 75
5. October 13, 2015 email (b) (6), (b) (7)(C) to Morehead-Pg. 17 footnote 77
6. March 7, 2017 email Morehead to (b) (6), (b) (7)(C) g. 22 footnote 95
7. Exhibit a-Morehead Transcript
8. Exhibit B-Written Response
9. Exhibit C-Morehead comments

Is there any issue with us providing these docs to the bar?

FYI, we provided the bar and Morehead with a **redacted** version of the report – removing quotes from two sealed defense sentencing memos.

In her written response, Morehead makes reference to the sealed pleadings but does not quote them:

Apparently in other sealed documents filed by (b) (6), (b) (7)(C) additional allegations of misconduct against me were also made to Judge Crabtree, including that I had failed to turn over criminal history and exculpatory information regarding (b) (6), (b) (7)(C) and criminal history pertaining to (b) (6), (b) (7)(C) which were filed on (b) (6), (b) (7)(C), six days before the scheduled (b) (6), (b) (7)(C) sentencing hearing. On April 12, 2021, (b) (6), (b) (7)(C) forwarded the defendant's sealed memo and attachments. (Attachment 87 (b) (6), (b) (7)(C) – Email from (b) (6), (b) (7)(C) with Doc. 191 (Attachment 87-0 Sealed sentencing Memo); Doc. 191-1 (Attachment 87-1 (b) (6), (b) (7)(C) Crim History); Doc. 191-2 (Attachment 87-2 (b) (6), (b) (7)(C) Addl. Crim. History)16; Doc. 191-3 (Attachment 87-3 Jo County Crim Records);

Doc. 191-4 (Attachment 87-4 Articles re: Terra and office).) (b) (6), (b) (7)(C)
asked that I contact him, which I did, to arrange a meeting to go over
the allegations. Because I was no longer counsel of record, I could
not access anything that was filed under seal, so I had not seen any
of the sealed filings prior to (b) (6), (b) (7)(C) sending them to me. (b) (6), (b) (7)(C)
filed a motion to continue the sentencing and asked for a two-week
extension until (b) (6), (b) (7)(C) to respond to the defendant's motion.
The Court granted the motion and set the new sentencing date for
(b) (6), (b) (7)(C).

Nevertheless, we address the criminal history issue in the unredacted portion of the report and
quote the court's decision regarding that issue.

So, we probably don't need to redact the reference above.

Greg Gonzalez
Senior Counsel
U.S. Department of Justice
Office of Professional Responsibility
950 Pennsylvania Ave. NW,
Washington, D.C. 20530

(b) (6)

202-514-5050 fax



From: Alice Walker (b) (6)
Sent: Thursday, January 18, 2024 5:54 PM
To: Gonzalez, Gregory (OPR) (b) (6)
Subject: [EXTERNAL] RE: OPR Bar Referral - RE: Terra Morehead

Here is a list of the documents I would like to obtain if possible:

1. August 13, 2015 email from defense counsel-Pg. 10 footnote 31
2. August 21, 2015 emails—Pg. 10 footnote 31
3. September 24, 2015 emails from (b) (6), (b) (7)(C) to Morehead-Pg. 11 footnotes 37, 38, and 39
4. January 25, 2017 emails between (b) (6), (b) (7)(C) and Morehead-Pg. 16 footnotes 73, 74, and 75

5. October 13, 2015 email (b) (6), (b) (7)(C) to Morehead-Pg. 17 footnote 77
 6. March 7, 2017 email Morehead to (b) (6), (b) (7)(C)-Pg. 22 footnote 95
 7. Exhibit a-Morehead Transcript
 8. Exhibit B-Written Response
 9. Exhibit C-Morehead comments
- Thank you for your assistance.

Alice

From: Gonzalez, Gregory (OPR) <(b) (6)>
Sent: Thursday, January 18, 2024 4:46 PM
To: Alice Walker (b) (6)
Subject: RE: OPR Bar Referral - RE: Terra Morehead

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Can you give me a list of the specific docs you need, so I can run that by management?

Greg Gonzalez
Senior Counsel
U.S. Department of Justice
Office of Professional Responsibility
950 Pennsylvania Ave. NW,
Washington, D.C. 20530
(b) (6)
202-514-5050 fax



From: Alice Walker (b) (6)
Sent: Thursday, January 18, 2024 5:21 PM
To: Gonzalez, Gregory (OPR) (b) (6)
Subject: [EXTERNAL] RE: OPR Bar Referral - RE: Terra Morehead

Greg,

We have had a chance to review the document in relation to evidence we already have, however, there are several things listed in the report that were not provided or we did not have access to during our investigation. What is the next step in seeking access to those documents to use as evidence in our case. The matter has been set for

hearing in May.

Thank you,

Alice L. Walker, Deputy Disciplinary Administrator
Office of the Disciplinary Administrator
701 Southwest Jackson Street – First Floor
Topeka, Kansas 66603-3729

Main: 785-435-8200

Fax: 785-783-8385

(b) (6)

This email or any documents accompanying this transmission may contain confidential information that is legally privileged and is only for the use of the intended recipient. If you are not the intended receiver, the disclosure, copying, distribution or taking of any action in reliance on this email is strictly prohibited. If this e-mail was received in error, please notify: (b) (6) and delete the e-mail and all related information from computer memory. Thank you.



State of Kansas

From: Gonzalez, Gregory (OPR) (b) (6)
Sent: Friday, September 29, 2023 7:32 AM
To: Gayle Larkin (b) (6)
Cc: Alice Walker (b) (6); Matthew Vogelsberg (b) (6)
Subject: RE: OPR Bar Referral - RE: Terra Morehead

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Disciplinary Administrator Larkin,

Pursuant to your September 28, 2023 request, please find attached a redacted version of the Office of Professional Responsibility's (OPR) June 21, 2023 report of investigation in (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) concluding that former Assistant United States Attorney Terra Morehead committed professional misconduct. OPR provides this report pursuant to your September 28, 2023 agreement to keep OPR's report confidential, consistent with Kansas Supreme

Court Rule 237, which governs confidentiality regarding disciplinary investigations and proceedings in Kansas. Please note that OPR's conclusions are based on a preponderance of the evidence standard, and that the redacted portions of OPR's report reference information obtained from sealed pleadings.

OPR would appreciate learning the results of any investigation your office conducts in this matter.

With regard to your additional request to obtain the documents underlying OPR's report, each document requested will require an individual review. After you have had an opportunity to review OPR's June 21, 2023 report of investigation, please contact me to discuss the procedures for disclosure of the specific documents necessary for your disciplinary proceedings.

Thank you,

Greg Gonzalez
Senior Counsel
U.S. Department of Justice
Office of Professional Responsibility
950 Pennsylvania Ave. NW,
Washington, D.C. 20530

(b) (6)

202-514-5050 fax



From: Gayle Larkin (b) (6)
Sent: Thursday, September 28, 2023 4:15 PM
To: Gonzalez, Gregory (OPR) (b) (6)
Cc: Alice Walker (b) (6); Matthew Vogelsberg (b) (6) >
Subject: [EXTERNAL] RE: OPR Bar Referral - RE: Terra Morehead

Dear Mr. Gonzalez:

Attached please find a letter to Jeffrey Ragsdale requesting a copy of the OPR report. If you would, please provide my letter to Mr. Ragsdale. Please let me know if you have any questions.

Sincerely,

Gayle Larkin

From: Gonzalez, Gregory (OPR) (b) (6)
Sent: Thursday, September 28, 2023 7:53 AM
To: Gayle Larkin (b) (6)
Cc: Alice Walker (b) (6); (b) (6); jambrosio
(b) (6); Brubacher, Kate (USAKS)
(b) (6) Masling, Mark (ODAG) (b) (6)
Subject: OPR Bar Referral - RE: Terra Morehead

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Disciplinary Administrator Larkin,

Attached please find OPR's referral of the conduct of former AUSA Terra Morehead.
Please let me know if you have difficulty opening the attachment.

Thank you,

Greg Gonzalez
Senior Counsel
U.S. Department of Justice
Office of Professional Responsibility
950 Pennsylvania Ave. NW,
Washington, D.C. 20530

(b) (6)
202-514-5050 fax



From: [Ragsdale, Jeffrey \(OPR\)](#)
To: [Cummings, John M. \(OPR\)](#)
Subject: FW: Additional Morehead Coverage
Date: Thursday, May 27, 2021 8:59:15 AM

fyi

From: Westenberg, Eric (OPR) (b) (6)
Sent: Thursday, May 27, 2021 8:55 AM
To: Ragsdale, Jeffrey (OPR) (b) (6); Drouet, Suzanne (OPR)
(b) (6)
Subject: Additional Morehead Coverage

<https://www.abajournal.com/news/article/judge-cuts-sentence-after-defense-lawyer-claims-shady-shenanigans-by-federal-prosecutor>



MEMORANDUM

TO: Neil Hurley

FROM: John Sciortino
Lyn Hardy

SUBJECT: Proposed Interviews for OPR Investigation of AUSA Terra Morehead (DKS), Matter # 201300382

As you requested, this memo provides background and proposes interviews for investigating the four misconduct allegations pending against District of Kansas AUSA Terra Morehead.

Relevant Criminal Management in USAO

- 09/2002 – subject hired to handle PSN cases; her original KC Criminal Supervisor was (b) (6), (b) (7)(C)
- 08/2007 – Marietta Parker promoted to First Assistant; (b) (6), (b) (7)(C) becomes KC Criminal Supervisor
- 12/2010 – (b) (6), (b) (7)(C) retires; Mike Warner hired as First Assistant (b) (6), (b) (7)(C) still KC Criminal Supervisor)
- 07/2012 – (b) (6), (b) (7)(C) replaces (b) (6), (b) (7)(C) as KC Criminal Supervisor
- “recently” – Mike Warner replaces (b) (6), (b) (7)(C) as KC Criminal Supervisor, while remaining First Assistant; however, (b) (6), (b) (7)(C) is “Criminal Coordinator” [“Criminal Coordinator” is considered more of an “upper management” position, and it is over the Criminal Supervisors]
- “recently” – Mike Warner steps down as FAUSA, due in part to headaches over Morehead

Allegation #1: Subject abused her official position and had a conflict of interest by initiating and pursuing a grand jury investigation against a private citizen, (b) (6), (b) (7)(C), who had filed a civil suit against a friend of hers, DEA Special Agent (b) (6), (b) (7)(C)

Basic Chronology

- 07/10/2003 – traffic accident, “road rage” incident; DEA SA (b) (6), (b) (7)(C) arrested and struck the other driver, (b) (6), (b) (7)(C)
- (b) (6), (b) (7)(C) -- (b) (6), (b) (7)(C) charged with a state felony criminal damage to property, reckless driving, and possession of drug paraphernalia in Wyandotte County.
- 03/16/2004 – (b) (6), (b) (7)(C) goes to the “Bullet Hole” and buys a gun; does not acknowledge on ATF 4473 that he is under felony indictment; also uses old address on the form; NICS hit went to ATF.
- (b) (6), (b) (7)(C) – (b) (6), (b) (7)(C) files his civil suit against (b) (6), (b) (7)(C)
- 02/01/2005 – ATF Agent (b) (6), (b) (7)(C) contacts Morehead, assumes she would not take case, but she does.
- (b) (6), (b) (7)(C) – (b) (3) (A), (b) (6), (b) (7)(C)
- 04/2005 – (b) (6), (b) (7)(C) acquitted in state court?
- 12/2005 – Morehead declines (b) (6), (b) (7)(C) gun case upon instruction from Lanny Welch, then interim US Attorney, who is worried about appearances.
- 08/12/2008 – email in which Morehead references “partying” at the PSN conference at the NAC with (b) (6), (b) (7)(C) and others later in the month
- 03/02/2009 – long email exchange between civil AUSA (b) (6), (b) (7)(C) and Morehead; starts with, “Sean, can you get me a copy of your file in the (b) (6), (b) (7)(C) case? Because we didn’t pursue charges my file was purged of the investigative file. Please get this to me as soon as possible.”
- 03/04/2009 – Morehead and (b) (6), (b) (7)(C) email chain continuing to exchange information about (b) (6), (b) (7)(C) marijuana use and claimed physical and psychological conditions.
- (b) (6), (b) (7)(C) -- 19-day bench trial in (b) (6), (b) (7)(C) (FTCA suit) commences in US District Court (Judge Julie A. Robinson; former AUSA); USAO civil AUSAs defend suit
- (b) (6), (b) (7)(C) testifies

- (b) (6), (b) (7)(C) – Judge Robinson grants motion *in limine* barring Supervisory AUSA (b) (6), (b) (7)(C) from testifying as to (b) (6), (b) (7)(C) credibility; (b) (6), (b) (7)(C) lack of credibility (based on (b) (6), (b) (7)(C) decision).
- 05/28/2009 – Email from Morehead to (b) (6), (b) (7)(C) saying “I got a really good one [apparently a photograph] of me, you and E. I’ll treasure it forever.”
- 09/18/2010 – email exchange between Morehead and (b) (6), (b) (7)(C) regarding (b) (6), (b) (7)(C) opinion below (?) discussing how (b) (6), (b) (7)(C) is so gigliood”; Morehead specifically discusses how they can keep using (b) (6), (b) (7)(C) specifically says “I say let’s continue using him. . . .”
- 09/19/2010 – email from subject to (b) (6), (b) (7)(C) “Mr. Grissom was in here today . . .” Discusses how subject and the US Attorney had information from the previous grand jury investigation that could be of help in the civil case, but that it couldn’t be used.”
- (b) (6), (b) (7)(C) – US District Court opinion in FTCA suit against USA finding (b) (6), (b) (7)(C) badly at fault, disparaging (b) (6), (b) (7)(C) credibility while finding (b) (6), (b) (7)(C) to be credible; awarding (b) (6), (b) (7)(C) \$833,250 plus post-judgment interest.
- 10/01/2010 – email from (b) (6), (b) (7)(C) attaching (b) (6), (b) (7)(C) order and advising, “if you need to call (b) (6), (b) (7)(C) as a witness or use him as an affiant, please talk with (b) (6), (b) (7)(C) or me beforehand. . . .”
- 10/05/2011 – email from Morehead to (b) (6), (b) (7)(C) and other agents regarding a case, and referring to them as the “Steamy McDreamy” team.
- 01/06/2012 – email exchange between (b) (6), (b) (7)(C) and Morehead regarding meeting at “Twisters,” probably a bar.
- 06/08/2012 – warm email exchange between Morehead and (b) (6), (b) (7)(C) in which (b) (6), (b) (7)(C) refers to her as “Boo,” and at one point Morehead writes to him, “Love you for that.”
- 07/23/2012 – semi-flirtatious email exchange between (b) (6), (b) (7)(C) and Morehead re “a word of advice to all my guy friends”
- 12/10/2012 – flirtatious email between Morehead and (b) (6), (b) (7)(C) about the “big bruise” he gave her the last time they were at the NAC together (which turns out to be her tripping over a rock)

Points from Subject’s Written Response

- 03/2004 – ATF SA (b) (6), (b) (7)(C) receives an NICS hit regarding (b) (6), (b) (7)(C) purchase of a firearm at The Bullet Hole store; sale went forward but should have been denied (there was some delay) due to (b) (6), (b) (7)(C) pending felony charge
- 04/07/2004 – SA (b) (6), (b) (7)(C) goes to address (b) (6), (b) (7)(C) put on 4473 to retrieve gun; learns that

(b) (6), (b) (7)(C) doesn't live there

- 02/01/2005 – Then-Criminal Supervisor (b) (6), (b) (7)(C) assigns case to subject; “While I knew little about the (b) (6), (b) (7)(C) incident at the time, I believe (b) (6), (b) (7)(C), as the Criminal Supervisor, was well informed and aware of the circumstances.”
- (b) (3) (A), (b) (6), (b) (7)(C)
- 03/02/2005 – (b) (6), (b) (7)(C) lawyer calls subject and also supervisory AUSA (b) (6), (b) (7)(C) to complain that USA is harassing her client because of his suit against the DEA
- 04/2005 – subject prepares draft indictment (b) (3) (A), (b) (5), (b) (6), (b) (7)(C)
- 12/23/2005 – USAO management instructs subject to close the (b) (6), (b) (7)(C) case due to (b) (6), (b) (7)(C) civil suit; subject declines based on “minimal federal interest”
- 05/18/2006 – well after (b) (6), (b) (7)(C) file closed, subject first meets DEA SA (b) (6), (b) (7)(C) worked a big multi-defendant wiretap case together, which went to trial in Spring of 2009, during which they became “professional friends”

Proposed Interviews

(b) (5), (b) (6), (b) (7)(C)

Allegation #2: AUSA Morehead abused her official position by disparaging the honesty and competence of KCKPD Detective (b) (6), (b) (7)(C) who provided testimony favorable to (b) (6), (b) (7)(C) in state criminal and federal civil proceedings, and by indicating that future cases involving (b) (6), (b) (7)(C) would not be accepted for federal prosecution.

Basic Chronology

- 07/10/2003 – traffic accident, “road rage” incident; DEA (b) (6), (b) (7)(C) arrested and struck the other driver, (b) (6), (b) (7)(C)
- (b) (6), (b) (7)(C) charged with a state felony criminal damage to property, reckless driving, and possession of drug paraphernalia in Wyandotte County; (b) (6), (b) (7)(C) is the investigating detective.
- (b) (6), (b) (7)(C) testifies in (b) (6), (b) (7)(C) civil suit
- 04/13/2010 – Wyandotte Co. Undersheriff (b) (6), (b) (7)(C) informs (b) (6), (b) (7)(C) that his services as a reserve deputy are no longer needed.
- 09/27/2010 – US District Court opinion in FTCA suit against USA finding (b) (6), (b) (7)(C) badly at fault, disparaging (b) (6), (b) (7)(C) credibility while finding (b) (6), (b) (7)(C) to be credible; awarding (b) (6), (b) (7)(C) \$833,250 plus post-judgment interest.

Opinion notes that (b) (6), (b) (7)(C) was the detective assigned to investigate the criminal damage to property charge against (b) (6), (b) (7)(C)

[REDACTED]

Footnote 75: (b) (6), (b) (7)(C)

[REDACTED]

- 06/29/2009 – subject emails Wyandotte Co. Undersheriff (b) (6), (b) (7)(C) that AUSAs had had “several issues with (b) (6), (b) (7)(C) bungling investigations that he knew were going to be federal cases.”; email attached a 1998 decision by US District Judge Vratil in (b) (6), (b) (7)(C) granting a motion to suppress apparently on the grounds that the scope of the warrant had

been executed. This decision apparently reflects poorly on (b) (6), (b) (7)(C) credibility.

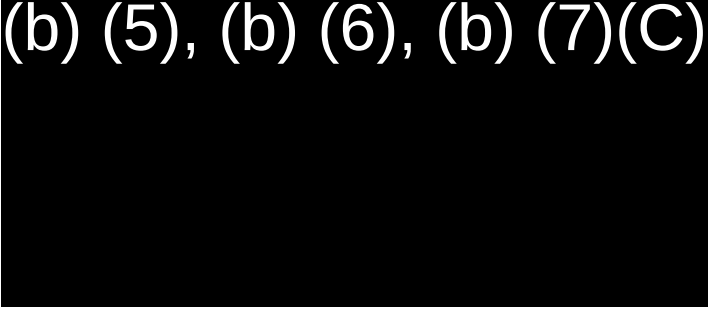
- 2009 – subject makes a presentation at the KCKP Academy at which she publicly identified (b) (6), (b) (7)(C) as “giglioed,”
- (b) (6), (b) (7)(C) – US District Court order in (b) (6), (b) (7)(C) dismissing some claims in (b) (6), (b) (7)(C) whistleblower/ retaliation lawsuit on statute of limitations grounds
- 07/24/2012 – email exchange between subject and Jerry Gorman, Wyandotte Co. district attorney; subject speaks contemptuously of (b) (6), (b) (7)(C) “twisted” lawsuit and writes, “hopefully that was the first step to (b) (6), (b) (7)(C) getting \$0.”
- 10/10/2012 – subject emails (b) (6), (b) (7)(C) a newspaper article regarding the fact that subject has been ordered to testify in (b) (6), (b) (7)(C) civil suit; subject writes, “How do you think the AP got this story? What a -----!”
- (b) (6), (b) (7)(C) – Summary judgment order in (b) (6), (b) (7)(C) rejecting all whistleblower claims; decision generally concludes that Giglio issues regarding (b) (6), (b) (7)(C) were valid

Points from Subject’s Written Response

- Prior to 2002 – subject was well-aware of (b) (6), (b) (7)(C) from working extensively with KCKPD
- Unknown date – first learned of (b) (6), (b) (7)(C) problem in a “PreIndictment Conference” meeting in which AUSAs (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) informed her that two of her cases were “potentially problematic” because (b) (6), (b) (7)(C) was the detective. Subject was not permitted to pursue the two cases.
- Subject participated in multiple training sessions during 2008-09 for the KCKPD; during these sessions, subject covered *Giglio* and used (b) (6), (b) (7)(C) problem as an illustrative example, “because it ws a published opinion involving a KCKPD employee.”
- Acknowledged that she emailed the (b) (6), (b) (7)(C) opinion to Wyandotte Co. Undersheriff (b) (6), (b) (7)(C) in June 2009. Also had a phone conversation with (b) (6), (b) (7)(C) in which she mentioned that the USAO would most likely not file a case in which (b) (6), (b) (7)(C) was a necessary witness. Subject may have made similar statements to another deputy in that office.
- Asserts that (b) (6), (b) (7)(C) seriously compromised two other cases she prosecuted at the USAO.
- (b) (6), (b) (7)(C) was fired by the KCK Community College Police Dept. for insubordination.
- General thrust is that her Giglio concerns about (b) (6), (b) (7)(C) are valid

Proposed Interviews

(b) (5), (b) (6), (b) (7)(C)



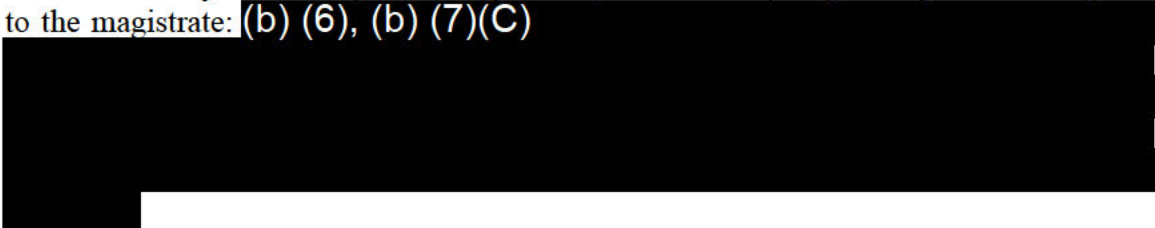
Allegation #3: AUSA Morehead coerces drug defendants with prior qualifying convictions into waiving their rights to a detention hearing and possible pretrial release pursuant to 18 U.S.C. § 3142 by threatening to file 21 U.S.C. § 851 notices when they contest her detention requests.

Basic Chronology

- [subject admits that “since early 2008, if I was aware that a defendant possessed any prior drug convictions and they indicated a desire to seek pretrial release, I have told their attorneys that I would file the §851 notice. . . .”] Elsewhere in her written response, she says she has been employing the practice since 2007.
- 09/03/2010 – email to response to defense attorney request for a plea offer in which subject writes, “Because of all the boneheaded motions you file, I will be filing the 851 notice next week, so he’ll be looking at a minimum of 20 years. I assumed based on the motions filed that he was going to trial. I your motions are withdrawn before I file the 851 notice, then he can plead straight up to the conspiracy (count 1) and he’d get 3 levels off [for acceptance of responsibility]. I won’t agree to anything else. . . .”
- 05/31/2011 – email in which subject threatens to file 851 notice subjecting defendant to a mandatory life sentence “which I will promptly do if I have to respond to any pre-trial motions.”
- 08/02/2012 – email from AUSA (b) (6), (b) (7)(C) to subject saying, “I know you have taken the position in this case that defendants with potential 851’s need to waive detention or you will file the 851. Quite frankly, you might want to file one or both 851s on this guy anyway so you may not want to raise the expectation that if he waives you won’t file it.”
- Multiple of the subject’s emails generally confirm her personal policy to file 851 notices against eligible defendants who contest detention, but also against eligible defendants who file other motions (suppression, etc.).

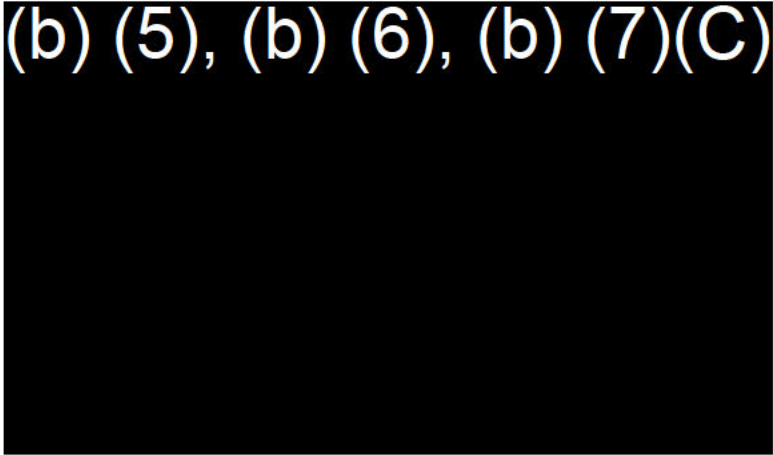
Points from Subject’s Written Response

- Asserts without explanation that USAM § 9-27.300 does not preclude the practice
- Says she started the practice after hearing from a defense attorney that that’s the way they do things in NDCA Sacramento Division [that’s actually EDCA]
- Says got express permission from AUSA (b) (6), (b) (7)(C), her criminal supervisor at the time
- Says she believes (b) (6), (b) (7)(C), then First Assistant, was also aware of her practice
- Says she never represented the practice as the USAO’s “policy,” but only as her “provision”

- Since hearing for the first time that the office objected to the practice in the OPR referral letter, she has ceased it.
 - “I believe that this negotiation method was an appropriate practice. I had supervisory approval to proceed with this practice during the time I engaged in [it].”
 - Subject attached a 08-07-2012 detention hearing transcript in (b) (6), (b) (7)(C) where the defense attorney was outraged at the practice, and she unapologetically acknowledged it to the magistrate: (b) (6), (b) (7)(C)
- 

Proposed Interviews

(b) (5), (b) (6), (b) (7)(C)



Allegation #4: AUSA Morehead violated the Department's "*Petite Policy*" by indicting a defendant, (b) (6), (b) (7)(C), who had been previously acquitted of a factually-related state offense, without first seeking a waiver from the OEO, as required by USAM § 9-2.

Basic Chronology

- 09/27/2011 – argument at DMV in Mission, KS over alleged line-cutting. One of the parties to the argument called her friend (b) (6), (b) (7)(C) who arrived at the location on a motorcycle, joined the argument and at some point displayed a firearm, chambered a round, and pointed it at the person who was arguing with his friend.
- “late 2012” – according to FAUSA Mike Warner, (b) (6), (b) (7)(C) was acquitted on 5 municipal court misdemeanors in Mission, KS, municipal court in late 2012. The Mission city prosecutor, (b) (6), (b) (7)(C), was reportedly ‘upset’ over the acquittals. He reported to (b) (6), (b) (7)(C) defense attorney that he was going to pursue this case ‘federally.’ (b) (6), (b) (7)(C) apparently next spoke with Mission, KS police chief, (b) (6), (b) (7)(C) of AUSA Terra Morehead. AUSA Morehead subsequently filed the User in Possession charge in federal court ostensibly per referral from her husband – and in apparent retaliation for the municipal court acquittals.”
- 03/13/12 -- USAO case opened by subject and authorized by (b) (6), (b) (7)(C)
- 03/13/2012 – email from subject to ATF SA (b) (6), (b) (7)(C): “I hear from (b) (6), (b) (7)(C) that you might be looking for busy work. I got a request from the Mission PD to do a firearm case. I have their reports – it’s a user in possession of a firearm – so not a real sitting on the edge of your seat thrill ride, but the suspect has a concealed carry permit and acted as a vigilante showing up to the driver’s license bureau and displaying his weapon in connection with a verbal altercation that he was not a party, too. When he was arrested he had some marijuana and paraphernalia in his possession and admitted that he was a frequent user of marijuana. Mission has sent the marijuana off for testing, but I will need a nexus [interstate commerce] on the gun. The suspect is (b) (6), (b) (7)(C). They charged him with a few misdemeanors and the city judge found him not guilty b/c it was ‘just a misunderstanding.’ The chief doesn’t like the fact that he had this vigilante attitude and asked that we go ahead and prosecute him. Can you pull together any loose ends?”
- 03/19/2012 – email from ATF SA (b) (6), (b) (7)(C) to subject: “What are you needing done for this case? I can get you nexus if that is what you are looking for, I just need the firearm information.” Subject replies by email, “After our conversation, it is apparent to me that you are not the right person for this case. Please disregard my request and I will find another agent that is the right person. Thanks.”
- 03/19/2012 – email from ATF Group Supervisor (b) (6), (b) (7)(C) to subject: “I have discussed the below with S/A (b) (6), (b) (7)(C). First of all, let me apologize on behalf of (b) (6), (b) (7)(C) and my group. I have found (b) (6), (b) (7)(C) to be a good, hardworking young Agent in my group, but I do not approve of the way he has handled this.”

- 03/19/2012 – subject replies to (b) (6), (b) (7)(C) “I appreciate your comments. I don’t know (b) (6), (b) (7)(C) but have a great love for ATF in general. I had a ‘special’ request from the Mission Chief of Police to do this case and when I presented it to (b) (6), (b) (7)(C) he concurred that we should do it. . . . I was a little taken aback by (b) (6), (b) (7)(C) attitude with this one, but will chalk it up to him not being familiar with me or how we roll in Kansas. Guess no know I am a hard charger and pretty high maintenance. . . . I just want to put the bad guys in jail and I am very passionate about my work and forget that things are different elsewhere.”
- 3/19/2012 – subject forwards the whole email exchange with ATF to AUSA (b) (6), (b) (7)(C), who is her criminal supervisor at that time.
- 03/20/2012 – subject gets an email from her (b) (6), (b) (7)(C), a detective with the Mission KS police dept; forwards an email from Mission PD Capt. (b) (6), (b) (7)(C) indicating that (b) (6), (b) (7)(C) wants his gun back and “I am sure that this is the case you said would be ending up in Federal court”; (b) (6), (b) (7)(C) asks subject to email (b) (6), (b) (7)(C)
- 03/20/2012 – email from subject to (b) (6), (b) (7)(C) telling him not to give (b) (6), (b) (7)(C) his gun back because it’s a violation of federal law for drug users to possess a firearm, and it would be a violation of federal law also for the person who transferred the firearm to the drug user
- 04/23/2012 – email from subject to ATF Group Supervisor (b) (6), (b) (7)(C) “I still need the nexus on the gun recovered from the Mission PD from this gun on September 27, 2011. Can you assign someone to get that done?” (b) (6), (b) (7)(C) replies: “Sure, is this an ATF investigation?” Subject replies: “It is the one I called (b) (6), (b) (7)(C) n a while back. The guy is an admitted drug user, but has a concealed carry permit and showed up at the driver’s license bureau after a friend of his had a verbal argument with someone there. He threatened to shoot the guy, racked one in the chamber and said because he had a concealed carry he could pull out his gun whenever he wanted to. The Mission Chief really wants this done, but (b) (6), (b) (7)(C) without knowing the facts, said it wasn’t worthy of federal prosecution.¹ I will have Mission handle it, if you can just get me a nexus.”
- 05/03/2012 – ATF assigns case to SA (b) (6), (b) (7)(C)
- (b) (6), (b) (7)(C) – indictment; during GJ testimony, (b) (3) (A), (b) (6), (b) (7)(C)
- 12/04/2012 – email from subject to defense attorney (in response to offer to forfeit gun in exchange for dismissal): “He can plead and I would agree to a 1 year of probation **and** he can forfeit the gun, if he does in a very prompt fashion. . . . I am prepared to go the long haul with this overreactive potsmoking vigilante and if I do that he would be looking at a term of imprisonment after I get him convicted.”

¹ In subject’s written response, she says that she “never heard back from Agent (b) (6), (b) (7)(C) and do not know whether he discussed the matter with his supervisor.” (b) (5)

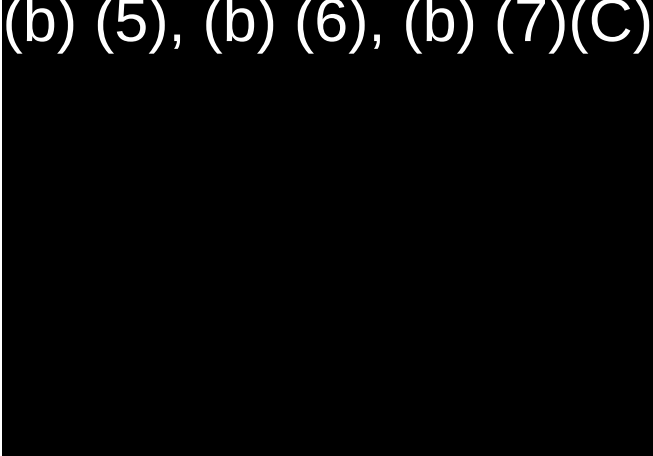
- 12/09/2012 – email from subject to defense attorney (who had been complaining about his client being prosecuted federally after acquittal): “Our office often dually prosecutes cases that have been unsuccessfully prosecuted on the local or state level. So this is nothing new in the US Attorney’s Office. . . . [T]he decision was made, above my pay grade, to prosecute this case. I made a reasonable offer to resolve the case, but dismissal is not an option. Surrendering the firearm or giving up his CCH would not prevent a similar event in the future because your client would not be prohibited from having a firearm.”
- 03/12/2013 – email from subject to Criminal Division Chief (b) (6), (b) (7)(C) (Topeka) discussing results of DNA analysis of (b) (6), (b) (7)(C) marijuana pipe
- 04/05/2013 – (b) (6), (b) (7)(C) matter reassigns case to Criminal Chief (b) (6), (b) (7)(C); case resolved with pretrial diversion
- 06/12/2013 – OPR asks whether USAO thought to ask OEO for a retroactive Petite waiver.
- 07/01/2013 – OEO tells USAO they need a retroactive Petite waiver
- 08/09/2013 – USAO obtains a retroactive Petite waiver from OEO

Points from Subject’s Written Response

- Says elements of federal charge are different from elements of state charge (doesn’t matter under Petite policy)
- Says case was appropriate under office prosecutive guidelines because violence was threatened during the offense
- Says Mission PD Police Chief John Simmons contacted her and expressed dissatisfaction with outcome in state court; says (b) (6), (b) (7)(C), Mission PD Detective (b) (6), (b) (7)(C), was well aware of federal gun law and her willingness to prosecute gun cases
- Says Mission Municipal Court is not a “court of record.”
- Says she informed her supervisor (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had been acquitted of city charges
- Says she has prosecuted lots of user in possession cases
- Says she recalls specifically brought up the fact that (b) (6), (b) (7)(C) was acquitted in state court when pitching the case to the USAO’s indictment review committee, and nobody said anything about Petite

Proposed Interviews

(b) (5), (b) (6), (b) (7)(C)





U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530

April 3, 2014

MEMORANDUM

TO: The File

FROM: Bill Birney

SUBJECT: AUSA Terra Morehead, D. Ks.

In an April 2, 2014 email to EOUSA, the U.S. Attorney's Office for the District of Kansas forwarded a March 31, 2014 letter from defense attorney (b) (6), (b) (7)(C) to Criminal Division Chief (b) (6), (b) (7)(C) alleging that AUSA Terra Morehead falsely represented to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) was not entitled to downward departure at sentencing because he did not provide substantial assistance in connection with the investigation and prosecution of a co-defendant or the investigation and prosecution of an unrelated murder case. According to (b) (6), (b) (7)(C) AUSA Morehead's representations were refuted by a Kansas City homicide detective who was present at (b) (6), (b) (7)(C) proffer and stated that (b) (6), (b) (7)(C) proffer was "definitely valuable." In addition, (b) (6), (b) (7)(C) alleged that Morehead's representations were contradicted by a Jackson County, Missouri prosecutor who stated that (b) (6), (b) (7)(C) was "helpful" and that he expected to call (b) (6), (b) (7)(C) as a witness in an upcoming murder trial. (b) (6), (b) (7)(C) concluded by alleging that Morehead had "withheld Brady material pertaining to mitigation at sentencing, and, in fact, created the alleged existence of aggravated circumstances this prosecutor may have argued at sentencing." AUSA (b) (6), (b) (7)(C) contacted both the homicide detective and the state prosecutor and confirmed that Morehead's representations to (b) (6), (b) (7)(C) regarding (b) (6), (b) (7)(C) cooperation with local law enforcement officials were not in fact accurate.

(b) (5)

Please note that Morehead is the subject of an ongoing OPR investigation assigned to John Sciortino. John conducted interviews and completed a draft report in that matter, (b) (5)



U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530

MEMORANDUM

TO: Robin Ashton

FROM: John Sciortino

SUBJECT: Background Information for AUSA Terra Morehead (DKS)
Matter # 201300382

This memo contains some content cut from the original draft Morehead report, which Neil thought still might be helpful as background information.

(b) (5), (b) (6), (b) (7)(C)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20530

MAR 07 2018

CONFIDENTIAL

The Honorable Stephen R. McAllister
United States Attorney
United States Attorney's Office
for the District of Kansas
500 State Avenue, Suite 360
Kansas City, KS 66101-2433

Dear Mr. McAllister:

By e-mail dated December 8, 2017, Assistant U.S. Attorney (AUSA) Terra Morehead self-reported to the Office of Professional Responsibility (OPR) adverse judicial findings against her that were made by the district court in its (b) (6), (b) (7)(C) memorandum and order vacating the convictions, and dismissing the charges with prejudice, in (b) (6), (b) (7)(C) (b) (6), (b) (7)(C). The matter was also reported to OPR by then-First Assistant U.S. Attorney Emily Metzger by e-mail dated December 11, 2017.

Defendant (b) (6), (b) (7)(C) was charged with drug trafficking and firearm offenses, and was prosecuted at trial by AUSA Morehead. During the trial, the defendant sought to impeach a government witness by calling as a defense witness (b) (6), (b) (7)(C), who faced unrelated federal drug charges in another district. On (b) (6), (b) (7)(C) prior to beginning the defense case, the parties discussed (b) (6), (b) (7)(C) prospective testimony with the court, as well as AUSA Morehead's concern that he might invoke his Fifth Amendment privilege against self-incrimination during the government's cross-examination because of his pending case. Attorney (b) (6), (b) (7)(C) represented (b) (6), (b) (7)(C) in his pending case and participated in the discussion regarding the scope of the government's cross-examination and whether (b) (6), (b) (7)(C) would likely invoke his Fifth Amendment privilege. (b) (6), (b) (7)(C) was then brought into the courtroom, at which time the court briefly explained his Fifth Amendment privilege and instructed him to meet with his attorney before deciding whether he would testify on the defendant's behalf. At the conclusion of this discussion, AUSA Morehead requested and received the court's permission to interview (b) (6), (b) (7)(C) before he testified.

AUSA Morehead did not speak with (b) (6), (b) (7)(C) and instead spoke with (b) (6), (b) (7)(C). Later that same afternoon, (b) (6), (b) (7)(C) advised (b) (6), (b) (7)(C) attorney that her client was no longer willing to testify and would invoke his Fifth Amendment privilege. (b) (6), (b) (7)(C) attorney advised the

court that he believed that (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) AUSA Morehead disagreed with this assertion and told the court that (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) declined the court's invitation to comment on her client's decision.

The next morning, the defendant advised the court that he would testify on his own behalf because (b) (6), (b) (7)(C) intended to invoke his Fifth Amendment privilege and therefore would not testify. The defendant also informed the court that when he and (b) (6), (b) (7)(C) were transported together to the detention center at the end of the previous day, (b) (6), (b) (7)(C) told him that AUSA Morehead had told (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) and that (b) (6), (b) (7)(C) then advised (b) (6), (b) (7)(C), "let's step away from this case." Following trial, the jury found the defendant guilty of the two drug trafficking charges and acquitted him on the two firearm charges.

The defendant filed a motion for a new trial based on his claim that AUSA Morehead's statements to (b) (6), (b) (7)(C), leading to (b) (6), (b) (7)(C) decision not to testify, interfered with his Sixth Amendment right to a fair trial. The court held two evidentiary hearings during which the defendant, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) testified. The government did not deny the incident, nor the general content of AUSA Morehead's comments to (b) (6), (b) (7)(C), but argued that there was no violation of the defendant's Sixth Amendment rights. In its memorandum and order, the court made factual findings as to the content of AUSA Morehead's statements to (b) (6), (b) (7)(C), concluding that they (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C). The court also found that AUSA Morehead (b) (6), (b) (7)(C)

that the (b) (6), (b) (7)(C) testimony (b) (6), (b) (7)(C) the defendant's case. Accordingly, the court found that AUSA Morehead violated the defendant's Sixth Amendment right to present a defense by substantially interfering with (b) (6), (b) (7)(C) decision to testify. The court then ruled that this interference prejudiced the defendant both (b) (6), (b) (7)(C) and by leading the defendant to feel compelled to testify, which exposed him to cross-examination about the nature of his multiple prior convictions. Concluding that a new trial would not be an adequate remedy, the court vacated the convictions on both counts and then dismissed the charges with prejudice.

OPR has initiated an inquiry into this matter. Please ask AUSA Morehead to prepare a detailed written response to each of the court's adverse findings. In addition, please ask AUSA Morehead to answer the following specific questions regarding the events that occurred on (b) (6), (b) (7)(C)

1. Where did AUSA Morehead speak with (b) (6), (b) (7)(C), what was the purpose of the meeting, and how long did the meeting last? AUSA Morehead should identify who else, if anyone, was present at the meeting between (b) (6), (b) (7)(C) and AUSA Morehead.
2. Where was (b) (6), (b) (7)(C) when AUSA Morehead spoke with (b) (6), (b) (7)(C), and was he in a location where he could hear or observe the conversation?

3. AUSA Morehead should describe, in as much detail as possible, what was said during her conversation with (b) (6), (b) (7)(C). Her answer should include the following:
 - (a) Who raised the subject matter of (b) (6), (b) (7)(C); Fifth Amendment privilege and why was it raised?
 - (b) At any time during AUSA Morehead's conversation with (b) (6), (b) (7)(C) was the prospective testimony of (b) (6), (b) (7)(C) discussed? If so, describe what was said. If the answer is no, why not?
 - (c) At any time during the conversation with (b) (6), (b) (7)(C) did AUSA Morehead refer to (b) (6), (b) (7)(C) pending case, or mention that she knew the prosecutors in the case? If so, describe what was said in as much detail as possible and why his pending case was brought up during the conversation.
 - (d) Defendant (b) (6), (b) (7)(C) advised the court that, based on a conversation he had with (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C), he understood that AUSA Morehead made a statement during her conversation with (b) (6), (b) (7)(C) to the effect that if (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) During AUSA Morehead's conversation with (b) (6), (b) (7)(C), did AUSA Morehead make such a statement or use similar words? If so, specify what she said and explain why she made the statement.
4. When AUSA Morehead was advised on (b) (6), (b) (7)(C), by defendant (b) (6), (b) (7)(C) attorney that he planned to call (b) (6), (b) (7)(C) as a witness during the defense case, she requested and received the court's permission to speak with (b) (6), (b) (7)(C) about his prospective testimony. Did AUSA Morehead ever speak with (b) (6), (b) (7)(C) about his prospective testimony and if not, why not?
5. Did AUSA Morehead discuss these events with a supervisor at or near the time they occurred, and, if so, what if any advice was she given?

AUSA Morehead's written submission should be her personal account, and should not be edited or revised by any Department employee. In addition, AUSA Morehead should provide OPR with copies of all documents that would aid its review, including any notes, e-mails, memoranda, pleadings, transcripts, and any other documents relevant to the OPR inquiry. Please be advised that OPR has obtained all relevant public filings, so they do not have to be provided. AUSA Morehead may contact other personnel to obtain documents, but should refrain from discussing this matter with any potential witnesses. She should also identify any other person(s) who could provide relevant information about this matter, but she should not contact potential witnesses for obtaining written or oral statements.

AUSA Morehead should also provide OPR with information regarding her professional background and experience, including length of service and positions held with the Department. In addition, to assist OPR in determining which ethical rules apply, AUSA Morehead should identify any state in which she is licensed to practice law, and her category of bar membership (*i.e.*, active, inactive, non-resident, etc.).

For your information and to assist AUSA Morehead in preparing her response, enclosed is a document describing the policies and procedures that OPR follows in handling allegations of misconduct made against Department attorneys.

Please ask AUSA Morehead to provide her written response and all responsive documents in electronic format, either as attachments to an e-mail, or on a disk mailed via Federal Express to OPR, by March 16, 2018. If the response is attached to an e-mail, the e-mail should be directed to OPR Assistant Counsel Laura A. Ingersoll. She may, but is not required to, provide you with a courtesy copy of her response. In addition, OPR welcomes any additional information or comments you may wish to provide by March 16, 2018.

OPR appreciates your assistance in this matter. If you or AUSA Morehead have any questions, please contact me, or Assistant Counsel Laura Ingersoll at (b) (6) or by e-mail at (b) (6)

Sincerely,



Robin C. Ashton
Counsel

Enclosure

cc: Terra Morehead
Assistant U.S. Attorney
District of Kansas (w/encl.)



U.S. Department of Justice

Office of Professional Responsibility

*950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530*

MAY 15 2014

The Honorable Barry R. Grissom
United States Attorney
United States Attorney's Office
for the District of Kansas
500 State Avenue, Suite 360
Kansas City, KS 66101-2433

Dear Mr. Grissom:

By e-mail dated April 2, 2014, you forwarded to the Executive Office for U.S. Attorneys (EOUSA) a letter dated March 31, 2014, from attorney (b) (6), (b) (7)(C), alleging that Assistant U.S. Attorney (AUSA) Terra D. Morehead improperly withheld favorable evidence material to the sentencing of his client in (b) (6), (b) (7)(C). In his letter, (b) (6), (b) (7)(C) specifically alleged that AUSA Morehead withheld information that (b) (6), (b) (7)(C) had provided valuable evidence to a Kansas City, Kansas Police Department (KCKPD) detective and a Jackson County prosecutor regarding an unsolved 2009 homicide. EOUSA forwarded your e-mail to the Office of Professional Responsibility (OPR). We have initiated an inquiry into the allegations.

To assist us in our inquiry, please ask AUSA Morehead to prepare a written response to the allegations contained in (b) (6), (b) (7)(C) March 31, 2014 letter (copy enclosed). In her written response, AUSA Morehead should: (1) provide a detailed chronology of her communications with (b) (6), (b) (7)(C) and others, including federal, state, and local law enforcement agents and officers, concerning Defendant (b) (6), (b) (7)(C) cooperation, or lack thereof, with state and federal law enforcement and prosecutors; and (2) describe and explain her position as to whether (b) (6), (b) (7)(C) cooperation efforts merited consideration, as of March 31, 2014, in connection with his sentencing in the pending federal criminal case. In addition, AUSA Morehead should include with her written response: (1) any documents (e.g. e-mails; memoranda; phone records) reflecting her communications with (b) (6), (b) (7)(C) or others on the subject of (b) (6), (b) (7)(C) alleged cooperation with law enforcement authorities; and (2) any documents reflecting or comprising office policies regarding motions made pursuant to section 5K1.1 of the United States Sentencing Guidelines.

AUSA Morehead's written response should be her personal account of the conduct at issue and should not be edited or revised by any Department of Justice or USAO employee. AUSA Morehead should provide OPR with all documents that would aid its review of this matter. AUSA Morehead may contact other personnel if necessary to obtain documents, but she should refrain from discussing the matter with potential witnesses. In her response, AUSA Morehead should identify any witnesses who would be able to provide relevant information and

identify their role in the matter, but should not contact them for purposes of obtaining a written or oral statement.

For your information and to assist AUSA Morehead in preparing her response, enclosed is a document describing the policies and procedures OPR follows in handling allegations of misconduct and judicial findings made against Department attorneys.

Please ask AUSA Morehead to provide her written response and all responsive documents in electronic format either as attachments to an e-mail, or on a disk sent via Federal Express to Assistant Counsel John J. Sciortino on or before June 6, 2014. If it is not feasible for AUSA Morehead to do so, she should contact Assistant Counsel Sciortino to discuss other options. AUSA Morehead may, but is not required to, provide you with a courtesy copy of her response. In addition, we welcome any information or comments you may wish to provide by the same date.

Thank you for your assistance in this matter. If you or AUSA Morehead have any questions, please contact Assistant Counsel Sciortino at (b) (6), or by e-mail at (b) (6)

Sincerely,



Robin C. Ashton
Counsel

Enclosures

cc: AUSA Terra D. Morehead
(with enclosures)

(b) (6)
(b) (6)
(b) (6) PC
(with enclosures)



U.S. Department of Justice

Office of Professional Responsibility

*950 Pennsylvania Avenue, NW, Suite 3266
Washington, DC 20530
(202) 514-3365*

December 15, 2021

Sent via Email and Mail

(b) (6), (b) (7)(C)

FCI Yazoo City Low
Federal Correctional Institution
P.O. Box 5000
Yazoo City, MS 39194

(b) (6), (b) (7)(C)

Dear **(b) (6), (b) (7)(C)**

This Office has reviewed your online complaint in which you alleged that an Assistant U.S. Attorney and your former defense counsel engaged in professional misconduct in connection with your 2007 criminal case and requested an investigation.

The Office of Professional Responsibility (OPR) has jurisdiction to investigate allegations of misconduct involving Department of Justice (DOJ) attorneys that relate to the exercise of their authority to investigate, litigate or provide legal advice, as well as allegations of misconduct by law enforcement personnel when they are related to allegations of attorney misconduct within the jurisdiction of OPR. However, it is the policy of this Office to refrain from investigating issues or allegations that could have been or still may be addressed in the course of litigation, unless a court has made a specific finding of misconduct by a DOJ attorney. Based on our review, we note that you have had the opportunity to raise your claims with the court, the U.S. Court of Appeals for the Tenth Circuit affirmed your conviction, and the U.S. Supreme Court denied your petition for writ of certiorari. There is no evidence that the court has made a finding of misconduct against a DOJ attorney. Accordingly, we concluded that no action by this Office is warranted.

We do not have jurisdiction over private attorneys. Your claims against your defense attorney should be sent to the appropriate state bar that licenses attorneys for review and consideration.

We regret that we are unable to be of assistance to you regarding this matter.

Sincerely,

Office of Professional Responsibility



U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, NW Room 3266
Washington, DC 20530

MAR 28 2018

(b) (6), (b) (7)(C)

Federal Correctional Institution
P.O. Box 4000
Springfield, MO 65801

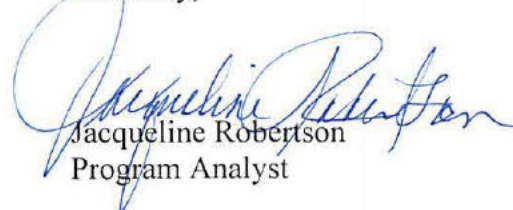
Dear (b) (6), (b) (7)(C):

This is in response to your correspondence to the Office of Professional Responsibility (OPR) in which you alleged that an Assistant United States Attorney for the District of Kansas engaged in misconduct in connection with your case, and requested assistance.

OPR has jurisdiction to investigate allegations of misconduct involving Department of Justice (DOJ) attorneys that relate to the exercise of their authority to investigate, litigate or provide legal advice, as well as allegations of misconduct by law enforcement personnel when they are related to allegations of attorney misconduct within the jurisdiction of OPR. It is, however, the policy of this Office to refrain from investigating issues or allegations that could have been or still may be addressed in the course of litigation, unless a court has made a specific finding of misconduct by a DOJ attorney or law enforcement agent. Based on our review of your correspondence, we have determined that your allegations fall into this category. Accordingly, we concluded that no action by this Office is warranted. You may wish to consult private counsel or contact the nearest Legal Aid Society to determine what additional legal avenues, if any, may be available to you.

We regret that we are unable to be of further assistance to you in this matter.

Sincerely,


Jacqueline Robertson
Program Analyst



U.S. Department of Justice

Stephen R. McAllister
United States Attorney
District of Kansas

Kansas City Office
500 State Avenue
Suite 360
Kansas City, Kansas 66101-2433

Wichita Office
1200 Epic Center
301 N. Main
Wichita, Kansas 67202-4812

TEL: (913) 551-6730
FAX: (913) 551-6541

Topeka Office
444 SE Quincy
Suite 290
Topeka, Kansas 66683-3592

April 16, 2018

Laura A. Ingersoll
OPR Assistant Counsel
Office of Professional Responsibility
950 Pennsylvania Avenue, N.W., Suite 3266
Washington, D.C. 20531

Dear Ms. Ingersoll:

This letter is in response to the letter from the Office of Professional Responsibility (OPR) dated March 1, 2018, which I received by registered mail on March 5, 2018. I am hopeful that my response fully addresses the questions in OPR's letter and demonstrates that the allegations made in the adverse judicial findings made against me by the district court in (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) are unfounded. In my nearly 32-year career as a prosecutor, I have consistently served the Government and the interests of justice to the best of my ability. I have always taken my ethical obligations extremely serious, and recognize that I have a professional responsibility to follow all rules promulgated, not only by the State of Kansas bar, but also those of the Department of Justice. I adhere to unwavering principles of honesty and integrity.

I. *My Career and Background Information*

I consider myself a career prosecutor. I hold an active license in the State of Kansas. I became a state prosecutor in 1986 after graduating from Washburn School of Law in Topeka, Kansas. I went back to my hometown of Greensburg, Kansas and was appointed the Kiowa County Attorney, where I remained for two years as the sole prosecutor handling all matters. I was then hired by the Wyandotte County District Attorney's Office, located in Kansas City, Kansas, in 1998, where I remained for 14 years. As an Assistant District Attorney, I was in charge of the child abuse/sex crimes unit for most of those 14 years. While in the Wyandotte County District Attorney's Office, I prosecuted hundreds of cases, and personally handled 180 felony jury trials, which were primarily homicide or child abuse/sex cases.

In September 2002, U.S. Attorney Eric Melgren hired me to handle primarily Project Safe Neighborhood (PSN) matters in the Kansas City, Kansas office and I worked almost exclusively with cases involving ATF in the northeast quadrant of Kansas. Since being at the U.S. Attorney's Office, I have had around 70 jury trials, including a federal death penalty case, and numerous complicated and lengthy trials. I have consistently worked long hours, sometimes logging in excess of 60 to 70 hours per work week. Throughout my tenure with this office, I have handled one of the highest caseloads in the District of Kansas.

I have received numerous awards and commendations over the past 31 years to include the following: 2000 State of Kansas Attorney General Outstanding Crime Victims Prosecutor of the Year; 2000 Sunflower House Child Advocate Award Outstanding Prosecutor of the Year; 2002 Kansas County & District Attorney Association Prosecutor of the Year; and, 2012 Midwest HIDTA Prosecutor of the Year. In addition, I have received numerous certificates and letters of praise from various local, state and federal agencies. I also received a 2012 commendation letter from Attorney General Eric H. Holder for my handling of the *Abasi Baker, et. al.* prosecution.

In addition to being a prosecutor, I engage in various volunteer activities. Since 1986, I have been a volunteer for the Kansas Guardianship Program, in which I have been appointed by a state court judge to be a guardian and/or conservator for elderly and mentally handicapped individuals. I currently serve ten adults in that capacity, but have assisted dozens of others over the years. I spend countless hours taking care of these individuals' finances, help them to make informed health and welfare decisions, and make sure that they are not being exploited. I purchase clothing and groceries for many of them, take them to doctor and dental appointments, and take them on outings to include Special Olympic activities. Many of these individuals have no family members. In addition, I am on the Board of Directors for the Kansas City, Kansas Special Olympics Huggers, the organization locally that funds and supports activities for the mentally and/or physically disadvantaged in our city. I am also a member of Civitan, which is an international volunteer organization, and I am currently involved with four different clubs, two of which are special needs organizations. I was recognized last fall as the Civitan of the Year for the entire Heartland District, which encompasses a five state region.

II. The (b) (6), (b) (7)(C) case

A. Pretrial and Trial Proceedings

I was assigned the (b) (6), (b) (7)(C) case by my supervisor at the time, (b) (6), (b) (7)(C) in the fall of 2015. (b) (6), (b) (7)(C) was indicted by a federal grand jury on (b) (6), (b) (7)(C) charging him with several narcotic and firearm related charges, including a conspiracy charge. (Doc. 1, Indictment filed (b) (6), (b) (7)(C) Attachment 1.) United States District Court Judge Julie Robinson was assigned to handle the case. (b) (6), (b) (7)(C) filed several pre-trial motions, including several motions to suppress, which were heard on (b) (6), (b) (7)(C) and denied by the court on (b) (6), (b) (7)(C) (Criminal Docket Sheet, Case No. (b) (6), (b) (7)(C) Attachment 2, at 6; Doc. 29, Transcript of Motions Hearing (b) (6), (b) (7)(C) Attachment 3; Doc. 30, Dist. Ct.'s Mem. & Order filed (b) (6), (b) (7)(C) Attachment 4.)

During the course of my prosecution, in February 2016, I was contacted by (b) (6), (b) (7)(C) the defense attorney for (b) (6), (b) (7)(C) who indicated (b) (6), (b) (7)(C) had some information to provide about (b) (6), (b) (7)(C) had been prosecuted in a drug conspiracy case in the District of Kansas by AUSA (b) (6), (b) (7)(C), and he had cooperated during that prosecution. By the time I was aware of (b) (6), (b) (7)(C) he had been already been sentenced and transferred to the Bureau of Prisons custody, and I had to issue a writ to have him returned to the District of Kansas. I was finally able to interview (b) (6), (b) (7)(C) on June 15, 2016. During his proffer interview, he actually provided information about (b) (6), (b) (7)(C) (hereinafter (b) (6), (b) (7)(C)), an individual he had met while incarcerated at the Atchison, Kansas Detention Center. During conversation (b) (6), (b) (7)(C) had with (b) (6), (b) (7)(C) the two men realized that they had both suppliers to (b) (6), (b) (7)(C) of methamphetamine.

I determined that (b) (6), (b) (7)(C) had been sentenced to the Bureau of Prisons' custody in an unrelated prosecution, which was prosecuted by (b) (6), (b) (7)(C) an AUSA in my office. (b) (6), (b) (7)(C) had cooperated in that prosecution. According to (b) (6), (b) (7)(C) was found to be extremely credible, and in fact, (b) (6), (b) (7)(C) had recommended a substantial reduction in (b) (6), (b) (7)(C) sentence based upon the cooperation he provided. I had to arrange for (b) (6), (b) (7)(C) return to Kansas, and I was able to interview him on July 5, 2016. (Handwritten Notes 07/05/16, Attachment 5.) During the interview, (b) (6), (b) (7)(C) provided information that he had been supplying significant quantities of methamphetamine to (b) (6), (b) (7)(C) from early 2012 through the later part of 2012. (b) (6), (b) (7)(C) information served to corroborate another cooperator (b) (6), (b) (7)(C) who was engaging in the drug transaction with (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) did not know each other.

In addition to the information about supplying drugs to (b) (6), (b) (7)(C) was able to provide details about his knowledge of and familiarity with (b) (6), (b) (7)(C) including information about a car transaction between the two men. In my long career, I have encountered hundreds of cooperators like (b) (6), (b) (7)(C) I was amazed at his ability to recall past events, and I was particularly impressed with his ability to provide even insignificant details about incidents from his past.

As a result of (b) (6), (b) (7)(C) information, I was able to secure a Superseding Indictment on (b) (6), (b) (7)(C) expanding the time frame of the conspiracy against (b) (6), (b) (7)(C) back to February 2012. (Doc. 33, Superseding Indictment filed (b) (6), (b) (7)(C) Attachment 6.) The statement provided by (b) (6), (b) (7)(C) as well as all other information from all Government witnesses was provided to (b) (6), (b) (7)(C) attorney (b) (6), (b) (7)(C) during the course of providing him with discovery. On (b) (6), (b) (7)(C) the court had set the case for jury trial to commence on (b) (6), (b) (7)(C) however, the defense filed a motion to continue the trial, which was granted by the court. (See Docket Sheet, Attachment 2, at 9.)

The jury trial was then rescheduled to commence on (b) (6), (b) (7)(C) filed numerous additional pretrial motions, which were addressed by the court. (*Id.* at 10-11.) In preparation for the trial, I interviewed a number of Government witnesses, including (b) (6), (b) (7)(C) who I spoke with on December 1, 2016. (Handwritten Notes 12/01/16, Attachment

7.) (b) (6), (b) (7)(C) confirmed the same information he had previously provided, including the information about the sale of the car to (b) (6), (b) (7)(C)

Prior to the commencement of trial, the parties were required to file witness and exhibit lists. I filed the Government witness list on (b) (6), (b) (7)(C) which specifically referenced (b) (6), (b) (7)(C) as a potential witness. (Doc. 51, Government's Proposed Witness List (b) (6), (b) (7)(C) Attachment 8.) Defense counsel filed his witness list on (b) (6), (b) (7)(C) (Doc. 57, Defendant's Proposed Witness List (b) (6), (b) (7)(C) Attachment 9.) (b) (6), (b) (7)(C) witness list mentioned several individuals including (b) (6), (b) (7)(C). On December 7, 2016, after receiving this filing, I contacted (b) (6), (b) (7)(C) by email about providing me with reciprocal discovery on his witnesses, and he called me later that same day. (Email Exchange 12/07/16, Attachment 10.) Mr. (b) (6), (b) (7)(C) indicated the only witnesses he expected to call were (b) (6), (b) (7)(C) (b) (6), (b) (7)(C). I jotted down notes during the conversation about what he anticipated their testimony to include. (Handwritten Notes 12/07/16, Attachment 11.) I noted for (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) told me "he sold the car to (b) (6), (b) (7)(C) (Id.) Based upon this representation, I thought this was the same (b) (6), (b) (7)(C) whom I had already noticed up in the Government's witness list, because of the reference to the vehicle. (b) (6), (b) (7)(C) never explained that the individual he was expecting to subpoena was not (b) (6), (b) (7)(C) and in fact was his brother with the same first and last name, who was being prosecuted in the Western District of Missouri, or that he had an attorney.

The (b) (6), (b) (7)(C) trial date was actually continued at the request of the defense following the discovery of a piece of evidence by the U.S. Marshal's Office that was thought to have been inadvertently left behind when (b) (6), (b) (7)(C) was originally encountered by them on (b) (6), (b) (7)(C) (See Docket Sheet, Attachment 2, at 12.) Because of issues with the court's calendar, the trial date changed from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) (Id. at 12-13.)

The trial began on Monday, (b) (6), (b) (7)(C) with jury selection, which took the entirety of the day. I received a voicemail from one of my co-workers, AUSA (b) (6), (b) (7)(C) at 10:09 a.m. (b) (6), (b) (7)(C) Voicemail (b) (6), (b) (7)(C) at 10:09 a.m. with corresponding ECF notation, Attachment 12.) (b) (6), (b) (7)(C) had received an email from AUSA (b) (6), (b) (7)(C) who works in the Western District of Missouri, inquiring why the District of Kansas had issued a writ for (b) (6), (b) (7)(C) from their jurisdiction to Kansas for testimony purposes.¹ (Email Exchange (b) (6), (b) (7)(C) 9:30 a.m., Attachment 13.) (b) (6), (b) (7)(C) had apparently presumed that it was our office that had issued the writ, hence his inquiry to (b) (6), (b) (7)(C) was aware that I was the only prosecutor in the office engaged in a drug related matter, and she called my office number and left the voicemail for me about (b) (6), (b) (7)(C) inquiry. I had my office cell phone with me in court, and I was able to listen to (b) (6), (b) (7)(C) voicemail during a break in the proceedings that morning. After listening

¹ The United States Attorney's Office, District of Kansas, Kansas City Office, is approximately 2.5 miles from the United States Attorney's Office, Western District of Missouri, Kansas City, Missouri. Because of the close proximity of the two offices, there is often overlap in prosecutions (b) (6), (b) (7)(C) is actually cross-designated to practice in the Western District, thus she has frequent contact with AUSAs from that office. Both offices house their respective inmates at CoreCivic in Leavenworth, Kansas; however, if either jurisdiction is in need of an inmate being prosecuted in the other jurisdiction a writ *ad-testificandum* is necessary in order to have them transported.

to the call, I called (b) (6), (b) (7)(C) back and got her voicemail. I left a message indicating that I did not know whom the individual was that he was referring to, because I had not issued a writ for anyone from the Western District of Missouri. (Terra Morehead Voicemail (b) (6), (b) (7)(C) at 11:11 a.m. with corresponding ECF notation, Attachment 14.)

When the court recessed for lunch, I went to (b) (6), (b) (7)(C) office and asked if she had any other information from (b) (6), (b) (7)(C). She offered to call him, which she did from her office. (Phone call log of (913)551-6670, denoting call to (816)426-3122 (main number for Western District of Missouri), Attachment 15.) I then spoke to (b) (6), (b) (7)(C) on speaker phone in Ms. (b) (6), (b) (7)(C) office, and learned that (b) (6), (b) (7)(C) hereinafter (b) (6), (b) (7)(C) was a defendant in the Western District of Missouri on a drug conspiracy case, for whom a writ had been issued from the District of Kansas for the (b) (6), (b) (7)(C) case. I indicated it would have been done by defense counsel, and that I had been unaware of the writ being issued. I asked (b) (6), (b) (7)(C) who (b) (6), (b) (7)(C) attorney was, and he advised it was an individual named (b) (6), (b) (7)(C) with whom I was unfamiliar. (b) (6), (b) (7)(C) indicated his case against (b) (6), (b) (7)(C) was set for trial, and he expressed surprise that he would be testifying in the case in Kansas.

(b) (6), (b) (7)(C) was able to obtain the criminal docket for (b) (6), (b) (7)(C) case from the Western District of Missouri from pacer, and she jotted down (b) (6), (b) (7)(C) office number and email. (See Copy of handwritten yellow note, Attachment 16²; Criminal Docket Sheet, Case No. (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) dated (b) (6), (b) (7)(C) Attachment 17.) I then proceeded to attempt to contact (b) (6), (b) (7)(C) from my office cell phone at 1:12 p.m.; however, the call went to her voicemail. (See AT&T phone log (913)626-4994 02/01/17 – 02/28/17, Attachment 18.) I did not leave a message for Ms. (b) (6), (b) (7)(C) because I knew I would be in court the rest of the day, and unreachable. I returned to the courtroom to complete jury selection, and was able to speak to (b) (6), (b) (7)(C) who confirmed that he had issued the writ for (b) (6), (b) (7)(C) which is the first time I was informed or recognized that there were two (b) (6), (b) (7)(C) who were brothers – (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C).

The jury trial proceeded forward with the Government's evidence being presented on (b) (6), (b) (7)(C) (Transcripts, Docs. 88, 89, 90, 97, 98, 99, 111.)³ The trial had consisted of the testimony from nearly a dozen witnesses, including the testimony of (b) (6), (b) (7)(C). On (b) (6), (b) (7)(C) as the Government was nearing the end of its evidence with the last witness (b) (6), (b) (7)(C), and just before the lunch recess, (b) (6), (b) (7)(C) advised the district court that he planned to

² The blue writing on this note referencing the information about (b) (6), (b) (7)(C) is (b) (6), (b) (7)(C) writing. The red writing on this note referencing (b) (6), (b) (7)(C) phone information is in my writing.

³ Document 88 is a partial transcript of the testimony of (b) (6), (b) (7)(C) which occurred on (b) (6), (b) (7)(C) Doc. 88, (b) (6), (b) (7)(C) Trial Tr. (partial), Attachment 19). Document 89 is a partial transcript of the remainder of the testimony of (b) (6), (b) (7)(C) which occurred on (b) (6), (b) (7)(C) (Doc. 89, (b) (6), (b) (7)(C) Trial Tr. (partial), Attachment 20). Document 97 (Doc. 97, (b) (6), (b) (7)(C) Trial Tr. (partial), Attachment 21) and Document 98 (Doc. 98, (b) (6), (b) (7)(C) Trial Tr. (partial), Attachment 22), are the remainder of the court proceedings for those two respective dates. Document 90 (Doc. 90, (b) (6), (b) (7)(C) Trial Tr. (partial), Attachment 23) and Document 99 (Doc. 99, (b) (6), (b) (7)(C) Trial Tr. (partial), Attachment 24) are each partial transcripts from (b) (6), (b) (7)(C) and Document 111 (Doc. 111, (b) (6), (b) (7)(C) Trial Tr. (Part 1) & (Part 2), Attachment 25) is an amended transcript from (b) (6), (b) (7)(C) proceedings, which specifically references where Document 90 merges with Document 99.

call two witnesses—(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)—both of whom were incarcerated and represented by counsel. (Doc. 111 (b) (6), (b) (7)(C) Trial Tr. (Part 1) at 732-33.) Mr. (b) (6), (b) (7)(C) further advised the district court that (b) (6), (b) (7)(C) attorney had advised (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C), who was pending trial in the Western District of Missouri (“WDMO”), would invoke his Fifth Amendment right not to testify. (*Id.* at 732.) (b) (6), (b) (7)(C) further explained that witness (b) (6), (b) (7)(C) was the brother of government witness (b) (6), (b) (7)(C) who had already testified at trial. (*Id.* at 733.) (b) (6), (b) (7)(C) stated that he had spoken to (b) (6), (b) (7)(C) attorney (b) (6), (b) (7)(C) and that she indicated that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (*Id.*) I recalled my conversation with Mr. (b) (6), (b) (7)(C) on December 7, 2016, when he told me (b) (6), (b) (7)(C) would be testifying that he sold the car to (b) (6), (b) (7)(C) and I realized that (b) (6), (b) (7)(C) likely meant that (b) (6), (b) (7)(C) would testify that he, not (b) (6), (b) (7)(C), sold the car to (b) (6), (b) (7)(C). The court then took the lunch recess directing the parties to return at 1:45 p.m.

When I returned to the courtroom, I observed a professionally dressed, young woman, in the back of the courtroom, and I presumed it was (b) (6), (b) (7)(C). I approached her, and asked if she was (b) (6), (b) (7)(C) and she indicated that she was. There were other people coming in and out of the courtroom, so she and I stepped out of the courtroom, through a doorway, into a vestibule/foyer, which then accesses the public hallway. (b) (6), (b) (7)(C) and I stood in that vestibule/foyer, where we had a brief (less than 5 minute) conversation. (b) (6), (b) (7)(C) was not in a location where he could either hear, or observe this conversation. (b) (6), (b) (7)(C) was being held in the U.S. Marshal holding area outside the courtroom. The location where (b) (6), (b) (7)(C) and I had our conversation was separated from the holding cell by the vestibule/foyer door, the courtroom, a concrete wall, and a steel door leading to a short hallway leading to another steel door to the actual cell.

I mentioned to (b) (6), (b) (7)(C) that I had tried to call her, to which she replied that she had not received the message. I explained that my office had been contacted by (b) (6), (b) (7)(C) who wanted to know why our office had issued a writ for (b) (6), (b) (7)(C) for testimony in the District of Kansas. I told (b) (6), (b) (7)(C) that I advised (b) (6), (b) (7)(C) that I had not issued a writ, and that he had given me her name as being the witness’ attorney. I told (b) (6), (b) (7)(C) that I had tried to call her on Monday, and that I had gotten her voicemail, and because I was in trial, I had not left a message. I told her that I was able to figure out that it was actually (b) (6), (b) (7)(C) who had issued the writ, as I had been unaware this witness had charges in the Western District of Missouri. I then mentioned to (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) had indicated (b) (6), (b) (7)(C) would be testifying, and she confirmed that was his intention. (b) (6), (b) (7)(C) also mentioned to me that (b) (6), (b) (7)(C) had personally met with (b) (6), (b) (7)(C), something that (b) (6), (b) (7)(C) had never mentioned to me.

I said to (b) (6), (b) (7)(C) that I presumed she had spoken to her client about possible perjury consequences, and she confirmed that she had spoken to him on that subject. As a career prosecutor, I have had similar conversations over the years to ensure witnesses are fully aware of the ramifications of committing perjury, and to avoid future claims that the witness was unaware of potential consequences should they testify falsely. Moreover in this case, I had good reason to believe that (b) (6), (b) (7)(C) would be committing perjury if he testified that he, not (b) (6), (b) (7)(C), sold the car to (b) (6), (b) (7)(C) and I did not believe that (b) (6), (b) (7)(C) understood this issue. (b) (6), (b) (7)(C)

was not present during the presentation of the Government's case, and her comments implied that her client would be offering uncontested testimony that had no possible negative ramifications against her client. To the contrary, the Government had already presented credible evidence that (b) (6), (b) (7)(C) had sold the car to (b) (6), (b) (7)(C). In particular (b) (6), (b) (7)(C) had testified that he had sold the car to the defendant, and he was able to provide a significant amount of details about the vehicle transaction.

As I previously noted, (b) (6), (b) (7)(C) had provided a number of insignificant details about (b) (6), (b) (7)(C) during his proffer, which he likewise testified about during his trial testimony. These facts were independently corroborated, during the presentation of the Government's evidence, by other witnesses regarding matters that a stranger or distant acquaintance to (b) (6), (b) (7)(C) would not have known. (Compare Doc. 98 at 492, 506 (b) (6), (b) (7)(C) met (b) (6), (b) (7)(C) at the (b) (6), (b) (7)(C) with Doc. 98 at 427, 431 (b) (6), (b) (7)(C) met (b) (6), (b) (7)(C) at the (b) (6), (b) (7)(C) and Doc. 88 (b) (6), (b) (7)(C) Trial Tr. (b) (6), (b) (7)(C) Excerpt at 7, 27 (met (b) (6), (b) (7)(C) at the (b) (6), (b) (7)(C) Compare Doc. 98 at 529-30 (b) (6), (b) (7)(C) saw an Asian male at (b) (6), (b) (7)(C) house on three occasions) with Doc. 98 at 462-63 (b) (6), (b) (7)(C) testified that when she dated (b) (6), (b) (7)(C), she had a male Asian friend who came by the house regularly and smoked methamphetamine); Compare Doc. 98 at 558 (b) (6), (b) (7)(C) testified that (b) (6), (b) (7)(C) had a boxer dog named "Tyson" with Doc. 98 at 441 (b) (6), (b) (7)(C) testified that (b) (6), (b) (7)(C) had a boxer, although she could not remember his name); Compare Doc. 98 at 556 (b) (6), (b) (7)(C) description of the interior of (b) (6), (b) (7)(C) house) with Doc. 99 at 693 (b) (6), (b) (7)(C) who lived with (b) (6), (b) (7)(C) at this residence for a period of time, described the interior of the house). Additionally (b) (6), (b) (7)(C) who had prosecuted (b) (6), (b) (7)(C) had found him to be extremely credible in all aspects of the information he had provided in the prior prosecution of other individuals.

Additionally, not only did (b) (6), (b) (7)(C) appear to mistakenly believe that (b) (6), (b) (7)(C) would only be testifying about an insignificant, unimportant vehicle transaction, but it also became apparent to me from comments by defense counsel and the judge that they believed (b) (6), (b) (7)(C) was providing testimony beyond facts related to the sale of a vehicle. (b) (6), (b) (7)(C) attempted to clarify that several times; however, I believed had (b) (6), (b) (7)(C) testified he would have been called upon for testimony beyond that which had been represented to (b) (6), (b) (7)(C). Thus, I certainly wanted to confirm with (b) (6), (b) (7)(C) that she had discussed perjury ramifications with her client.

I mentioned to (b) (6), (b) (7)(C) that the Government had already put on two and half days of testimony, and that the last Government witness (b) (6), (b) (7)(C) was in the process of testifying, so it was expected her client would be testifying shortly.⁴ I could see through the doorway windows that the judge was preparing to come back into the courtroom from the lunch recess, so she and I stepped back into the courtroom.

⁴ I did not seek advice from a supervisor on this matter, as I am familiar with the case law that supports that these types of conversations are proper.

The parties then discussed with the court, the anticipated proceedings. (b) (6), (b) (7)(C) elaborated that (b) (6), (b) (7)(C) would testify that (b) (6), (b) (7)(C) purchased a chameleon-colored (b) (6), (b) (7)(C) vehicle from him, not from (b) (6), (b) (7)(C) (*Id.* at 735.) According to (b) (6), (b) (7)(C) would also testify that (b) (6), (b) (7)(C) was friends with (b) (6), (b) (7)(C) but did not have a friendship with his brother (b) (6), (b) (7)(C).⁵ (*Id.*) Again, (b) (6), (b) (7)(C) credible testimony regarding his relationship with (b) (6), (b) (7)(C) raised the concern that (b) (6), (b) (7)(C) would be committing perjury if he testified to the contrary.

The district court expressed confusion as to why (b) (6), (b) (7)(C) was putting this information on the record and asked, (b) (6), (b) (7)(C) (*Id.* at 736.) I suggested that (b) (6), (b) (7)(C) was concerned about me impeaching (b) (6), (b) (7)(C) as he had a pending criminal drug case in the WDMO. (*Id.* at 736.) I further stated, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (*Id.*) (emphasis added) (b) (6), (b) (7)(C) was not in the courtroom during this discussion. (See *id.* at 742-43.) This was stated in open court outside the presence of the jury, in (b) (6), (b) (7)(C) presence.

The district court still did not appear to understand the nature of the issue. (*Id.* at 737.) I responded: (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (*Id.* at 737-38.) The district court then discussed the parameters of what I could ask (b) (6), (b) (7)(C) about his pending charges, noting that I could elicit from him the fact that criminal charges were pending against him and he might be seeking favorable treatment in that case by testifying. (*Id.* at 738.) (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (*Id.* at 739.)

The district court then asked (b) (6), (b) (7)(C) attorney, (b) (6), (b) (7)(C) to step forward to address the court. (*Id.*) (b) (6), (b) (7)(C) told the district court:

(b) (6), (b) (7)(C)

(*Id.*) (b) (6), (b) (7)(C) further mentioned:

⁵ This is an example of (b) (6), (b) (7)(C) expectation that (b) (6), (b) (7)(C) was to testify beyond the subject matter of the vehicle transaction.

(b) (6), (b) (7)(C)

(*Id.* at 740.)

The district court stated it did not want (b) (6), (b) (7)(C) to invoke his Fifth Amendment in front of the jury. (*Id.* at 741.) The district court further noted that she did not think (b) (6), (b) (7)(C) had a Fifth Amendment right to not answer questions about the car transaction or the fact that he is under pending charges in the WDMO. (*Id.*) The district court instructed the Government not to ask questions about the factual circumstances of the pending WDMO charges. (*Id.*) In response to a question from me, the district court instructed that the Government could impeach (b) (6), (b) (7)(C) with his prior felony convictions and misdemeanor crimes of dishonesty. (*Id.* at 742.)

The district court asked that the U.S. Marshals bring (b) (6), (b) (7)(C) into the courtroom. (*Id.* at 743) The district court advised (b) (6), (b) (7)(C) that: (1) his attorney was in the courtroom; (2) (b) (6), (b) (7)(C) attorney intended to call him as a witness that afternoon; (3) (b) (6), (b) (7)(C) had a right not to incriminate himself in connection the charges pending against him in the WDMO; (4) the district court instructed the Government that they could ask (b) (6), (b) (7)(C) whether he had a pending criminal case and whether he was seeking favorable treatment in his case by testifying as a defense witness; (5) the district court instructed the Government and (b) (6), (b) (7)(C) attorney, that they could not ask (b) (6), (b) (7)(C) about any facts or circumstances of his WDMO case; (6) she did not want (b) (6), (b) (7)(C) to invoke the Fifth Amendment in front of the jury; and, (7) rather than invoking the Fifth Amendment, if a question was asked which called for an incriminating answer then he should say, (b) (6), (b) (7)(C) and then the court would take a break to accommodate (b) (6), (b) (7)(C) request. (*Id.* at 743-45.) (b) (6), (b) (7)(C) stated that he understood. (*Id.* at 745.) The district

⁶ This reference to (b) (6), (b) (7)(C) was a specific reference to me, and corresponds with the conversation that I just had with her outside of the courtroom. (b) (6), (b) (7)(C) comments confirm that I had spoken to her about perjury consequences (b) (6), (b) (7)(C) might face, and as a result she was requesting that the court make a record to appease any residual concerns that I might have, and to further protect herself.

⁷ Example of (b) (6), (b) (7)(C) reiterating that (b) (6), (b) (7)(C) told her (b) (6), (b) (7)(C) testimony would be limited to a legal car transaction, and not the other matters that (b) (6), (b) (7)(C) had referenced.

court excused (b) (6), (b) (7)(C) from the courtroom and advised him, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (Id.)

After (b) (6), (b) (7)(C) had exited the courtroom to go back to the walled off holding cell, I mentioned to the district court that (b) (6), (b) (7)(C) had agreed to allow me the opportunity to interview (b) (6), (b) (7)(C) prior to his testifying, as I had been unaware that (b) (6), (b) (7)(C) had already been afforded that opportunity. (Id. at 746.) The district court advised me that I could meet with (b) (6), (b) (7)(C) at the next break. (Id. at 747.) I always make it a practice to attempt to speak with all witnesses prior to their testimony, so as to be fully informed and prepared about what they would say.

After the Government presented its remaining evidence and rested, the district court took a break to allow me the opportunity to interview (b) (6), (b) (7)(C), and for (b) (6), (b) (7)(C) to discuss with (b) (6), (b) (7)(C) whether he intended to testify. (Id., (Part 2), at 11.) After the judge departed the bench, the case agent, ATF Special Agent (b) (6), (b) (7)(C) and I were preparing to enter the holding cell area, along with (b) (6), (b) (7)(C) so that we could speak with (b) (6), (b) (7)(C). Aside from the less than 5-minute exchange outside the courtroom detailed above, (b) (6), (b) (7)(C) and I had *no* further conversations in the interim. (b) (6), (b) (7)(C) then said that she would like to speak to her client first. Agent (b) (6), (b) (7)(C) and I then waited in the courtroom, while (b) (6), (b) (7)(C) was allowed to go back into the holding cell area to speak with her client. After a few moments, (b) (6), (b) (7)(C) came back into the courtroom and said that her client had changed his mind and that he had decided not to testify.⁸

After the break, (b) (6), (b) (7)(C) advised the district court: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (Id. at 12.) I clarified, and (b) (6), (b) (7)(C) acquiesced, that I had not spoken to (b) (6), (b) (7)(C) but only to his attorney. (Id.) (b) (6), (b) (7)(C) confirmed for the district court that (b) (6), (b) (7)(C) would not be testifying. (Id.) The district court asked if he was (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (Id.) (b) (6), (b) (7)(C) responded: (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (Id. at 13.)

(b) (6), (b) (7)(C) advised the district court, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (Id.) I immediately responded,

(b) (6), (b) (7)(C)

⁸ The district court's order falsely suggests that I said something to (b) (6), (b) (7)(C) after the district court's admonishments to her client that caused (b) (6), (b) (7)(C) and/or her client to change their mind regarding his willingness to testify. To my knowledge, the district court's instructions on the record to (b) (6), (b) (7)(C) regarding his Fifth Amendment rights were the last comments on the matter to (b) (6), (b) (7)(C) apart from his private discussions with (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(*Id.*) The district court turned to (b) (6), (b) (7)(C) and asked if there was anything more she would like to say. (*Id.*) (b) (6), (b) (7)(C) simply said (b) (6), (b) (7)(C) (*Id.*) (b) (6), (b) (7)(C) advised the district court that (b) (6), (b) (7)(C) had decided to testify. (*Id.* at 14.) During the district court's colloquy with (b) (6), (b) (7)(C) concerning his decision to testify, (b) (6), (b) (7)(C) stated that he felt (b) (6), (b) (7)(C) (*Id.*) The district court gave (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) an opportunity to discuss the decision further. (*Id.* at 16, 20.)

The next morning (b) (6), (b) (7)(C) requested an *ex parte* conference with the district court. (Doc. 87 (b) (6), (b) (7)(C) Sealed Excerpt of Trial Tr., at 5, Attachment 26.) (b) (3) (A), (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

I was completely unaware about the substance or content of the *ex parte* bench conference until defense counsel filed the Motion for New Trial more than a month after the trial concluded. (Doc. 92, Motion for New Trial for Violations of Defendant's Sixth Amendment Right to Fair Trial filed (b) (6), (b) (7)(C), Attachment 27.)

(b) (6), (b) (7)(C) testified, in relevant part, that he bought four tires, and later a (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) for \$1,800. (Doc. 91, Trial Tr. of Def.'s Testimony, dated (b) (6), (b) (7)(C) at 33-35, Attachment

⁹ His potential witness was actually (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) brother and the Government's witness. Defense counsel frequently got the names of the various participants confused throughout the proceedings, dating back to the filing of his witness list when he identified (b) (6), (b) (7)(C) as (b) (6), (b) (7)(C) instead of by his correct name (b) (6), (b) (7)(C)

28.) When (b) (6), (b) (7)(C) gave (b) (6), (b) (7)(C) the (b) (6), (b) (7)(C) explained that he wanted the wheels back off the (b) (6), (b) (7)(C) (Id. at 37.) (b) (6), (b) (7)(C) testified that after he had the (b) (6), (b) (7)(C) in his driveway for two weeks, (b) (6), (b) (7)(C) showed up in his "wrecker" and told (b) (6), (b) (7)(C) he was there to take the car back. (Id. at 38.) (b) (6), (b) (7)(C) insisted that (b) (6), (b) (7)(C) had given him the car. (Id.) (b) (6), (b) (7)(C) came over to (b) (6), (b) (7)(C) house and explained that he needed the wheels off the (b) (6), (b) (7)(C) the men took the wheels off the (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) kept the (b) (6), (b) (7)(C) (Id.)

(b) (6), (b) (7)(C) testified that he did not associate with (b) (6), (b) (7)(C) on a (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (Id. at 36.) (b) (6), (b) (7)(C) claimed he did not know (b) (6), (b) (7)(C) and only knew him through his brother (b) (6), (b) (7)(C) (Id. at 33, 36.) (b) (6), (b) (7)(C) further testified that he had seen (b) (6), (b) (7)(C) at the (b) (6), (b) (7)(C) and that (b) (6), (b) (7)(C) had been by (b) (6), (b) (7)(C) house a couple of times with his brother, (b) (6), (b) (7)(C) (Id. at 39.) (b) (6), (b) (7)(C) testified that (b) (6), (b) (7)(C) (Id.)

Two days earlier, (b) (6), (b) (7)(C) had testified as a Government witness. He testified that he had pleaded guilty in the District of Kansas to conspiring to distribute 50 grams or more of methamphetamine, between July 22, 2011 and December 3, 2013, and he was sentenced to 168 months' imprisonment. (Doc. 98, (b) (6), (b) (7)(C) Trial Tr. at 487-90, 500, 539.) (b) (6), (b) (7)(C) testified that he was a wholesale distributor of methamphetamine, with several suppliers and customers. (Id. at 491-92.) In early 2012, (b) (6), (b) (7)(C) met (b) (6), (b) (7)(C) at the (b) (6), (b) (7)(C) (Id. at 506.) (b) (6), (b) (7)(C) approached (b) (6), (b) (7)(C) and asked him, in effect, whether he was selling drugs. (Id. at 507.) The two men exchanged telephone numbers and (b) (6), (b) (7)(C) began (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) (Id.) (b) (6), (b) (7)(C) further testified that (b) (6), (b) (7)(C) started by buying (b) (6), (b) (7)(C) and then moved up to buying four ounces at a time. (Id. at 507-08.) (b) (6), (b) (7)(C) purchased methamphetamine from (b) (6), (b) (7)(C) until the end of 2012. (Id. at 512, 518.) (b) (6), (b) (7)(C) testified that he distributed the larger, four-ounce quantities of methamphetamine to (b) (6), (b) (7)(C) more than five times, but less than ten times. (Id. at 532.) (b) (6), (b) (7)(C) stopped selling methamphetamine to (b) (6), (b) (7)(C) after (b) (6), (b) (7)(C) told him that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and wanted (b) (6), (b) (7)(C) to work for them. (Id. at 534-35.)

(b) (6), (b) (7)(C) further testified that around August 2012, he sold a chameleon-colored (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) which he had previously acquired for an ounce of methamphetamine from some methamphetamine users. (Id. at 524-26.) (b) (6), (b) (7)(C) could not recall how much he charged (b) (6), (b) (7)(C) for the car; he did not believe (b) (6), (b) (7)(C) ever paid him. (Id. at 525.) (b) (6), (b) (7)(C) also purchased (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) which (b) (6), (b) (7)(C) put on his black Chrysler vehicle. (Id. at 528-29.) (b) (6), (b) (7)(C) considered (b) (6), (b) (7)(C) a business acquaintance. (Id. at 529.)

On cross-examination, (b) (6), (b) (7)(C) testified that he has a brother named (b) (6), (b) (7)(C) (Id. at 555.) He denied meeting (b) (6), (b) (7)(C) through his brother or that his brother sold the (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) (Id. at 556.) This car transaction was an extraneous fact that had no direct bearing on any of the charged crimes.

On (b) (6), (b) (7)(C) the jury found (b) (6), (b) (7)(C) guilty on the drug counts but acquitted on the firearm counts. On (b) (6), (b) (7)(C) filed a motion for a new trial, alleging that the

Government violated his Sixth Amendment right to a fair trial by interfering with his ability to call (b) (6), (b) (7)(C) (Doc. 92, Motion for New Trial for Violations of Defendant's Sixth Amendment Right to Fair Trial filed (b) (6), (b) (7)(C) Attachment 27.) I submitted a written response. (Doc. 95, Government's Response to Defendant's Motion for New Trial filed (b) (6), (b) (7)(C) Attachment 29.) It was uncontested that I did not speak to (b) (6), (b) (7)(C) at any point. (*Id.* at 3.) I referenced that I only had a brief conversation with (b) (6), (b) (7)(C) attorney about (b) (6), (b) (7)(C) possible exposure to perjury charges should he testify falsely. (*Id.* at 6.) I confirmed that I had asked (b) (6), (b) (7)(C) for an opportunity to speak to (b) (6), (b) (7)(C) before he testified, which she agreed to arrange. (*Id.*) However, after (b) (6), (b) (7)(C) spoke again to her client alone, he decided not to testify. (*Id.*)

C. The (b) (6), (b) (7)(C) Evidentiary Hearing

On (b) (6), (b) (7)(C) the court held the first of two evidentiary hearings on the new-trial motion. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) testified. (Doc. 112, Tr. of (b) (6), (b) (7)(C) Hearing, Attachment 30.) (b) (6), (b) (7)(C) testified that on the same day that (b) (6), (b) (7)(C) announced that (b) (6), (b) (7)(C) would not testify as a defense witness; (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) rode on the same van back to jail. (*Id.* at 5-6.) The court sustained the Government's hearsay objection to admitting (b) (6), (b) (7)(C) statement about what (b) (6), (b) (7)(C) said to him, and the court indicated it was willing to hear the hearsay for the limited purpose of understanding (b) (6), (b) (7)(C) subsequent conduct. The court stated:

(b) (6), (b) (7)(C)

(*Id.* at 7-8.) However, in the court's decision, that is precisely what the court did by extrapolating out the statements from (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) and attributing those statements to me. There was no evidence from (b) (6), (b) (7)(C) that I ever made the statement alleged – (b) (6), (b) (7)(C) I adamantly deny that I ever made this statement, or anything to that effect, nor did I ever use any similar words.

(b) (6), (b) (7)(C) was represented at the hearing by counsel, (b) (6), (b) (7)(C) advised the court that (b) (6), (b) (7)(C) had prepared an affidavit and would rather not testify, but would testify if directed to do so by the court. (*Id.* at 14.) The court explained that it viewed the conversation between me and (b) (6), (b) (7)(C) as being (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (*Id.* at 16.) The district court therefore ordered (b) (6), (b) (7)(C) to testify concerning her conversation with me. (*Id.* at 17.)

(b) (6), (b) (7)(C) affidavit provided in relevant part, that (b) (6), (b) (7)(C) had spoken to me on (b) (6), (b) (7)(C) and that I had advised her that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (Def.'s Ex. 300, (b) (6), (b) (7)(C) Affidavit, at ¶¶ 4-5, Attachment 31.) The affidavit further referenced that I advised (b) (6), (b) (7)(C) that I was aware of the indictment against (b) (6), (b) (7)(C)

and which AUSA was prosecuting (b) (6), (b) (7)(C) (*Id.* at 1, ¶ 6.) (b) (6), (b) (7)(C) further stated (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (*Id.* ¶ 7.)

(b) (6), (b) (7)(C) testified at the (b) (6), (b) (7)(C) hearing that she graduated from law school in 2012, and represented (b) (6), (b) (7)(C) in connection with his WDMO criminal case. (Doc. 112, Tr. of (b) (6), (b) (7)(C) Hearing, at 21.) She said when I spoke to her about (b) (6), (b) (7)(C) testifying as a defense witness, my tone was assertive, but not confrontational. (*Id.* at 22.) The following colloquy then took place between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C):

(b) (6), (b) (7)(C)

¹⁰ To be clear, I did not state or imply that the Government would take any action against (b) (6), (b) (7)(C) for merely testifying on behalf of (b) (6), (b) (7)(C) my comments were focused exclusively on ramifications for committing perjury, which I believed the proffered testimony was likely to constitute.

(b) (6), (b) (7)(C)

(*Id.* at 23–24.) (b) (6), (b) (7)(C) confirmed that (b) (6), (b) (7)(C) had refused to testify at the Rule 33 hearing on advice of counsel. (*Id.* at 25.)

C. The (b) (6), (b) (7)(C) Evidentiary Hearing

(b) (6), (b) (7)(C) testified at a second hearing on (b) (6), (b) (7)(C) (Doc. 118, Tr. of (b) (6), (b) (7)(C) Hearing, Attachment 32.) (b) (6), (b) (7)(C) was present at the hearing, as well. (*Id.* at 38.) (b) (6), (b) (7)(C) introduced a list of eight proposed questions for (b) (6), (b) (7)(C) which was admitted as Defendant's Exhibit 1000. (*Id.* at 40, 46.) (b) (6), (b) (7)(C) objected to the last two questions, which asked: (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (*Id.* at 42.) (b) (6), (b) (7)(C) argued that both questions would elicit information about (b) (6), (b) (7)(C) conversation with (b) (6), (b) (7)(C) about the (b) (6), (b) (7)(C) (*Id.*) (b) (6), (b) (7)(C) advised the district court that (b) (6), (b) (7)(C) was not willing to waive his attorney-client privilege. (*Id.* at 43.)

The district court agreed that the first challenged question would solicit privileged information, as (b) (6), (b) (7)(C) never spoke directly to me. (*Id.*) The district court found that the second challenged question was permissible, as long as (b) (6), (b) (7)(C) added the caveat (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (*Id.* at 44.) The district court noted that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (*Id.*) (b) (6), (b) (7)(C) argued that (b) (6), (b) (7)(C) waived the attorney-client privilege when he told (b) (6), (b) (7)(C) about his conversation with (b) (6), (b) (7)(C) (*Id.* at 44–45.)

¹¹ This is yet another example of (b) (6), (b) (7)(C) attempting to expand on the subjects that he had expected (b) (6), (b) (7)(C) to testify about, and (b) (6), (b) (7)(C) clarifying and indicating her understanding of the subject matter. I believe based upon these repeated attempts by (b) (6), (b) (7)(C) to expand the content of (b) (6) testimony that Mr. (b) (6), (b) (7)(C) fully intended to go far beyond what he and (b) (6), (b) (7)(C) had discussed prior to the jury trial. This would have potentially exposed (b) (6), (b) (7)(C) to risks beyond just his testimony about the vehicle transaction. I already knew based upon the testimony presented by (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would be exposed to a potential perjury charge if he testified that he had sold the vehicle to (b) (6), (b) (7)(C) since I believed that (b) (6), (b) (7)(C) was posited as a credible witness in light of all of the evidence that had been presented up to that point.

(b) (6), (b) (7)(C) argued that (b) (6), (b) (7)(C) conversation with (b) (6), (b) (7)(C) [on the van to the jail] (b) (6), (b) (7)(C) (Id. at 45.) The district court ruled that (b) (6), (b) (7)(C) could be forced to testify about things he might have said to (b) (6), (b) (7)(C) whether or not (b) (6), (b) (7)(C) was the source of that information. (Id.) The court ruled that (b) (6), (b) (7)(C) could be compelled to testify about what (b) (6), (b) (7)(C) and he discussed in the van returning to the jail, so long as he did not testify about what his lawyer told him. (Id. at 45.) (b) (6), (b) (7)(C) used the assistance of an interpreter during the hearing. Mr. (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) had the following colloquy:

(b) (6), (b) (7)(C)

(Id. at 49-51 (emphasis supplied).

On cross-examination, I elicited that on (b) (6), (b) (7)(C) when the district court spoke to (b) (6), (b) (7)(C) about his potential testimony, he did not indicate whether or not he was going to testify. (Id. at 53.) (b) (6), (b) (7)(C) confirmed that, prior to (b) (6), (b) (7)(C) he had never spoken to me. (Id.) On (b) (6), (b) (7)(C), after the district court spoke to (b) (6), (b) (7)(C) in open court and while in the holding area, he spoke only to his attorney. (Id. at 53-54.)

The court directed the parties to submit supplemental memorandums regarding potential remedies. (Doc. 119, Defendant's Memorandum of Law on Proper Remedies Should the Court Grant Defendant's Motion for New Trial, filed (b) (6), (b) (7)(C) Attachment 33; Doc. 120, Government's Memorandum of Law, filed (b) (6), (b) (7)(C) Attachment 34.) I argued, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) (Doc. 120, at 3; see also id. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

III. Conclusion

Throughout this prosecution, I emphatically denied improperly threatening (b) (6), (b) (7)(C) yet in her decision the judge claimed the Government (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (Doc. 121, Dist. Ct.'s Mem. & Order filed (b) (6), (b) (7)(C), at 13, Attachment 35 (emphasis added).) This is incorrect.

The judge noted in her order that my conduct was the catalyst that caused (b) (6), (b) (7)(C) to change his mind about testifying. However, after my brief conversation with (b) (6), (b) (7)(C), it was still the intention of (b) (6), (b) (7)(C) to testify. It was not until after the colloquy with the judge, and his conversation with his attorney did (b) (6), (b) (7)(C) change his decision. (b) (6), (b) (7)(C) otherwise would have had no other contact with anyone else.

Or (b) (6), (b) (7)(C), when defense counsel first accused me of influencing (b) (6), (b) (7)(C) decision not to testify or he would suffer ramifications in his WDMO case, I responded:

(b) (6), (b) (7)(C)

(Doc. 111, (b) (6), (b) (7)(C) Trial Tr. (Part 2) at 13.) (b) (6), (b) (7)(C) statements in court moments after her conversation with me support that I only mentioned to her that (b) (6), (b) (7)(C) could be charged with perjury or face consequences in his WDMO case were he to commit perjury at trial. When (b) (6), (b) (7)(C) first confirmed for the district court that (b) (6), (b) (7)(C) would not be testifying, she explained, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (Doc. 111 (b) (6), (b) (7)(C) Trial Tr. (Part 2) at 13.) When (b) (6), (b) (7)(C) accused me of influencing (b) (6), (b) (7)(C) decision not to testify, (b) (6), (b) (7)(C) said she had nothing more to add to my summary of what (b) (6), (b) (7)(C) and I discussed. (*Id.* at 189.) This colloquy with the district court took place mere moments after Ms. (b) (6), (b) (7)(C) and I discussed the matter, and (b) (6), (b) (7)(C) made clear that she had nothing to add to my account of their conversation. Certainly, had I made the suggested improper statement, then I would have expected (b) (6), (b) (7)(C) or any defense counsel to immediately report this type of misconduct to the court.

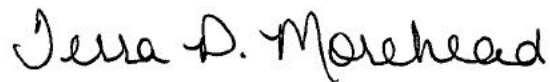
Likewise in the Government's response to the Rule 33 motion, I argued that I had not attempted to influence the WDMO prosecutions (Doc. 95 at 3), and that I had only a brief conversation with (b) (6), (b) (7)(C) about (b) (6), (b) (7)(C) possible exposure to perjury charges should he testify falsely (*id.* at 6).

Furthermore, (b) (6), (b) (7)(C) affidavit notes only that I had advised her (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and that I was aware of the WDMO indictment against (b) (6), (b) (7)(C) and which AUSA was prosecuting (b) (6), (b) (7)(C) (Def.'s Ex. 300, (b) (6), (b) (7)(C) Affidavit at

¶¶ 5, 6.) I fully acknowledge that this was included in the conversation that we had on (b) (6), (b) (7)(C) – and for good reason. (*See above*, at 6.) She further stated that she did not (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (*Id.*, ¶ 7.)

It should be noted that the Government is in the process of appealing the district court's findings. The Government's appeal brief is currently due on (b) (6), (b) (7)(C) I hope that I have addressed everything that was requested, and included all relevant attachments. If upon review, you determine that I have omitted anything, please let me know. I look forward to moving past these unsupported adverse judicial findings. Thank you for your review of my response.

Sincerely,



Terra D. Morehead
Assistant United States Attorney

TDM:tdm

Electronic Attachments

cc: Stephen R. McAllister – USA District of Kansas

(b) (6) – Attorney for OPR Investigation

(b) (6) – Attorney for State of Kansas Disciplinary Inquiry



U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

MAY 10 2013

The Honorable Barry R. Grissom
United States Attorney
United States Attorney's Office
for the District of Kansas
500 State Avenue, Suite 360
Kansas City, KS 66101-2433

Dear Mr. Grissom:

The Office of Professional Responsibility (OPR) has initiated an inquiry into allegations that Assistant U.S. Attorney (AUSA) Terra D. Morehead engaged in professional misconduct in multiple respects. Specifically, the allegations within OPR's jurisdiction are the following:

- 1) AUSA Morehead allegedly abused her official position and had a conflict of interest by initiating and pursuing a grand jury investigation against a private citizen, (b) (6), (b) (7)(C) who had filed a civil suit against a purported friend of hers, Drug Enforcement Administration (DEA) Special Agent (SA) (b) (6), (b) (7)(C)
- 2) AUSA Morehead allegedly abused her official position by disparaging the honesty and competence of Kansas City, Kansas Police Department (KCKPD) Detective (b) (6), (b) (7)(C) who provided testimony favorable to (b) (6), (b) (7)(C) in state criminal and federal civil proceedings, and by indicating that future cases involving (b) (6), (b) (7)(C) would not be accepted for federal prosecution;
- 3) AUSA Morehead allegedly coerced one or more drug defendants into waiving their right to a detention hearing and possible pretrial release pursuant to 18 U.S.C. § 3142 by threatening to file a notice of sentencing enhancement pursuant to 21 U.S.C. § 851 against any defendant with a prior qualifying conviction who contested the prosecution's detention request; and
- 4) AUSA Morehead may have violated the Department's so-called "Petite Policy" by indicting a defendant (b) (6), (b) (7)(C) who had been previously acquitted of a factually-related state offense, without first seeking a waiver from the Assistant Attorney General, as required by Section 9-2.031 of the United States Attorneys' Manual (USAM).

To assist us in our inquiry, please ask AUSA Morehead to prepare a written response to these allegations. With respect to the first allegation noted above, in her written response, AUSA Morehead should: provide a detailed account of her relationship (if any) with DEA SA (b) (6), (b) (7)(C) and her involvement with the (b) (6), (b) (7)(C) civil suit (including any attendance at the civil trial);

provide a detailed chronology and account of how, when, and why the (b) (6), (b) (7)(C) matter was opened for federal grand jury investigation or prosecution; identify the supervisor (if any) who authorized opening the investigation; provide a full description of the charges contemplated and evidence obtained through the investigation; and provide a comprehensive account of all communications she had with SA (b) (6), (b) (7)(C) regarding the (b) (6), (b) (7)(C) grand jury investigation. In addition, AUSA Morehead should include with her written response the entire case file, including all prosecutive memoranda, draft indictments, grand jury transcripts, subpoenas, and other such materials, as well as any USAO prosecutive guidelines for the charge(s) contemplated against (b) (6), (b) (7)(C).

With respect to the second allegation, AUSA Morehead should: provide a complete account of each instance in which she provided negative information or comment regarding former KCKPD Detective (b) (6), (b) (7)(C) competence or credibility, or his suitability to be a witness in federal criminal proceedings, to any federal, state, or local law enforcement agency personnel, specifically including Wyandotte County Sheriff's Department (WCSD) Undersheriff (b) (6), (b) (7)(C) and Wyandotte County District Attorney Jerome Gorman, and all such communications occurring during training at the KCKPD Academy conducted by AUSA Morehead in 2009; identify each person to whom she disseminated the court order regarding (b) (6), (b) (7)(C) issued in (b) (6), (b) (7)(C), and explain why she did so; identify each matter that, to her knowledge, was allegedly mishandled by (b) (6), (b) (7)(C) AUSA Morehead should enclose a copy of the (b) (6), (b) (7)(C) court order with her written response.

With respect to the third allegation, AUSA Morehead should: indicate whether it is or has ever been her practice to inform drug defendants with prior qualifying convictions that, should they contest the prosecution's detention request, she would file a notice of sentencing enhancement pursuant to 21 U.S.C. § 851; identify all cases in which she made such an assertion to the defense, including but not limited to (b) (6), (b) (7)(C) and indicate, for each such case, whether a 21 U.S.C. § 851 notice was ultimately filed; identify all cases in which she did not file a notice of sentencing enhancement pursuant to 21 U.S.C. § 851 for a defendant who had a prior qualifying conviction; identify any and all USAO supervisory personnel who knew of or approved such practice; and explain whether, in her opinion, such a practice is consistent with the Department's policy, as set forth in USAM § 9-27.300, regarding the filing of 21 U.S.C. § 851 notices.

With respect to the fourth allegation, AUSA Morehead should: provide a complete account of the circumstances under which the pending case, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was accepted by the USAO for prosecution; identify and describe all communications regarding the case with state and local law enforcement offices, including but not limited to personnel of the Mission, Kansas Police Department, as well as all subsequent communications regarding the case with Bureau of Alcohol Tobacco Firearms and Explosives (ATF) personnel, including ATF SAs (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C); identify the supervisor who approved opening the matter and filing charges, and indicate whether USAO management was aware that the defendant had been acquitted of a factually-related state charge; explain whether she sought or considered seeking a waiver, pursuant to USAM § 9-2.031, before pursuing the federal indictment, and whether she discussed potential "Petite Policy" issues with USAO management; and identify other prosecutions during her tenure with the USAO in which she charged a violation of 18 U.S.C. § 922(g)(3). AUSA Morehead should enclose with her

written response any prosecutive guidelines maintained by the USAO for offenses charged under 18 U.S.C. § 922(g).

With respect to each of these allegations, AUSA Morehead's written response should be her personal account of the conduct at issue and should not be edited or revised by any Department of Justice or USAO employee. AUSA Morehead should provide OPR with all documents that would aid its review of this matter. AUSA Morehead may contact other personnel if necessary to obtain documents, but she should refrain from discussing the matter with potential witnesses. In her response, AUSA Morehead should identify any witnesses who would be able to provide relevant information and identify their role in the matter, but should not contact them for purposes of obtaining a written or oral statement.

AUSA Morehead should provide us with information regarding her professional background and experience, including her length of service and positions held with the Department. In addition, to assist us in determining which ethical rules apply, AUSA Morehead should identify each state in which she is licensed to practice law and her category of membership (e.g., active, inactive, associate, or some other membership category).

For your information and to assist AUSA Morehead in preparing her response, enclosed is a document describing the policies and procedures OPR follows in handling allegations of misconduct and judicial findings made against Department attorneys.

Please ask AUSA Morehead to provide her written response and all responsive documents in electronic format either as attachments to an e-mail, or on a disk sent via Federal Express to Assistant Counsel John J. Sciortino on or before June 3, 2013. If it is not feasible for AUSA Morehead to do so, she should contact Assistant Counsel Sciortino to discuss other options. AUSA Morehead may, but is not required to, provide you with a courtesy copy of her response. In addition, we welcome any information or comments you may wish to provide by the same date.

Thank you for your assistance in this matter. If you or AUSA Morehead have any questions, please contact Assistant Counsel Sciortino at (b) (6), (b) (7)(C) or by e-mail at (b) (6), (b) (7)(C)

Sincerely,



Robin C. Ashton
Counsel

Enclosure

cc: AUSA Terra D. Morehead
(with enclosure)



U.S. Department of Justice

Office of Professional Responsibility

*950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530*

JAN 08 2014

K. Scott McRory
Acting Deputy Chief Inspector
Drug Enforcement Administration
U.S. Department of Justice
8701 Morrisette Drive
Springfield, VA 22152

Dear Mr. McRory:

The Office of Professional Responsibility (OPR) is conducting an investigation into allegations of professional misconduct against an Assistant U.S. Attorney in the Criminal Division of the U.S. Attorney's Office for the District of Kansas (USAO). In connection with that investigation, two OPR attorneys will be present at the USAO on the morning of January 16, 2014, and would like to interview at that time DEA Special Agent (b) (6), (b) (7)(C) of your Kansas City District Office. Special Agent (b) (6), (b) (7)(C) is considered by OPR to be a witness in this matter; he is not a subject of OPR's investigation.

Thank you for your cooperation in this matter. If you need any further information, please contact OPR Assistant Counsel John Sciortino at (b) (6) or (b) (6).

Sincerely,

Robin C. Ashton
Counsel