

San Francisco U W JOURNAL THE RECORDER

130TH YEAR NO. 46

www.callaw.com

\$2.00

WEDNESDAY, MARCH 8, 2006

ALM

Measure of Success

Ryan's scorecard not as simple to fill out as critics suggest

By **Justin Scheck**
RECORDER STAFF WRITER

It's easy to imagine U.S. Attorney Kevin Ryan's dismay last week when he heard that a longtime prosecutor had written the Justice Department with harsh complaints about his management of the office.

But the U.S. attorney for the Northern District of California couldn't have been surprised. Criticizing Ryan's management has become a cottage industry since he was appointed by President Bush in 2002, with prosecutors, defense lawyers and at least one judge complaining about office management and the handling and selection of cases.

Just over the past 15 months, Ryan has endured two withering letters from subordinates, a string of attorney departures



CHRISTINE JEGAN

JUDGMENT DAY: Local U.S. Attorney Kevin Ryan's regular Justice Department review comes this month, after waves of staff departures and sharp criticism from inside the office and out.

the soap opera of discontent in Ryan's office.

The sharply worded letter by Assistant U.S. Attorney George Bevan Jr. express-

that's left the office "in crisis," it says little about how Ryan is performing his job.

That's a more complicated question than whether Ryan runs some the wrong

RYAN

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Ryan's spokesman and one of his top prosecutors said they can't vouch for the Syracuse numbers, and don't know how they were compiled. Mark Krotoski, the acting criminal chief, said last week that the office doesn't track the numbers itself, but disputed the apparent 50 percent drop in white-collar cases since 2002. By comparison, national white-collar filings fell by 20 percent during that period.

Krotoski said he believes that white-collar prosecutions are not down in the Northern District, and even if they are, that wouldn't reflect the quality of cases being brought.

"I question a numeric approach to fighting crime, and we have a track record that speaks for itself," Krotoski said.

HARSH ASSESSMENTS

Lawyers in and out of the U.S. attorney's office were surprised by Bevan's Jan. 13 critique, and not because of the strong language — through 24 years in the Northern District, Bevan has become known for sending off-the-cuff communiqués within the office.

What is striking, they say, is that Bevan took those complaints outside the office, taking the risk of making it look bad to outsiders. Bevan himself would not comment on the letter, nor would he provide a copy. "I can't talk about that," he said when reached by phone.

In his letter, the prosecutor blames top office management for a string of departures: "The departed AUSAs include top-notch, experienced prosecutors whom I believe would have remained in the office but for the gross mismanagement of the office."

Bevan's letter doesn't describe what those management missteps might be.

Northern District U.S.

Key categories of prosecution that Kevin Ryan took over the office in 2002 with the online version of

Year

Total Prosecutions

White Collar

Organized Crime

Weapons

Drugs

Civil Rights

Immigration

Source: TRAC Reports (Syracuse University Transactional Reporting Service)

But, he wrote, the defection of more than 40 prosecutors from the 85-lawyer criminal division since 2002 "has caused serious long-term damage to the office and its infrastructure." He also asked that EARS reviewers contact departed AUSAs to ask about management.

A Marine platoon commander in Vietnam, Bevan is known as an aggressive prosecutor specializing in gang, gun and drug cases. Lawyers within the office said that while Bevan has always been extremely loyal to the department, he has felt alienated for some time, since Ryan demoted him from a supervisory position shortly after being appointed.

And last year, while Bevan was on leave after suffering a heart attack, prosecutors released a key defendant in one of Bevan's gang cases.

Attorney Prosecutions

by the local U.S. attorney's office.
01. Full TRAC statistics are available
for this story at callaw.com.

2001	2003	2005
1,291	982	975
176	163	93
64	13	61
87	119	110
268	201	140
0	0	39
246	201	170

ional Records Access Clearinghouse)

Ryan spokesman Luke Macaulay said Ryan didn't know about the letter until last week. But its criticisms were not new.

A letter similar to Bevan's was sent around the office by former AUSA John Hemann as he left in January of last year for a partnership at Morgan, Lewis & Bockius.

"People in the office — lawyers and staff — are unhappy and frustrated. People outside the office are critical and, increasingly, derisive," Hemann wrote.

Acting criminal chief Krotoski said last week that attrition in the Northern District is about the same as in other offices — approximately 10 percent per year. "We have not seen the track record of this office suffer because of that," he said. And Macaulay blames departures on financial incentives, like lucrative law firm partner-

ships and retirement packages for career prosecutors.

But Rory Little, a professor at Hastings College of the Law and a former federal prosecutor who is generally supportive of Ryan, said it's unrealistic to say office turnover is unrelated to a white-collar decline, especially since the securities and white-collar sections have seen some high-profile personnel losses.

"A change in personnel, it doesn't matter why the change is, means things are going to be disrupted," he said.

PAR FOR THE COURSE?

While the nexus between management complaints and performance isn't always clear, recent history suggests that a San Francisco U.S. attorney will become known for one or the other.

Robert Mueller, who led the office in the late 1990s before becoming FBI director, is still spoken of with reverence; his predecessor, Michael Yamaguchi, was run out of office after a series of problems.

While these two represent extremes, Joseph Russoniello — the last Republican appointee thrown into the difficult role of San Francisco U.S. attorney — said public perception is always a concern.

"You basically work a little harder to make sure that reporters, instead of looking at how I ran my office, looked at the cases I was bringing," he said recently.

Ryan's failure to accomplish that has been attributed to a range of things. For example, Russoniello says, U.S. attorneys have become increasingly constrained by the Justice Department.

"It's very difficult now for the U.S. attorney, as I understand it, to have much of a say in the cases that are brought," he said. "Everything is micromanaged."

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'The departed AUSAs include top-notch, experienced prosecutors whom I believe would have remained in the office but for the gross mismanagement of the office.'

— GEORGE BEVAN
former U.S. attorney

RYAN

Washington.”

Others point directly to Ryan's temperament: they say the transition from a state judgeship to the hornet's nest of the federal building made him hunker down shortly after taking office.

Indeed, criticism can come from all angles, like well-publicized courtroom barbs from judges Charles Breyer and Jeffrey White last year, along with more private avenues: In 2004, Judge Marilyn Hall Patel complained about Ryan's management of the office to a high-ranking Justice Department official, said sources familiar with the communication. Patel didn't return calls seeking comment.

Over the past two years, lawyers in the office say Ryan has come to rely on his top deputy, Eumi Choi, for much of his communication with other prosecutors. And in recent months, Choi has been at the center of several troubling episodes for the office.

SECOND IN COMMAND

“Under the Ryan administration,” Bevan wrote in his letter, “many good people have been badly mistreated, and more particularly, by his first assistant/criminal chief, Eumi Choi, and there have been abuses of management's authority, and instances of lack of integrity and candor.”

Bevan did not specify what those alleged abuses were, but Choi — who has been out of town on a family emergency and was unavailable to comment for this story — has certainly taken her share of hits recently.

As the author of a letter firing the office's top administrator last year, Choi has been at the center of an investigation by the Office of Special Counsel, a federal whistle-blower agency probing whether the administrative officer, Caroline Krewson, was improperly terminated for criticizing Choi's and Ryan's management.

According to a copy of his letter reviewed by *The Recorder*, Bevan also sent

ment investigation.

The dismissed defendant, Nabil Ismael, is now trying to recover attorney's fees. In connection with that attempt, Breyer recently ordered Ryan, Choi and four other prosecutors to be deposed by defense lawyer Ian Loveseth.

Loveseth claimed in court filings that prior to dismissing the case, Choi made a plea offer to his client contingent on the defendant signing a statement that the DEA agent did not lie on the stand.

Choi has denied that, but the government — which rarely pays out fees in such cases — seems to feel there's a problem. Sources with direct knowledge of the case say the L.A. U.S. attorney's office, which is now handling it, has been authorized to settle the defendant's fee claims for up to \$50,000. L.A. Assistant U.S. Attorney

Patrick McLaughlin, who's in charge of the case, did not return phone messages requesting comment). McLaughlin's investigation has also been taken seriously by the assistant U.S. attorneys who were handling the case: at least two of them have retained counsel to represent them in the probe.

Office spokesman Macaulay said Ryan stands by Choi. In a statement delivered via Macaulay, Ryan said Choi “has not

quality of cases being brought.

Ryan's office is quick to make those points. And while Ryan said, in an e-mail sent via his spokesman last week, that statistics requested by *The Recorder* aren't "readily available," he also said he knows his office is performing well "based on the quality and quantity of the cases we are bringing."

Ryan said that numbers don't provide an accurate picture of the office's efforts. He pointed, for example, to the BALCO steroids case, which counts as just one case and led to only four convictions but, he argues, also pushed Congress and Major League Baseball to address the problem.

He also points to Operation Copycat, a nationwide crackdown on game, software and movie piracy. Though the operation

has thus far accounted for just four indictments here, and thus counts as just four "cases," Ryan said the impact of the probe "is international in its scope."

Still, the Syracuse data show that white-collar prosecutions declined from 181 in 2002 to 93 last year.

Little, the Hastings professor, says this is likely due, in part, to shifting office priorities since Ryan took over.

"Kevin has made it a priority, or a focus,

Priorities not always clear to observers

One difficulty in separating U.S. Attorney Kevin Ryan's performance from complaints about his management style is the lack of a clear measuring stick. While Ryan's spokesman says white-collar cases are as important a concern as ever, the perception among defense lawyers is that the focus on gangs and guns has come at the expense of corporate fraud cases.

Officially, Ryan says terrorism is the office's top priority. But sources inside and outside the office say there's relatively little terror work for lawyers to do.

Largely for that reason, a 2004 reorganization got rid of the full-time terror unit, a change the office has been reluctant to admit, but that spokesman Luke Macaulay confirmed last week — and that has been applauded by many outside the office, who said the unit was drawing lawyers away from other investigations.

The current terrorism unit is made up of attorneys in other divisions who move over to terror cases whenever necessary as a top priority. The unit is headed up by Assistant U.S. Attorney Jonathan Schmidt, and while Macaulay said the names of other terror lawyers are secret, sources familiar with the unit said the group also includes white-collar chief Michael Wang and Assistant U.S. Attorneys Monica Fernandez and Elise Beck-

