



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

MANAGEMENT ADVISORY MEMORANDUM

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JANUARY 2024

Notification of Concerns with the Policies
and Procedures Regarding the Handling and
Safeguarding of Physical Evidence at United
States Attorney's Offices

INVESTIGATIONS DIVISION



January 24, 2024

Management Advisory Memorandum

To: Norman Wong
Acting Director
Executive Office for United States Attorneys

A handwritten signature in blue ink that reads "Michael E. Horowitz".

From: Michael E. Horowitz
Inspector General

Subject: Notification of Concerns with the Policies and Procedures Regarding the Handling and Safeguarding of Physical Evidence at United States Attorney's Offices

The purpose of this memorandum is to advise you of concerns the Department of Justice Office of the Inspector General (OIG) has identified with the Executive Office for United States Attorneys' (EOUSA) policies regarding the storage of evidence by United States Attorney's Offices (USAO). The OIG identified these concerns in connection with an investigation of missing physical evidence that had been in the custody of a USAO. During the investigation, the OIG found that EOUSA's policies regarding the handling of evidence in criminal matters are contained only in Justice Manual (JM) Title 3, entitled "EOUSA," and not referenced in JM Title 9, entitled "Criminal," which creates a risk that, absent adequate training, AUSAs handling criminal matters will not be aware of such policies. Indeed, in the investigation that led to this memorandum, multiple AUSAs and other USAO employees told us they were unaware of written policies regarding handling or storing evidence. In addition, EOUSA's policies do not specifically require USAOs, when storing physical evidence, to maintain documentation identifying the particular USAO employees who handled or had access to the physical evidence. Further, EOUSA's policies do not set forth baseline standards for how USAOs should ensure any location in which physical evidence is stored is secure and only accessible to individuals with a need to access such physical evidence. While we did not survey all USAOs and we recognize that some USAOs may have adequate procedures for handling and storage of evidence on an individual basis, the USAO referenced above did not have such procedures at the time of the OIG investigation. We concluded that the gaps we identified in the EOUSA's policies create significant risks that evidence could be lost or stolen without accountability, and could potentially impact a USAO's use of evidence in court proceedings. In this memorandum, the OIG makes three recommendations to address the concerns we identified.

Relevant Authorities

The OIG requested that EOUSA provide the OIG with all policies or procedures governing the handling and storage of evidence within USAOs. EOUSA referred the OIG to the Justice Manual (JM), title 3, "EOUSA," part

15.00, which is entitled "Security Programs and Emergency Management."¹ Specifically, § 3-15.130 of this part of the JM is entitled "Evidence in Criminal Matters and Cases" and states:

Normally, United States Attorneys' offices (USAOs) should not have custody of evidence in criminal matters and cases. Under most circumstances, evidence should remain in the custody of the investigating agency. When evidence is required in court the agencies handling the case, or other representative of the investigating agency, should bring the evidence and retain custody until the material is introduced as evidence, at which point it becomes the responsibility of the United States Marshal, the Clerk, and the Court.

Regarding physical evidence specifically, JM § 3-15.130 states:

USAOs may be authorized storage of physical evidence under exceptional circumstances and for such short periods of time as necessary to present the evidence to the court or grand jury.

When accepting the custody of evidence is justified, USAOs shall, at a minimum, initiate the following procedures:

(1) Establish and maintain a permanent log of evidence transferred to and from their custody; (2) Issue, as well as require, receipts for evidence transferred to and from their custody; (3) Ensure all evidence is stored in secure facilities.

JM § 3-15.130 also addresses the storage of sensitive high-risk physical evidence, such as weapons, drugs, cash, negotiable instruments, or any other dangerous or valuable items, and states that the storage of such evidence by USAOs is "strongly discouraged." However, this section states that "under exceptional circumstances storage may be allowed in areas and containers which have been approved by" EOUSA provided the following conditions are met:

(1) A one-time written request by the United States Attorney to EOUSA with full justification for the need to establish a sensitive high-risk storage area is approved by the Director, EOUSA; (2) Written certification by the District Office Security Manager that the proposed storage area and containers meet EOUSA's sensitive high-risk physical evidence storage standards will satisfy interim certification requirements. Completion of a one-time, on-site security survey by the Security Programs Staff (SPS), EOUSA is required prior to final certification of the area; (3) A written agreement between the USAO and the Special Agent-in-Charge or appropriate supervisory official of the investigative agency, requiring the storage of sensitive high-risk physical evidence. The agreement will state the USAO will not assume custody of the evidence, but will only provide storage facilities which will allow the agency to retain complete custody of, and full control over, access to the sensitive high-risk physical evidence; (4) A one-time review and approval by SPS of the office's operational and administrative procedures for the storage of sensitive high-risk physical evidence to ensure compliance with EOUSA guidelines.

JM § 3-15.130 further states, "Under no circumstances will the storage of explosives, high quantities of ammunition, flammable devices, or chemicals be allowed."

¹ EOUSA also provided the OIG with policies and procedures for safeguarding child pornography and grand jury information. Additionally, EOUSA provided USAO procedures for litigation and legal holds as well as case file creation and preservation. EOUSA informed the OIG that, in addition to JM part 3-15.00, these were the only EOUSA policies or procedures dealing with evidence.

Title 9 of the JM, entitled "Criminal," and specifically § 9-13.000, "Obtaining Evidence," does not reference the storage of evidence by USAOs or reference JM § 3-15.130.

The Issue

The OIG's investigation was initiated as a result of a report that certain physical evidence in a criminal case was missing, some of which was high-risk physical evidence, and that it had last been in custody of a USAO. The OIG's investigation revealed that the USAO had stored physical evidence in this case and in prior cases, but that there were inadequate safeguards to ensure the proper storage of physical evidence by the USAO. For example, there were no safeguards: to ensure that the location where the evidence was stored was locked; to document who had access to the location; or to document what evidence entered or exited the location. At the time the high-risk physical evidence was reported missing, the particular USAO did not have any procedures to ensure the safe handling, secure storage, and documentation of physical evidence upon receipt from investigative agencies or other sources.

EOUSA's policies regarding storage of evidence by USAOs are set forth in JM Title 3, "EOUSA," specifically JM § 3-15.130, but they are not referenced in JM Title 9, "Criminal." The provisions in JM Title 9 generally govern the handling of criminal investigations and cases by USAOs, while JM Title 3 is more focused on administrative matters, such as personnel and financial management. We concluded that this JM placement creates a risk that, absent adequate training, AUSAs handling criminal matters will not be aware of the policies governing evidence storage. Indeed, in the investigation that led to this memorandum, multiple AUSAs and USAO employees told us they were unaware of written policies regarding handling or storing evidence.

Further, JM § 3-15.130 does not specifically require USAOs, when storing physical evidence, to maintain documentation identifying the particular USAO employees who handled or had access to physical evidence nor does it contain baseline standards for how USAOs should ensure any location in which physical evidence is stored is secure and only accessible to individuals with a need to access such physical evidence. Including such baseline standards in the EOUSA policy could help deter theft or mishandling of evidence as well as increase the likelihood that individual employees who engage in such misconduct can be held accountable.

While some USAOs may have individual procedures governing the safe handling or secure storage of evidence, there are no uniform baseline standards across USAOs that address these concerns. The OIG recognizes that the 94 USAOs and their divisions and branch offices throughout the country vary in resources, space, budgets, and staff. However, the absence of guidance or baseline standards for how USAOs should ensure any location in which physical evidence is stored is secure and only accessible to individuals with a need to access such physical evidence creates a significant risk that evidence could be lost or stolen without the ability to identify who is responsible or hold those who are responsible accountable.

Conclusion

We found that the placement of EOUSA's policy regarding storage of evidence by USAOs in JM Title 3, without any reference to this policy in JM Title 9, creates a risk that AUSAs handling criminal matters will be unaware of the EOUSA policy and will store evidence in criminal cases in violation of it. In addition, JM § 3-15.130 does not specifically require USAOs, when storing physical evidence, to maintain documentation identifying the particular USAO employees who handled or had access to physical evidence. JM § 3-15.130 also does not contain baseline standards for how USAOs should ensure any location in which physical evidence is stored is secure and only accessible to individuals with a need to access such physical evidence.

We concluded that the policy provisions relating to handling and storage of evidence by USAOs present significant risks that evidence will be mishandled, lost, or stolen, and that there are insufficient guidance and standards to enhance the likelihood responsible individuals can be held accountable for misconduct. Moreover, these issues could potentially impact a USAO's use of evidence in court proceedings.

Recommendations

The OIG recommends that EOUSA take the following measures to address the concerns identified in this memorandum:

1. Revise Justice Manual Title 9 to reference the Title 3 policy regarding USAO handling of evidence in criminal matters and cases, and otherwise ensure that the policy regarding USAO handling of evidence in criminal matters and cases is made known to all relevant USAO employees.
2. Reassess and revise the policy regarding handling evidence in criminal matters and cases to address the concerns identified in this memorandum. Specifically, at a minimum, these revisions should require USAOs, when storing physical evidence, to maintain documentation identifying the particular USAO employees who handled or had access to physical evidence and set forth baseline standards for how USAOs should ensure any location in which physical evidence is stored is secure and only accessible to individuals with a need to access such physical evidence.
3. Provide training to relevant USAO employees regarding the safe handling, permissible storage, and documentation of physical evidence in criminal cases.

The OIG provided a draft of this memorandum to EOUSA, and EOUSA's response is incorporated as Appendix 1. EOUSA indicated in its response that it agreed with the recommendations. Appendix 2 provides the OIG's analysis of EOUSA's response and a summary of the action necessary to close the recommendations. The OIG requests that EOUSA provide an update on the status of its response to the recommendations within 90 days of the issuance of this memorandum. If you have any questions or would like to discuss the information in this memorandum, please contact me at (202) 514-3435 or Sarah E. Lake, Assistant Inspector General for Investigations, at (202) 616-4730.

cc: Bradley Weinsheimer
Associate Deputy Attorney General
Department of Justice

Appendix 1: EOUSA's Response



U.S. Department of Justice

Executive Office for United States Attorneys


Office of the Director

Room 2261, RFK Main Justice Building (202) 252-1000
950 Pennsylvania Avenue, NW
Washington, DC 20530

MEMORANDUM

DATE: January 16, 2024

FOR: Michael E. Horowitz
Inspector General
Office of the Inspector General



FROM: Norman Wong
Acting Director

SUBJECT: Response to the Inspector General's Final Draft Management Advisory Memorandum Titled *Notification of Concerns with the Policies and Procedures Regarding the Handling and Safeguarding of Physical Evidence at United States Attorney's Offices*

The Executive Office for United States Attorneys (EOUSA) appreciates the opportunity to review the Office of the Inspector General's December 20, 2023 final draft Management Advisory Memorandum titled, *Notification of Concerns with the Policies and Procedures Regarding the Handling and Safeguarding of Physical Evidence at United States Attorney's Offices*, and provides the below responses to the recommendations directed to EOUSA:

Recommendation No. 1: Revise Justice Manual Title 9 to reference the Title 3 policy regarding USAO handling of evidence in criminal matters and cases, and otherwise ensure that the policy regarding USAO handling of evidence in criminal matters and cases is made known to all relevant USAO employees.

EOUSA Response: EOUSA concurs with this recommendation and is working to update the Justice Manual to address these concerns. Revisions to the Justice Manual must be circulated to and vetted through the Office of the Deputy Attorney General and the Justice Manual Board of Editors, which includes all Department litigating components. The timeframe for that process cannot be definitively calculated, but EOUSA anticipates completion within six months.

Recommendation No. 2: Reassess and revise the policy regarding handling evidence in criminal matters and cases to address the concerns identified in this memorandum. Specifically, at a minimum, these revisions should require USAOs, when storing physical evidence, to maintain documentation identifying the particular USAO employees who handled or had access to physical evidence and set forth baseline standards for how USAOs should ensure any location in which physical evidence is stored is secure and only accessible to individuals with a need to access such physical evidence.

EOUSA Response: EOUSA concurs with this recommendation. EOUSA's Security and Emergency Management Staff is drafting a U.S. Attorneys' Policy and Procedure (USAPP) that addresses evidence storage and ensures accountability for receiving, processing, safeguarding, storing, and disposing of physical evidence in accordance with relevant laws, regulations, and best practices. The timeframe for drafting, vetting within the United States Attorney community, and finalizing the USAPP cannot be definitively calculated, but EOUSA anticipates completion within six months.

Recommendation No. 3: Provide training to relevant USAO employees regarding the safe handling, permissible storage, and documentation of physical evidence in criminal cases.

EOUSA Response: EOUSA concurs with this recommendation. EOUSA's Security and Emergency Management Staff will coordinate with the Federal Law Enforcement Training Center to have two Criminal Investigators (GS-1811s) attend the Crime Scene Investigators Training Program (a 35-day train-the-trainer program) and develop the curriculum and lesson plans to train U.S. Attorneys' offices' evidence custodians on the proper safe handling, storage, and documentation of physical evidence in criminal cases. EOUSA anticipates completion by the end of calendar year 2024.

If you have questions or concerns regarding this response, please contact Michael Magruder, Audit Liaison at USAEO.EOUSA.Audit.Liaison@usdoj.gov.

Appendix 2: Office of the Inspector General Analysis of EOUSA's Response

The OIG provided a draft of this memorandum to EOUSA, and EOUSA's response is incorporated as Appendix 1. EOUSA indicated in its response that it agreed with the recommendations.

The following provides the OIG's analysis of EOUSA's response and a summary of the action necessary to close the recommendation. The OIG requests that EOUSA provide an update on the status of its response to the recommendation within 90 days of the issuance of this memorandum.

Recommendation 1: Revise Justice Manual Title 9 to reference the Title 3 policy regarding USAO handling of evidence in criminal matters and cases, and otherwise ensure that the policy regarding USAO handling of evidence in criminal matters and cases is made known to all relevant USAO employees.

Status: Resolved.

EOUSA Response: EOUSA reported the following:

EOUSA concurs with this recommendation and is working to update the Justice Manual to address these concerns. Revisions to the Justice Manual must be circulated to and vetted through the Office of the Deputy Attorney General and the Justice Manual Board of Editors, which includes all Department litigating components. The timeframe for that process cannot be definitively calculated, but EOUSA anticipates completion within six months.

OIG Analysis: EOUSA's response is responsive to the recommendation. The OIG will consider whether to close this recommendation after EOUSA (1) revises Justice Manual Title 9 to reference the Title 3 policy regarding USAO handling of evidence in criminal matters and cases, and otherwise ensures that the policy regarding USAO handling of evidence in criminal matters and cases is made known to all relevant USAO policies; (2) provides the OIG a draft of the revised Justice Manual Title 9 for review to ensure it satisfies the OIG's recommendation; and (3) thereafter provides the OIG the final policy for review.

Recommendation 2: Reassess and revise the policy regarding handling evidence in criminal matters and cases to address the concerns identified in this memorandum. Specifically, at a minimum, these revisions should require USAOs, when storing physical evidence, to maintain documentation identifying the particular USAO employees who handled or had access to physical evidence and set forth baseline standards for how USAOs should ensure any location in which physical evidence is stored is secure and only accessible to individuals with a need to access such physical evidence.

Status: Resolved.

EOUSA Response: EOUSA reported the following:

EOUSA concurs with this recommendation. EOUSA's Security and Emergency Management Staff is drafting a U.S. Attorneys' Policy and Procedure (USAPP) that addresses evidence storage and ensures accountability for receiving, processing, safeguarding, storing, and disposing of physical evidence in accordance with relevant laws, regulations, and best practices. The timeframe for drafting, vetting within the United States Attorney community, and finalizing the USAPP cannot be definitively calculated, but EOUSA anticipates completion within six months.

OIG Analysis:

EOUSA's response is responsive to the recommendation. The OIG will consider whether to close this recommendation after EOUSA (1) finishes drafting the USAPP referenced in its response regarding handling evidence in criminal matters and cases; (2) provides the OIG a draft of the USAPP for review to ensure it satisfies the OIG's recommendation; and (3) thereafter provides the OIG the final USAPP for review.

Recommendation 3: Provide training to relevant USAO employees regarding the safe handling, permissible storage, and documentation of physical evidence in criminal cases.

Status: Resolved.

EOUSA Response: EOUSA reported the following:

EOUSA concurs with this recommendation. EOUSA's Security and Emergency Management Staff will coordinate with the Federal Law Enforcement Training Center to have two Criminal Investigators (GS-1811s) attend the Crime Scene Investigators Training Program (a 35-day train-the-trainer program) and develop the curriculum and lesson plans to train U.S. Attorneys' offices' evidence custodians on the proper safe handling, storage, and documentation of physical evidence in criminal cases. EOUSA anticipates completion by the end of calendar year 2024.

OIG Analysis:

EOUSA's response is responsive to the recommendation. The OIG will consider whether to close this recommendation after EOUSA (1) provides training to relevant USAO employees regarding the safe handling, permissible storage, and documentation of physical evidence in criminal cases; and (2) provides the OIG evidence of such training, such as an agenda or slides, for the OIG's review.