

**X.**

**Victims of Intellectual  
Property Crimes—  
Ethics and Obligations**

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But justice, though due to the accused, is due to the accuser also.... We are to keep the balance true.

Justice Benjamin Cardozo, *Snyder v. Massachusetts*, 291 U.S. 97, 122 (1934).

Many victims of intellectual property (“IP”) offenses are atypical, in that they often have substantial resources to protect their rights by investigating, pursuing, and deterring infringers independent of law enforcement. For instance, businesses often pool their resources in industry groups that undertake enforcement actions on their behalf. *See* Appendix G (listing trademark and copyright organization contacts). These groups sometimes investigate violations independently and refer the results to law enforcement with a request to bring charges. They may even seek to contribute resources to law enforcement agencies or multi-agency task forces organized to focus on IP and other high-tech offenses. Whether an IP victim can enforce its rights through civil or administrative processes may influence whether criminal prosecution is warranted (see Chapter IX of this Manual), and if so, what charges and strategy are appropriate. The fact that IP rights-holders sometimes can address IP crime on their own does not, however, diminish their rights under federal law.

Although corporate rights-holders are often the primary victims in intellectual property offenses, consumers are victimized also. Some consumers may be defrauded into mistakenly buying counterfeits, while consumers who purchase authentic goods pay higher prices.

## X.A. Victims' Rights

Beginning with the passage of the Victim and Witness Protection Act of 1982, Pub. L. No. 97-291, 96 Stat. 1248 (1982), Congress has enacted numerous statutes that protect victims' rights during the investigation, prosecution, and sentencing stages of criminal prosecutions. Most recently, Congress revised and recodified victims' rights laws in the Justice for All Act of 2004, Pub. L. No. 108-405, 118 Stat. 2260 (2004). Guidance for the implementation of the Justice for All Act can be found in the revised *Attorney General Guidelines for Victim and Witness Assistance* (May 2005) (“*AG Guidelines*”), which supersedes all earlier versions, and can be found at <http://www.usdoj.gov/olp/final.pdf>.

Generally, the Justice for All Act requires Department of Justice employees to make their best efforts to notify victims of the following rights:

1. The right to be reasonably protected from the accused
2. The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or any release or escape of the accused
3. The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding
4. The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding
5. The reasonable right to confer with the attorney for the government in the case
6. The right to full and timely restitution as provided in law
7. The right to legal proceedings free from unreasonable delay
8. The right to be treated with fairness and with respect for the victim's dignity and privacy

*See* 18 U.S.C. § 3771(a), (c)(1); *AG Guidelines*, Art. I.B. Apart from these enumerated rights, the prosecutor has an independent obligation under the Act to advise the victim of his or her right to counsel in connection with

the rights established by the Act. *See* 18 U.S.C. § 3771(c)(2); *AG Guidelines*, Art. I.C.

The Act also creates several enforcement mechanisms. If the government or a victim believes the victim's rights are being violated, relief is possible by way of motion and ultimately a petition for writ of mandamus in the Court of Appeals. *See* 18 U.S.C. § 3771(d)(3); *AG Guidelines*, Art. II.D.1. If the victim's rights are violated, the Act does not permit a motion for a new trial, but does provide for re-opening a plea or sentence. 18 U.S.C. § 3771(d)(5). Finally, although the Act does not authorize suits against government personnel, it requires the Department to create an administrative authority within the Department to receive and investigate complaints, and impose disciplinary sanctions for willful or wanton non-compliance. *See* 18 U.S.C. § 3771(f)(2); *AG Guidelines*, Art. I.D.2.; 28 C.F.R. § 45.10 (2005).

For purposes of enforcing these rights, the Justice for All Act defines a victim as “a person *directly and proximately harmed* as a result of the commission of a Federal offense or an offense in the District of Columbia.” *See* 18 U.S.C. § 3771(e) (emphasis added); *see also AG Guidelines*, Art. II.D.1. A victim may be an individual, a corporation, company, association, firm, partnership, society, or joint stock company. *See* 1 U.S.C. § 1 (defining “person”); *AG Guidelines*, Art. II.D.1. In contrast, a “person whose injuries stem *only indirectly* from an offense is not entitled to the rights or services described” above. *AG Guidelines*, Art. II.E.2 (emphasis added). Accordingly, in considering whom to classify as a victim, prosecutors may consider whether those who were injured during the commission of a federal crime were indeed “directly and proximately harmed” by the offense pursuant to 18 U.S.C. § 3771(e), particularly in cases where there are hundreds or even thousands of potential victims.

The Act's provision on “Multiple Crime Victims” is of particular interest in cases involving the large-scale distribution of pirated digital works over the Internet:

In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.

18 U.S.C. § 3771(d)(2); *see also AG Guidelines*, Art. II.G. For instance, in an online software piracy prosecution with hundreds or thousands of victims, it is often impractical for a prosecutor to notify all of the rights-holders. In such cases, the prosecutor should consider, at a minimum, notifying and

enlisting the assistance of any trade organizations that represent multiple rights-holders. The prosecutor could then craft an alternative procedure for informing such representatives (in lieu of notifying all rights-holders) and move the court to approve it.

The Act states that “[n]othing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.” 18 U.S.C. § 3771(d)(6). Congress clearly did not intend the Act to be implemented in a way that hinders prosecutorial discretion in addressing issues of victims' rights and notification.

The Act did not alter other provisions that protect victimized rights-holders. In all criminal prosecutions, a pre-sentence report must contain verified information containing an assessment of the impact on any individual against whom the offense has been committed. Fed. R. Crim. P. 32(d)(2)(B). Additionally, most intellectual property statutes guarantee victims (including producers and sellers of legitimate works, rights-holders, and their legal representatives) the right to submit a victim impact statement identifying the extent and scope of their injury and loss prior to sentencing. *See* 18 U.S.C. §§ 2319(e), 2319A(d), 2319B(e), 2320(d).

## **X.B. The Victim's Role in the Criminal Prosecution**

The fact that victims of IP crime have access to civil remedies raises several issues during criminal prosecution.

### **X.B.1. Reporting an Intellectual Property Crime**

The Department recommends that victims of intellectual property crimes document all investigative steps, preserve evidence, and contact law enforcement right away. *See U.S. Department of Justice Report of the Department of Justice's Task Force on Intellectual Property* App. C (Oct. 2004). Victims can report intellectual property crimes using the referral forms in this Manual at Appendix H.

### **X.B.2. Ethical Concerns When the Criminal Prosecution Results in an Advantage in a Civil Matter**

Like other victims of crime, IP rights-holders are often interested in securing economic and other relief, but, unlike many other victims, rights-holders often have the resources to aggressively pursue that relief themselves. Prosecutors are obligated by statute and policy to assist victims

in obtaining restitution and other remedies, but prosecutors are also obligated to serve the public interest; occasionally, those interests may be in tension. How concerned should the government be about IP victims using the threat of criminal prosecution to advance their private interests? And to what extent can the government offer a defendant concessions in prosecution or sentencing in exchange for the defendant's agreement to compensate the victim or mitigate the harm the defendant has caused?

### **X.B.2.a. Victims Who Seek Advantage by Threats of Criminal Prosecution**

It is commonplace for an IP-owner's attorney to send a merchant a letter directing him to cease and desist sales of infringing merchandise. If the merchant continues to infringe, the letter will be solid evidence of the defendant's mens rea during any ensuing criminal case.

Sometimes the IP owner's letter will include an express or implied threat to seek criminal prosecution should the merchant persist. The extent to which a lawyer can ethically threaten to press criminal charges to advance a civil cause of action is not clear. The lack of clarity stems in part from a patchwork of ethical rules. The ABA's Model Code of Professional Responsibility (1969, amended 1980) explicitly prohibited strategic threats of prosecution: "A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter." Disciplinary Rule 7-105(A). The ABA's Model Rules of Professional Conduct, adopted in 1983, omitted the rule as "redundant or overbroad or both." *See* ABA Formal Ethics Opinion 92-363 (1992) (allowing a lawyer to use a threat of a criminal referral to obtain advantage if the civil claim and criminal matter are related and well-founded). Not all states have dropped the old rule, and some have adopted other specific provisions addressing the issue. *Compare Office of Disciplinary Counsel v. King*, 617 N.E.2d 676, 677 (Ohio 1993) (disciplining a lawyer under the old rule for threatening to seek prosecution unless opponent in property dispute paid disputed rent or vacated the property) *with* Disciplinary Rule 7-105(A) (Or. 2003) (allowing such threats "if, but only if, the lawyer reasonably believes the charge to be true and if the purpose of the lawyer is to compel or induce the person threatened to take reasonable action to make good the wrong which is the subject of the charge").

Whatever the implication for the victim's lawyer, there is nothing unethical about the government's prosecuting the offender after such a threat has been made. The victim's threat does not present a legal or ethical obstacle for the prosecution. Instead, the concern for the government prosecutor is a strategic one, to the extent that the threat reflects on the

victim's credibility or willingness to manipulate the criminal justice system for private gain. The victim's conduct in this regard is one factor among many to be considered in deciding whether to prosecute.

### **X.B.2.b. Global Settlement Negotiations**

Ethical questions arise when the prosecution, victim, and defendant attempt to resolve all pending civil and criminal disputes in a global settlement agreement. While the answers to these questions are not entirely clear, there are some best practices that follow the guidelines cited above, Department policy, and strategic concerns.

First, it is often the better practice for the prosecutor to defer to the other parties to suggest a global disposition rather than be the first to suggest it. By adopting this approach, the prosecutor is less likely to create the appearance of overreaching:

[T]he government can neither be, nor seem to be, trading money for relief or insulation from criminal prosecution or sentencing consequences. Such a trade-off not only would undermine the integrity of the prosecutorial process, but also raises formidable fairness concerns, with wealthy defendants better able to reach global settlements than poor ones.

\* \* \*

Many prudent Assistant United States Attorneys consider global settlements to have an appropriate and ethical role in resolving parallel proceedings, but follow a rule of not introducing or suggesting such a disposition. If opposing counsel raise[s] the issue, it may be responded to and pursued by government attorneys in close consultation with supervisors, and mindful of the ethics issues.

U.S. Department of Justice, *Federal Grand Jury Practice* § 12.16 (Office of Legal Education 2000) (concerning parallel proceedings and global settlements).

Second, it is the better practice to limit the negotiations to matters of criminal law. For example, as discussed in Section X.B.3.a. of this Chapter, although some civil remedies will award a victim of IP theft with treble damages, treble damages cannot be awarded under the criminal restitution statutes. *See* 18 U.S.C. §§ 3663(b), 3663A(b), 3664(f)(1)(A). *See* also Section VIII.D.3. of this Manual (discussing how to determine restitution measures). However, the criminal statutes permit restitution to be ordered “to the extent agreed to by the parties,” 18 U.S.C. § 3663(a)(3), and allow for the defendant to provide services in lieu of money, 18 U.S.C.

§§ 3663(a)(5), 3664(f)(4). Therefore, it is perfectly appropriate for the government to require full restitution as a condition of a plea agreement. See Sections VIII.D.1.-.2. of this Manual.

Clearly, the government may not use the threat of unsupported charges to obtain advantage for a civil plaintiff. Model Rule of Professional Conduct 3.8 prohibits a prosecutor from seeking charges that the prosecutor knows are not supported by probable cause, and Rule 3.1 prohibits any advocate from asserting frivolous claims. Rule 4.1 requires a lawyer to be truthful. Even a well-founded threat of criminal prosecution may be unethical if intended merely to “embarrass, delay or burden a third person.” Model Rules of Professional Conduct R. 4.4 (2003).

Finally, there is the strategic concern. A judge or jury might react negatively if the victim or prosecutor appears to be threatening more serious consequences in the criminal case as leverage in the civil disposition. Although the prosecutor must at all times keep the victim informed of the progress of the criminal case, including discussion of a plea offer (see Section X.A. of this Chapter), it is ultimately the prosecutor who must decide how, if at all, to attempt to resolve a criminal case, including all issues of restitution to the victim.

### **X.B.3. Parallel Civil Suits**

The civil and regulatory laws of the United States frequently overlap with the criminal laws, creating the possibility of parallel civil and criminal proceedings, either successive or simultaneous. In the absence of substantial prejudice to the rights of the parties involved, such parallel proceedings are unobjectionable under our jurisprudence.

*Securities & Exch. Comm'n v. Dresser Indus., Inc.*, 628 F.2d 1368, 1374 (D.C. Cir. 1980) (en banc) (footnote omitted). The topic of parallel civil suits is complex and largely beyond the scope of this Manual. For a more extensive discussion of parallel proceedings, see U.S. Department of Justice, *Federal Grand Jury Practice* ch. 12 (Office of Legal Education 2000). The following is a brief summary.

#### **X.B.3.a. Private Civil Remedies**

Victims of IP crimes have extraordinary enforcement mechanisms and civil remedies against infringers. In civil actions, IP rights-holders can recover damages, the defendant's profits, costs, attorney fees, and even statutory damages, which can be punitive or quasi-punitive. *See* 15 U.S.C. § 1117 (trademark infringement damages); 17 U.S.C. §§ 504 (copyright infringement), 505 (same), 1101 (bootlegged recordings of live musical



performances), 1203 (DMCA); 18 U.S.C. § 2318(f) (illicit labels and counterfeit labels, documentation, and packaging for copyrighted works); *see also Getty Petroleum Corp. v. Island Transp. Corp.*, 862 F.2d 10, 13-14 (2d Cir. 1988) (holding punitive damages unavailable for federal trademark claims, but may be available for state infringement and unfair competition claims). Civil remedies also include injunctive relief against future infringement and seizure or impoundment of infringing goods. 15 U.S.C. §§ 1116, 1118 (trademark); 17 U.S.C. §§ 502 (copyright), 503 (same), 1101 (bootlegged recordings of live musical performances), 1203(b) (DMCA); 18 U.S.C. § 2318(f)(2)(A), (B) (illicit labels and counterfeit labels, documentation, and packaging for copyrighted works).

Victims of trademark or copyright infringement can also seek the private counterpart of a search warrant: an ex parte seizure order, executed by law enforcement. 15 U.S.C. § 1116(d) (trademark); 17 U.S.C. § 503 (copyright); *see Columbia Pictures Indus., Inc. v. Jasso*, 927 F. Supp. 1075 (N.D. Ill. 1996) (sealed writ of seizure issued for pirated videos); *Time Warner Entm't Co. v. Does Nos. 1-2*, 876 F. Supp. 407, 410 (E.D.N.Y. 1994) (recognizing availability of seizure order for infringing goods, but denying the victims' ex parte request on Fourth Amendment grounds because it called for execution by private investigators and failed to describe the locations to be searched with particularity). A party seeking civil seizure of goods with counterfeit marks must first notify the United States Attorney to allow the government's intervention should the seizure affect the public interest in a criminal prosecution. 15 U.S.C. § 1116(d)(2).

Prosecutors should consider the availability and use of private civil remedies in deciding whether to prosecute an infringer criminally. See Section IX.D. of this Manual.

### **X.B.3.b. Advantages and Disadvantages of Parallel Civil and Criminal Proceedings**

If the government prosecutes a defendant who is also a party to a pending civil case, the parallel proceedings raise their own set of issues:

#### **Advantages**

- The victim's private civil enforcement action brings additional statutory and equitable remedies to bear on a defendant.
- The victim's allocation of resources to the investigation may conserve government resources. Moreover, as discussed in Section X.C. of this Chapter, the victim's independent reasons for

providing resources to advance the civil case may lessen the appearance of any potential conflict of interest.

- In the civil case, the plaintiff victim can compel discovery, which the prosecution can use and discuss with the victim without grand jury secrecy or operational concerns.
- A civil case presents the defendant with a difficult Fifth Amendment choice. If he submits to discovery, he may lock in his story, provide leads, disclose strategy, or furnish false exculpatory statements, all of which may assist the criminal prosecutor. If he asserts his privilege against self-incrimination in the civil matter, however, the jury in the civil case can be instructed that it may draw an adverse inference from his silence. *See, e.g., Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976) (adverse inference from silence permissible in prison disciplinary proceedings); *ePlus Tech., Inc. v. Aboud*, 313 F.3d 166, 179 (4th Cir. 2002) (adverse inference permissible in civil RICO fraud case); *LaSalle Bank Lake View v. Seguban*, 54 F.3d 387, 390-91 (7th Cir. 1995) (same).
- A criminal conviction typically ends the civil case in the victim's favor, either because the victim can rely on the criminal court's restitution order, collateral estoppel will conclusively establish the defendant's wrongdoing in the civil case, or the conviction simply renders the defendant less willing to contest the civil case.

### **Disadvantages**

- Given the availability of private, civil enforcement mechanisms, the court may view the criminal prosecution as a waste of judicial resources.
- The government loses control of a component of the investigation. Actions taken by private counsel and investigators for the civil case may not be in the criminal case's best interests.
- If the grand jury is used to gather evidence, secrecy concerns may require criminal investigators to withhold material information from the parties to the civil proceeding, although collecting evidence outside the grand jury, such as through search warrants or administrative subpoenas, may allow the government to share information without breaching grand jury secrecy.
- The defendant can compel discovery in the civil case, which may generate inconsistent witness statements and provide insight into

the prosecution's case. As a result, some prosecutors will seek to stay the civil case while the criminal case proceeds.

### **X.B.3.c. Stays and Protective Orders to Delay Civil Proceedings During Criminal Prosecution**

If the disadvantages of parallel proceedings outweigh the advantages, the government may seek a protective order or a stay of the civil proceedings. There is ample authority for issuing a stay or protective order, especially when liberal civil discovery would allow a criminal target or defendant to interfere with the investigation or bypass restrictions on criminal discovery. *See, e.g., Degen v. United States*, 517 U.S. 820, 825-26 (1996) (holding that a stay may be sought in parallel civil forfeiture action); *United States v. Stewart*, 872 F.2d 957, 961-63 (10th Cir. 1989) (holding that a court handling a criminal case may have authority under Fed. R. Crim. P. 16(d) or 18 U.S.C. § 1514(a) to prevent parties in a parallel civil case from abusing witnesses or discovery procedures); *Securities & Exch. Comm'n v. Dresser Indus.*, 628 F.2d 1368, 1376 n.20 (D.C. Cir. 1980) (en banc) (noting that the government may seek postponement of the noncriminal proceeding to prevent the criminal defendant from broadening his rights of criminal discovery against the government); *Campbell v. Eastland*, 307 F.2d 478, 490 (5th Cir. 1962) (holding that the public interest in criminal prosecution with limited discovery outweighed civil litigant's right to prepare case promptly); *see also* U.S. Department of Justice, *Federal Grand Jury Practice* § 12.14, at 407-10 (Office of Legal Education 2000).

In seeking a stay or protective order, the government should be prepared to address the following factors: (1) the extent to which issues in the criminal case overlap with those presented in the civil case; (2) the status of the criminal matter, especially whether the civil defendant has been indicted; (3) the interest of the plaintiff in proceeding expeditiously, as weighed against the prejudice caused by the delay; (4) the private interests of and burden on the defendant; (5) the interest of the court in case management and judicial resources; (6) the interest of non-parties; and (7) the public interest. *See Benevolence Int'l Found. v. Ashcroft*, 200 F. Supp. 2d 935, 938 (N.D. Ill. 2002); *Trustees of the Plumbers and Pipefitters Nat'l Pension Fund v. Transworld Mech., Inc.*, 886 F. Supp. 1134, 1139 (S.D.N.Y. 1995).

## **X.C. Offers of Assistance From Victims and Related Parties**

IP rights-holders frequently offer to provide resources to assist the government with criminal investigations. Traditionally, law enforcement agencies have routinely accepted assistance from victims and citizens willing to do so in discharge of their civic duty. However, offers of assistance in investigations and litigation have increased in scope, variety, and monetary value. This prompted the Department of Justice's Task Force on Intellectual Property to recommend that the Department issue guidance on the acceptance of resources from victims, related parties, and third parties. Accordingly, Deputy Attorney General Paul J. McNulty issued a memorandum to all United States Attorneys and Component Heads entitled "Guidance for Acceptance of Assistance and Gifts from Private Parties for Use in Connection with Investigations and Litigation" (May 2006). This subsection tracks the Deputy Attorney General's memorandum closely and highlights some of the issues addressed therein. The reader is advised to refer to the memorandum itself before deciding on an appropriate response to an offer of resources. The reader should also refer to Appendix J of this Manual, which examines a variety of specific hypothetical offers of resources, such as private investigators offering information; victims offering meeting space, expert witnesses, purchase money to obtain counterfeit items, and storage space for seized items; and unrelated parties offering forensic tools and analysis, facilities from which to conduct an investigation, and expert witness services.

An offer of donated resources generally raises three issues. The first is whether the donation of resources is permitted by laws, regulations, and Department directives limiting the acceptance of gifts. This will usually turn on whether the offered resources constitute a gift or the type of assistance traditionally provided by victims of crime, their related parties, and third parties. The second issue is whether the assistance is permitted by the rules of professional conduct regardless of whether the offered resources are considered to be gifts or assistance. The third issue is whether the assistance will have an adverse impact on the prosecution, even if permissible under gift restrictions and rules of professional conduct. All three issues are addressed below.

## **X.C.1. Gift Issues**

### **X.C.1.a. Applicable Law**

The Attorney General has authority to “accept, hold, administer, and use gifts, devises, and bequests of any property or services for the purpose of aiding or facilitating the work of the Department of Justice.” 28 U.S.C. § 524(d)(1). Gifts of money (including money derived from property) must be deposited in the Treasury for the benefit of the Department and may be distributed by order of the Attorney General. 28 U.S.C. § 524(d)(2).

In 1997, the Attorney General issued Department of Justice Order 2400.2, *available at* <http://www.usdoj.gov/jmd/ethics/docs/doj-2400-2.htm>, which “sets forth the Department's policies and procedures regarding the solicitation and acceptance of gifts, devises and bequests of property of all kinds.” The Order states that no Departmental employee may solicit a gift unless he or she has obtained the prior approval of the Attorney General or the Deputy Attorney General. DOJ Order 2400.2 ¶ 3.a.(1). Solicitations are rare and approved in only extraordinary circumstances.

In addition, the Assistant Attorney General for Administration (AAG/A) has the exclusive authority to accept “gifts made to the Department” or any component. *Id.* ¶ 3.b.(1). Before accepting any gift, the AAG/A must consider: (1) whether the gift is appropriate for use; (2) whether the conditions the donor has placed on acceptance or use, if any, are “acceptable;” (3) whether any employee solicited the gift, and if so, whether approval was obtained; and (4) whether acceptance is “appropriate and advisable,” in light of conflict-of-interest and ethics guidelines, including whether acceptance would “create the appearance of impropriety.” *Id.* ¶ 3.b.(2).

The AAG/A has delegated to component heads the authority to determine whether to accept certain case-specific gifts from private parties in criminal and civil investigations, prosecutions, and civil litigation that have a value of \$50,000 or less. The component head for U.S. Attorneys' Offices is the Director of the Executive Office for United States Attorneys. The component head may accept the first offer from a source up to \$50,000. A second or subsequent offer in the same fiscal year from the same source must be submitted to the Assistant AAG/A for approval when the value combined with the first gift exceeds \$50,000. Gifts that are not case-specific, gifts of cash, gifts valued above \$50,000, and extraordinary case-specific gifts continue to require approval by the AAG/A.

### **X.C.1.b. Distinction Between “Assistance” and “Gifts”**

Historically, the Department has distinguished a gift from traditional forms of assistance provided by citizens during a criminal or civil investigation, prosecution, or civil litigation. Matters that constitute “assistance” are *not* gifts and, accordingly, are *not* subject to the procedures applicable to gifts. If the offered resource constitutes assistance, it may be accepted without approval, but if it is a gift, it cannot be accepted without obtaining approval as described later in this Chapter.

Law enforcement agencies routinely receive wide-ranging aid from private parties in the investigation and prosecution of federal crimes. Such aid has played an important and accepted role in the criminal process. *See, e.g., Commonwealth v. Ellis*, 708 N.E.2d 644, 651 (Mass. 1999) (“It is in the public interest that victims and others expend their time, efforts, and resources to aid public prosecutors.”); *see also Wilson v. Layne*, 526 U.S. 603, 611-12 (1999) (noting that the use of third parties during the execution of a warrant to identify stolen property “has long been approved by this Court and our common-law tradition”). Victims and other private parties are often in a unique position to provide information and other aid in an investigation and litigation. Such private cooperation not only is desirable, but often is critical to law enforcement and the government's mission. In this vein, the vast majority of *case-specific* aid from private parties, particularly from victims and related parties, constitutes assistance and is not a gift.

A victim provides assistance when it offers services, equipment, or logistical support that enhances the efficiency of the government's efforts in relation to a case. Apart from cost savings, an offer of assistance enhances the Department's efficiency when the offer gives an added benefit that is unique because of the victim or related party's involvement. Assistance generally will be distinguishable in some way from what the Department could obtain through commercial obligations. For example, use of a victim company's office space to conduct interviews of witnesses constitutes assistance since that location provides accessibility to staff that would not be possible in a hotel or other location. On the other hand, a victim company's offer to Departmental employees of its fleet of cars for local transportation, even if made in the course of a case, provides only a convenience that is no different from what the Department would obtain on the commercial rental market, and should not be accepted.

#### **X.C.1.b.i. Assistance from Victims and Related Parties**

Aid provided by a victim will generally be classified as assistance, rather than a gift. Examples of actions that constitute assistance when provided by a victim include:

- Providing factual or expert information in an investigation or fact or expert testimony at trial
- Turning over the fruits of an internal investigation (e.g., collecting and analyzing financial or transactional data)
- Consulting with law enforcement during the investigation (e.g., reviewing seized evidence to distinguish legitimate copyrighted works from forgeries, identifying proprietary information in a theft of trade secrets prosecution, or instructing professional staff and contractors to respond to queries from Departmental employees regarding technical subjects)
- Permitting agents to use equipment, services or logistical support in circumstances where such assistance provides a unique benefit not available on the commercial market, such as the use of office space for employee interviews, surveillance or document review
- Providing certain goods or services for use in the investigation or a related undercover operation (e.g., a bank providing credit card accounts in a credit card fraud investigation involving that bank)

Aid provided by a party that is related to the victim (“related party”) will also generally constitute assistance. Related parties consist of those parties that have a close association with the victim and a shared interest with the victim in providing the particular assistance. Related parties can include a victim's immediate family, an industry association, or agents or contractors hired by the victim. For example, a computer security firm hired by a victim to monitor its computer network would be a related party in a case that involved the victim's computer network.

In certain circumstances, an entity may be an “indirect victim” of a crime and also be in a unique position to offer assistance. For example, an owner of an apartment building would be an indirect victim of a tenant who used his rental apartment to sell and deliver controlled substances. In addition, a package delivery company that suspects use to transport and deliver illegal goods is also an indirect victim. Aid offered by an indirect victim generally will be considered assistance. For example, the landlord described above provides assistance with free use of an apartment for surveillance, as does the package delivery company when it provides its

truck and uniform for an undercover agent to make a controlled delivery. However, depending on the value of the aid offered, and the potential appearance of impropriety that correlates to the value of the offer, an indirect victim's offer may cross the line from being permissible assistance to a gift that requires specific consideration before acceptance. For example, a landlord's offer of free use of an apartment for one year that has a market value of \$25,000 in rent constitutes a gift.

#### **X.C.1.b.ii. Private Investigators**

Corporate victims and trade associations often retain private investigators to gather evidence to be used in a civil lawsuit or for referral to law enforcement authorities. Private investigators are in the class of “related parties” who may provide assistance to the Department. Intellectual property owners often outsource security and investigative responsibilities to other entities on an ongoing basis. In these cases especially, private investigators regularly turn up evidence of criminality and share it with law enforcement. Moreover, their investigative responsibilities do not end with the referral to authorities, as their clients expect them to continue to uncover evidence in related or separate matters, especially when the infringement or theft is committed by organized groups.

Several principles should guide the acceptance of assistance from private investigators. First, prosecutors and agents should not direct or advise an entity or individual in its private investigation before a referral is made to law enforcement authorities. Apart from issues regarding the acceptance of gifts versus assistance, activity by a private investigator may be imputed to the government for Fourth Amendment, entrapment, or other purposes, depending on the extent to which government officials direct or control those activities. Second, prosecutors and agents may not relinquish control of investigative responsibilities to private investigators after the Department has initiated an investigation. Third, if the private investigator continues (post-referral) to investigate the case or related matters and turns up additional evidence or information, employees may accept the continued assistance, but should be careful to avoid the appearance of implicit approval or direction. In fact, attorneys and other employees should evaluate whether the parallel private investigation would interfere with the criminal matter and if so, whether the victim and private investigator should be asked to immediately cease any further investigation after the referral is made.

There may, however, be instances when a private investigator is in a unique position to assist the Department. If the investigator's assistance is



within the scope of the work for which he was originally retained by the victim, the government may accept his assistance while he remains employed by the victim, and without payment from the Department. For example, if a private investigator has developed expertise in identifying the victim's property, or genuine products, he may assist in examining materials to determine whether they have been stolen from the victim or are counterfeit. If a private investigator made controlled buys of counterfeit products from a suspect prior to referring the case to a federal agency, and the Department believes a federally-supervised controlled transaction is warranted, the private investigator may continue to assist the Department at the victim's expense if his involvement is needed to conduct the transaction and it is within the scope of the work for which he was originally retained.

#### **X.C.1.b.iii. Cash**

A direct contribution of money to the government to help fund the costs of law enforcement activities, either generally or in a particular case or cases, will almost always be a gift, not assistance. The private funding of federal law enforcement activities traditionally has not been considered assistance, and such direct funding raises serious ethical and other concerns, and would *not* be accepted by the Department. *See, e.g., People v. Eubanks*, 927 P.2d 310 (Cal. 1996) (victim paying cost of experts working for the district attorney's office created an actual conflict of interest). *But see Commonwealth v. Ellis*, 708 N.E.2d 644 (Mass. 1999) (funding of prosecution costs by insurance association permitted because authorized by statute). To the extent cash is used for mission-related functions, the Department may not augment its resources in this manner.

There is one exception to the principle that a direct contribution of money is an impermissible gift. When the government serves as a conduit for funds from the victim (or a related party) that are used for the purchase of the victim's stolen property, the payment of ransom, or a similar demand, the government's receipt of those funds does not constitute a gift. Accordingly, when an IP victim or a related party provides a Departmental employee funds to purchase the victim's stolen property or pirated goods, the government is serving as a conduit for the funds and the funds are considered assistance. In these circumstances, the goods must be returned to the victim after completion of the government's case. Similarly, the government serves as a conduit when it uses funds from a victim or a related party to pay ransom or extortion on behalf of the victim. The Department has an established practice of accepting funds in these circumstances.

#### **X.C.1.b.iv. Storage Costs in Counterfeit or Infringing Products Cases**

A company that owns intellectual property has a significant independent interest in keeping counterfeit or infringing goods out of the stream of commerce. If federal law enforcement has seized offending products, it is likely that the victim would seek to impound and destroy the offending articles even if prosecution were declined. *See* 15 U.S.C. §§ 1116(d)(1)(A) and 1118 (allowing for court-authorized seizure and destruction of trademark-infringing articles at the rights holder's request); 17 U.S.C. § 503 (allowing court to authorize impoundment and destruction of copyright-infringing articles and instrumentalities). When a victim has sought a court's approval to seize and retain counterfeit or infringing products and chooses to do so, the Department may accept the offer of “assistance” to store offending articles that may also be relevant to the Department's investigation.

There also may be instances when the victim will not choose to seek court approval of authority to retain and destroy illegal goods, yet offers the Department free storage at its facilities or elsewhere during the pendency of the Department's case. It generally is permissible to accept such an offer. However, depending on the amount of time and space used for storage, the company's offer to pay for storage may cross the line from being permissible assistance to an impermissible gift if the market value of the storage space is so exorbitant that continuing acceptance of free storage could raise a question of an appearance of impropriety. In such circumstances, a Department employee should consult with the assigned attorney and the employee or attorney's Deputy Designated Agency Ethics Official (DDAEO) before continuing to accept the free use of storage space.

#### **X.C.1.b.v. Resources Donated for Ongoing Use by Law Enforcement**

Resources provided by a victim or related party will generally be considered to be a gift if its use is *not* restricted to the investigation(s) or prosecution(s) in which the provider is a victim or related party. For example, a package delivery company that gives the government free use of one of its delivery trucks for an undercover operation to investigate the hijacking of its trucks provides assistance. In contrast, the company's offer to the government of free use of its trucks for any undercover operation, regardless of the subject matter of the investigation, constitutes a gift. Similarly, a computer company that provides computers for the government to use in investigating and prosecuting the theft of trade

secrets from that company gives assistance. But if the company permits the government to use those computers for additional purposes not related to that case, either for continued use after its conclusion or for an unrelated matter, the computers become a gift.

As a general rule, “assistance” is provided by a victim or related party for use in an investigation or litigation involving that person or entity. However, there may be limited circumstances in which a third party provides aid that is unique and not available on the open market in much the same way as a victim or related party's assistance. For example, the DEA and FBI have longstanding, ongoing relationships with private package delivery companies that are akin to assistance. During an investigation, the FBI and DEA sometimes execute controlled deliveries of packages that contain illegal goods. Given safety, evidentiary, and other concerns, an agent will use the company's truck and uniform rather than have the package delivery company and its employee perform this task. Of course, the delivery company uniforms and vehicles are not available on the open market. Yet their appearance is what is expected by the recipient, and it, therefore, provides the Department unique access to and identification of the intended recipient. The agent (in the package delivery uniform) may need to arrest the recipient of the package at the time of delivery. Given these unique and multiple factors, this type of aid is considered assistance.

#### **X.C.1.b.vi. Assistance from Private Third Parties**

The distinction between “assistance” and “gift” is also critical in cases involving resources donated by a private third party—that is, any person or entity that is neither a victim nor a related party. If the assistance provided by the third party is uniquely necessary to provide relevant information to the investigators, grand jury, judge, or jury, then it should generally be treated as assistance. If not, then it should generally be treated as a gift.

In many cases this determination will be simple. The most fundamental and traditional types of aid that citizens have always provided in criminal investigations and prosecutions—such as answering agents' and prosecutors' questions, identifying suspects, and providing factual information and testimony—constitute assistance. This includes not only factual information gathered from individual citizens but also information that corporations and others provide from their records and databases. For example, an airline might provide information from passenger manifests, or a credit history service might provide credit information. Even though these activities may involve a cost to the third party in terms of time, effort,

and expense and may provide a material benefit to the government, no one would suggest that such cooperation constitutes a gift; it is simply one of the responsibilities of citizenship.

In dealing with assistance provided by third parties, it may be helpful to consider whether the assistance could be obtained by compulsory process. For example, if the information could be obtained by grand jury subpoena without cost, it should not be considered to be a gift merely because the cooperating third party elects to volunteer the required information rather than be compelled by legal process to produce it.

The Department also may receive offers of free or reduced-fee consultation and testimony by experts or consultants. Individuals may be interested in sharing their expertise without a fee for a variety of reasons. Some experts or consultants may see the opportunity to testify on behalf of the United States, and be qualified as an expert, as a substantial benefit to their curriculum vitae or resume. In addition, an expert may charge an exorbitant market rate for his services to the general public that the Department cannot afford, and therefore, the expert may offer services for a reduced fee.

The Department may accept free expert or consultative services under its gift acceptance authority, 28 U.S.C. § 524(d), or 5 U.S.C. § 3109. Both statutes provide separate mechanisms to accept these services. Neither statute, however, obviates the necessity for Departmental attorneys and staff to assess whether it is *appropriate* to accept the services for free. The same issues that govern the propriety of acceptance of items apply to the offer of consultative services and testimony. An attorney in consultation with an agent or other employee and the DDAEO must decide whether free expert services are appropriate to accept, and whether the government's impartiality may or will be questioned in these circumstances.

For additional examples of what constitutes traditional assistance or a gift, please refer to Appendix J, which examines a variety of specific hypothetical offers of resources, such as private investigators offering information; victims offering meeting space, expert witnesses, purchase money to obtain counterfeit items, and storage space for seized items; and unrelated parties offering forensic tools and analysis, facilities from which to conduct an investigation, and expert witness services.

### **X.C.1.c. Departmental Procedures for the Solicitation and Acceptance of Gifts and Assistance**

#### **X.C.1.c.i. Consultative Process for Acceptance of Assistance and Gifts**

A law enforcement officer or Departmental employee who receives any offer of assistance by a victim, related party, or witness beyond traditional assistance or access to company records should consult with the AUSA or Main Justice attorney who is assigned to the case or, if none, agency counsel, and the Deputy Designated Agency Ethics Official (DDAEO) who provides advice either to the law enforcement officer (or employee's) component or the attorney's office and component. The agent or employee in consultation with the appropriate counsel and DDAEO may determine that the offer is one of assistance (rather than a gift), and acceptance is appropriate. Disagreement among employees regarding these determinations should be submitted to the relevant component head(s) or designee and the Departmental Ethics Office, Justice Management Division (DEO) for resolution. Again, the component head for U.S. Attorneys' Offices is the Director of the Executive Office for United States Attorneys.

#### **X.C.1.c.ii. Solicitation of Gifts**

No Department employee may solicit gifts or encourage the solicitation of gifts to the Department unless the solicitation has been approved in advance by the Attorney General or the Deputy Attorney General. Solicitations will rarely be appropriate and accordingly, rarely approved. There may, however, be unusual circumstances in which it would be appropriate to solicit a gift to the Department in connection with a particular investigation, prosecution, or litigation. In that instance, the appropriate office first should consult with the DEO, and then present the matter to the Office of the Deputy Attorney General for a determination.

#### **X.C.1.c.iii. Acceptance of Gifts**

Any gift of goods or services accepted from a private party in connection with a criminal or civil investigation, prosecution, or litigation must be approved in accordance with procedures set forth below. Except in extraordinary circumstances, that approval must be obtained before the gift is accepted. If approval cannot be obtained before the gift is accepted, approval must be obtained no later than seven days after acceptance.

- **Certain gifts may be accepted only by the AAG/A.**

Only the AAG/A may approve acceptance of a gift of goods or services that is valued in excess of \$50,000. If a component or office is uncertain whether a gift is valued in excess of \$50,000, it may consult with the Departmental Ethics Office, Justice Management Division, regarding the reasonable value of the gift. If an office cannot determine adequately whether a gift exceeds \$50,000 in value, approval must be obtained from the AAG/A.

The AAG/A also must approve gifts of cash and gifts that are not case-specific, including gifts that will be used by the Department for purposes in addition to or after the conclusion of a particular investigation, prosecution, or litigation.

- **The AAG/A has delegated his authority to accept gifts from private parties for use by the Department in connection with a criminal or civil investigation, prosecution, or litigation.**

Component heads have been delegated authority to approve for their components the acceptance of a gift from a private party to be used in connection with a criminal or civil investigation, prosecution, or litigation that is (1) case-specific and (2) has a value of \$50,000 or less. Component heads may further delegate this authority to one other individual at the Deputy Assistant Attorney General (or equivalent) level within his or her component.

- **Approval of acceptance must be coordinated among the relevant offices.**

If a law enforcement agent or other non-attorney employee receives an offer of a gift, that employee must notify and consult with an attorney, if any, who is assigned to the matter. The attorney, in conjunction with his or her component head, will determine whether to accept the offer. If no attorney has been assigned, the investigating component may decide whether to accept the offer of the gift. If an attorney from more than one office, Board, or Division is assigned a matter (e.g., an AUSA and attorney in the Criminal Division), both relevant component heads (or designees) must concur in the recommendation to accept a gift before it may be accepted. Disagreement among component heads may be resolved, upon request, by the AAG/A.

Component heads must ensure that a Gift Donation Form and a Gift Acceptance Form are completed for each gift acceptance approved by their respective component. The completed forms must be forwarded to

Property Management Services, Facilities and Administration Services Staff, Justice Management Division.

Any questions regarding gift issues should be directed to the Departmental Ethics Office, Justice Management Division.

### **X.C.2. Professional Responsibility Issues**

Several specific professional responsibility rules are implicated when the government accepts either assistance or gifts from outside parties. For ease of discussion, we refer here to the ABA Model Rules of Professional Conduct, but note that a different set of professional conduct rules may apply, depending on the circumstances of each case and the rules in the attorney's state of licensure.

First, a prosecutor represents the United States and has a duty of confidentiality to that client. Rule 1.6(a) requires a lawyer to protect confidential client information and prohibits disclosure of such information unless impliedly authorized, or the client consents, or some other enumerated exception applies. The prohibition applies to privileged information, “matters communicated in confidence by the client [and] also to all information relating to the representation, whatever its source.” Rule 1.6 cmt. [3]. When an investigator is hired or paid for by a victim to assist on a case and is working with government agents, the privately paid investigator might naturally expect to obtain information from the government in return for information he or she has disclosed to the government. However, a prosecutor must limit disclosures made about the case by him or herself and by the agents. *See* Rule 5.3(b), (c) (requiring lawyer to take reasonable steps to ensure that the conduct of non-lawyer assistants is compatible with the professional obligations of the lawyer and will be held responsible for the noncompliance of non-lawyer assistants in some circumstances). Some disclosures may be impliedly authorized, while others would require the consent of the client; in most instances the United States Attorney or the Assistant Attorney General (or his or her designee) would provide the necessary consent for the United States. Of course, there are other limits on sharing of confidential grand jury information under Fed. R. Crim. P. 6(e).

When a prosecutor plans to disclose confidential information to the persons providing assistance or gifts, the attorney should seek written agreement from the person that he or she will not use or disclose the information except in relation to the case without the express written consent of the appropriate official within the Department of Justice. Also,

the prosecutor should consider whether sharing privileged information would waive the privilege.

The rules may require that assistance by third parties be disclosed to the court and/or to the defense, either to ensure that all representations to the court are accurate and complete, Rule 3.3 (candor toward the tribunal), or to clarify when the assistance or gifts provided by a private party might be seen as affecting the credibility of an important government witness, Rule 3.8(d) (special responsibilities of a prosecutor).

Moreover, there may be conflict of interest issues to resolve under Rule 1.7(a)(2), which recognizes that a lawyer may have a conflict of interest if “there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to . . . a third person or by a personal interest of the lawyer.” In these circumstances, a lawyer may nevertheless represent the client if the client gives informed written consent. The United States Attorney or the Assistant Attorney General (or his or her designee) would have the authority to provide consent to the attorney's work on a case notwithstanding the conflict. One could imagine a scenario in which a continuing relationship with a victim/witness who is providing assistance in one case might raise concerns about the lawyer's representation of the United States in that or another case, particularly one involving the victim/witness.

Other professional conduct issues may arise because of assistance and gifts provided to the government. Each issue will require individual analysis, and questions may be directed to the Professional Responsibility Officer (PRO) in each office or to the Department's Professional Responsibility Advisory Office (PRAO).

### **X.C.3. Strategic and Case-Related Issues**

Even if the resources offered by the victim or related parties are acceptable under both gift laws and policies and the rules of professional responsibility, an attorney must still consider whether accepting the assistance will adversely affect the case. Just because it might be permissible to accept an offer of either assistance or a gift does not make it advisable to do so in all instances. Depending on the scope, nature, or value of the assistance or gift, the public may question the Department's impartiality. Assistance that is extensive, unusual, or is, in fact or perception, of significant monetary value is more likely to raise questions about the Department's impartiality and independence than assistance or a gift that is more discreet, of modest value, and routine.



The government must exercise independent and impartial judgment in the conduct of all criminal and civil matters. *See Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. 787, 803 (1987) (“The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all ....”) (quoting *Berger v. United States*, 295 U.S. 78, 88 (1935)). When working with victims and other private parties, a Departmental employee must be aware that an entangled or intimate relationship with a private party can negatively affect a matter and the standing or respect accorded the Department. For example, a highly-paid, aggressive private investigator could be portrayed as a bounty hunter willing to entrap a defendant. The government might be portrayed as a pawn of wealthy corporate interests. The defense might claim that the victim's investigators were agents of the government and thereby seek to impute their conduct to the government for 4th Amendment or entrapment purposes. The defense might seek to dismiss the case based on a claim of prosecutorial misconduct or conflict of interest. These questions or doubts can affect the Department's ability to successfully prosecute or litigate a matter.

An employee should consider, among other things, whether the offeror has an independent reason to offer the gift or assistance. Especially in parallel civil and criminal investigations, the fact that the victim would prefer to pay for expenses deemed important to the victim in pursuit of its civil claim tends to reduce the likelihood that a conflict of interest will be found. *See Hambarian v. Superior Court*, 44 P.3d 102, 109 (Cal. 2002) (finding no conflict presented by prosecution's use of a victim-retained consultant hired by the victim to support an anticipated civil suit).

An employee also should consider who the donor is. If the donor is an industry leader, the employee should avoid actions that appear to create a competitive advantage for that entity. If the donor is a trade association or combination of affected entities that is involved in ongoing monitoring or investigation to protect the industry as a whole, the offer may be considered more impartial. *See Commonwealth v. Ellis*, 708 N.E.2d 644, 649 (Mass. 1999) (holding that likelihood of influence on a prosecutor's charging decisions is reduced when the resources are devoted to investigating industry-related offenses rather than for the benefit of one particular victim).

The acceptance of donated resources is most problematic for courts when the resources are provided directly to the prosecutor or prosecutorial entity. *See People v. Eubanks*, 927 P.2d 310, 322 (Cal. 1997) (holding district attorney disqualified, and state attorney general substituted, after victim

paid an invoice submitted to the prosecutor for expert services, among other expenses); *cf. Young v. United States ex rel. Vuitton et Fils S.A.*, 481 U.S. at 809 (holding that private counsel representing the beneficiary of a court order cannot be appointed to prosecute the defendant for violating the order). The less direct the benefit to the prosecution, the less likely the defendant will be able to obtain relief. *See Marshall v. Jerrico, Inc.*, 446 U.S. 238 (1980) (finding no realistic possibility that prospect of institutional benefit would unfairly influence decision to impose civil penalties by a Department of Labor administrator functioning as a prosecutor); *Calderon v. Superior Court of California*, No. C97-1448 MJJ, 2001 WL 940904 (N.D. Cal. 2001) (finding victim's contribution of resources to police investigation unlikely to influence prosecutor's decisions). However, for the reasons discussed more fully herein, although a court may distinguish when aid is offered directly to a prosecutor or prosecutorial entity, as compared to an investigator or law enforcement agent, this distinction is not determinative for purposes of assessing whether the offer should be accepted in the first instance.

In addition, the Department's acceptance of a single, extraordinary gift from a victim or related party may impact the public, or more specifically, a jury's, perception of the Department's motivations and activities. If it appears that the Department's actions are influenced heavily by a private party, the Department's litigating posture and the public's respect will be weakened. A jury may vote against the Department's position because it perceives the Department is acting on behalf of a private party rather than as a representative of the United States' interests. In extreme cases, a court may conclude that the Department's acceptance of a gift created a conflict of interest and impaired the prosecutor's independence. *Cf. Eubanks*, 927 P.2d at 322. Of course, the standard of appropriate behavior is not whether a matter will be dismissed, but whether the appearance of impropriety or the lack of independence outweighs the benefit of the proffered gift or assistance. The Department, by its actions, must maintain the public's confidence in and respect for the criminal process, and the Department's reputation for fairness generally.

A Justice Department employee needs to balance the need for, or importance of, the aid against any negative perception by a jury or the public that can influence adversely a particular case. Employees should evaluate whether the assistance or gift is likely to call into question their independence and impartiality, or create an appearance of impropriety. This analysis does not lend itself to clear or measured parameters. The decision whether to accept assistance or a gift often can involve difficult and nuanced issues. Given the potential ramifications, these decisions

should be made through the consultative process among law enforcement personnel, other investigators, and attorneys before the matter is resolved. The trial attorney is in the best position to assess these concerns, and he must be consulted before any employee may accept an offer of resources. The assigned attorney also should consult with an ethics officer to determine whether the offer constitutes assistance or a gift that may be accepted under the gift procedures, and the offer conforms with the rules of professional responsibility.

#### **X.C.4. Help and Advice**

Each component (including each United States Attorney's Office) has qualified specialists to provide guidance, including a Deputy Designated Agency Ethics Official who can provide advice on gift and assistance issues. The General Counsel's Office of the Executive Office for United States Attorneys provides guidance to U.S. Attorneys' offices on matters of government ethics, including recusal, outside employment and conflicts of interest. The office number is (202) 514-4024. Department employees also may seek guidance from the Departmental Ethics Office, Justice Management Division. The office number is (202) 514-8196.

For professional responsibility advice, an Assistant United States Attorney should first consult his or her supervisor and office Professional Responsibility Officer (PRO), who may then seek advice from the Professional Responsibility Advisory Office, telephone number (202) 514-3365.