

February 4, 2013

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Washington, DC 20510  
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The Honorable Patrick Leahy  
Chairman, Judiciary Committee  
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The Honorable Al Franken  
United States Senator  
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The Honorable Chuck Grassley  
Ranking Member, Judiciary Committee  
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Sent Via Fax

Re: Nomination of B. Todd Jones and Response to Letter of Donald Oswald

Dear Mr. Chairman and Members of the Committee:

Over the 32 years of my career as a federal prosecutor in the Districts of Minnesota, Northern Indiana and the Virgin Islands, I worked for nine United States Attorneys.

Two of them, Tom Heffelfinger and Todd Jones, I worked for twice. I have worked for many Acting and Interim U.S. Attorneys. I served as an Acting and Interim U.S. Attorney. I also served for the Department of Justice as an evaluator of the performance of U.S. Attorney's Offices around the United States.

I know a good U.S. Attorney when I see one. Todd Jones has been an outstanding and highly effective U.S. Attorney.

If confirmed as the Director of the ATF he will continue his exemplary and dedicated service to the United States.

Todd, in each of his tenures as U.S. Attorney, demonstrated the highest level of leadership. His decisions were always based on what is the best method of accomplishing the mission of the United States Attorney's Office. As U.S. Attorney he recognized that effective law enforcement as a goal required a close working relationship with all levels of federal, state and local law enforcement and prosecutors.

He also recognized that communication with the various communities within Minnesota was an essential element of any enforcement action and he established methods by which prosecutors and law enforcement could disseminate information to

those communities impacted by crime. In doing so, he smartly leveraged the federal resources through strong partnerships with local prosecutors, law enforcement, and the community.

I observed Todd make decisions about cases and personnel which were complicated and difficult. His decision making process always included the input from the interested parties. He always wanted open expression of views and he received critical evaluation of options with an open mind. In the final analysis as the U.S. Attorney, the decision and responsibility for those decisions were his. In my view, he always made sound and ethical decisions after careful consideration of the various options. Even when I had disagreed with Todd on an issue, his acceptance of the disagreement was professional and courteous. His reasons for his decisions were well formulated and demonstrated a clear understanding of the issues. Mr. Oswald's recollections and description, which arise from just one year in Minneapolis, are completely inconsistent with my observations of Todd's performance over the 20+ years that I have known him.

Politics never entered his decision making. Never. The accusation by Mr. Oswald that he was politically motivated is outlandish, contrary to all my experiences with Todd, and in my opinion is absolutely without basis in fact and is not true.

Annual prosecution statistics served as a management tool during my 10 years as Chief of the Criminal Division in Minnesota and Todd's years, to ensure that workloads were carefully managed so that proper time and attention was devoted to each case. To each defendant. Never, absolutely never, did those statistics drive the decisions made by Todd that a particular case or defendant should be prosecuted. Generation of numbers is not a proper basis for prosecutorial decision making. Todd's decisions were always fact driven. Goal driven.

Justice driven by statistics is not justice.

High federal prosecution numbers does not mean a good job is being done. Lower numbers does not mean a poor job is being done. Taking the easy stats from the low-hanging fruit may look good to Mr. Oswald, however, it is not the way to effectively combat crime on the federal level. Mr. Oswald recites statistics as if recording high numbers of defendants demonstrates that effective work is being done, and he does so without consideration of whether or not any particular case or defendant, on the facts, is one that should be prosecuted with limited prosecutor and court resources.

Addressing the difficult cases, the complex cases with substantial community impact — gun smuggling, drug cartels, financial fraud, child pronography, terrorism — that require substantial resources and extremely hard work is a primary objective of federal prosecutions. Prosecuting cases in federal court that state and local prosecutors could otherwise prosecute more swiftly and with equal success is typically not a smart use of

taxpayer dollars, the federal court system, the unique capabilities of federal agents, or the special expertise of federal prosecutors.

Is the mere fact that a case is deferred to local prosecution rather than the U.S. Attorney's Office a demonstration of a lack of commitment to gun and drug prosecutions? It is not. Those local prosecutors are not potted palms, nor are they a second prize in the field of prosecution. Indeed, they and their staffs are on the front line of prosecution efforts — alongside federal prosecutors.

Perhaps the best way to demonstrate what has been accomplished by the U.S. Attorney's Office in Minnesota under Todd Jones' management is to review the published reports of the cases prosecuted by his legal teams. Petters. Hecker. Beckman. Al-Shabaab. In addition to these high profile cases, the office has prosecuted a wide breadth of crime and the complexity is significant and impressive.

Financial crime cases are time and resource intensive involving hundreds and even thousands of hours of work to gather the evidence, bring to indictment, prepare the case for trial, and if necessary try the cases over many weeks. Often that work occupies an Assistant United States Attorney or two, full time for more than a year. The harm that financial crimes cause to the community is widespread impacting various institutions, businesses, and their employees. It is also devastating to the individual victims and their families who are financially ruined. Many times the victims of financial crimes are senior citizens who have their retirement money stolen. They will never recover from the loss.

Addressing these financial crimes requires that sufficient resources within the U.S. Attorney's Office be allocated to them and that often means those resources are taken away from other types of crimes.

Mr. Oswald misunderstands the statistics he cites. His analysis is simplistic to the point of being wrong. The aphorism that for every problem there is a solution which is simple, clean and wrong, applies to Mr. Oswald's understanding of how to address prosecution decisions. Indeed, fewer resources devoted to a particular type of crime will reduce the numbers of those cases. But, higher numbers of prosecutions is a simple, but wrong solution. Declinations of cases is not the only reason that the number of prosecutions may decrease and his assumption is therefore incorrect.

For example, Mr. Oswald's chart on Counter-Terrorism shows 15 defendants prosecuted in FY09; 13 in FY10; 2 in FY11 and 2 in FY12. He concludes that the U.S. Attorney must not be devoting sufficient resources to those crimes. It is a false analysis and incorrect conclusion based on incomplete information.

First, I think we would all agree the high number of terrorist prosecuted in FY09 and FY10 means that there were way to many terrorist in Minnesota. The fact that only two were prosecuted in FY11 and in FY12 each may be nothing but good news that many terrorists had been prosecuted in FY09 and FY10 and taken off the street and there were fewer of them in FY11 and FY12. Would be terrorists may have been deterred, left town or were not detected or presented for prosecution. The facts relied upon by Mr. Oswald are simply incomplete.

As an example of his position regarding the terrorist prosecutions, Mr. Oswald broached "Operation Wrong Reich" in his missive and the decision made with regard to a specific prosecution target in that matter. Putting aside the propriety of publically discussing specific matters learned during federal employment, especially the guilt or innocence of a person not charged with an offense, he seems to imply that for FY12 that there should have been three defendants prosecuted --not two.

The devil is always in the details. Does declining a single prosecution evidence a lack of commitment to prosecution of gun crimes or terrorism? It does not. For all anyone knows that case deserved to be declined on its facts or on the resources it would take to prosecute it. Mr. Oswald infers this subject was guilty of a federal crime. Without knowing the evidence no one else should do so. Every prosecution has to be judged on its individual merits and statistics alone of the number of defendants presented, declined, prosecuted, tried or pled tell nothing of the quality of the cases. Prosecuting defendants just to increase the statistics is not proper. The two main defendants in "Operation Wrong Reich" were prosecuted and the federal interests in that regard were vindicated.

Gun violence is becoming an ever greater issue across this country, as was evidenced by your recent hearings on the subject. A strong leader at ATF is essential to the success of that agency --if success is the desired outcome.

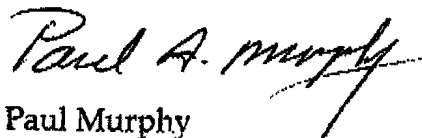
Todd is all about management. As a leader he makes the goals and objectives crystal clear. He makes certain to consider the views of his staff and stakeholder groups in formulating those goals and objectives. He thinks strategically and operationally about how those goals can be achieved. He has a persistent habit of following up relentlessly to ensure that milestones in the process are being met and, in the end, the goals and objectives are realized. I have worked for many good leaders and Todd is excellent.

Because of all these traits I really liked working for Todd. I knew what was expected of me and my associates in the U.S. Attorney's Office. There was always a well defined path to achieving the desired outcome.

You and other members of the Senate Judiciary Committee are considering Todd's nomination as Director of the ATF

I urge you and the committee members to reject Mr. Oswald's and all similar unfounded criticisms and to approve Todd for that position. He will do an excellent job.

Sincerely,

A handwritten signature in cursive script that reads "Paul A. Murphy". The signature is written in black ink and is positioned above the typed name.

Paul Murphy  
Retired Assistant U.S. Attorney

[REDACTED]  
St. Paul, Minnesota