



**U.S. Department of Justice**

Office of Legislative Affairs

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Office of the Assistant Attorney General

*Washington, D.C. 20530*

July 15, 2016

The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

This responds further to your letters to Channing Phillips, the nominee to be the United States Attorney for the District of Columbia, dated May 25, 2016, and June 15, 2016, requesting information on, among other things, an ongoing Freedom of Information Act (FOIA) case related to certain prosecutions data for the District of Columbia, *Krepp v. United States*, No. 16-CV-00926-KBJ (D.D.C.) As the Department of Justice indicated in our initial response dated July 1, 2016, we are pleased to enclose the requested information sorted by the seven police districts used by the Metropolitan Police Department.

In response to your request for data regarding arrests for the offenses of “homicide, rape, robbery, aggravated assault, burglary, larceny, motor vehicle theft, and arson,” we have provided the data for the D.C. Code offenses that best correspond to your request, *i.e.*, homicide, first degree sexual abuse and first degree child sexual abuse, aggravated assault, burglary, first degree theft, unlawful use of a vehicle, and arson. The arrests are sorted by year, offense, and police district, which is the format in which this information is maintained in the usual course. The data includes numbers for “no papered” cases, “papered” cases, convictions by plea, jury trial and non-jury trial, not guilty verdicts and hung juries, dismissals, total dispositions, and cases with no disposition reported. These terms are explained further below.

When police officers or agents arrest an individual based on probable cause, they present the case to the U.S. Attorney’s Office for the District of Columbia (U.S. Attorney’s Office or the Office) which then evaluates the evidence and exercises its prosecutorial discretion to initiate a prosecution in the Superior Court by filing a complaint or other charging document. This is referred to as “papering” a case. When the U.S. Attorney’s Office declines to file a charging document, the arrest is referred to as being “no papered.” The term “dismissal” refers to cases for which a charging document has been filed in court but which are dismissed at a later time by the U.S. Attorney’s Office or the court.

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There are a variety of reasons why the U.S. Attorney's Office might "no paper" or *nolle prosequi* cases. They include reasons such as the following: insufficient evidence that a crime was committed or that the accused committed it; reluctant, uncooperative, or compromised witnesses; witnesses who cannot be located or who fail to appear for papering, grand jury or trial; victims who choose not to go forward; the failure or inability of the police to obtain evidence; evidence that conflicts with witness accounts; a *de minimis* loss or injury that may not warrant criminal prosecution; evidence that the offense occurred in another jurisdiction; deferral to another jurisdiction with more serious charges; a decision to prosecute the case on federal charges in the United States District Court; potential violations of the 4th, 5th, or 6th Amendments to the Constitution; and potentially strong trial defenses or other mitigating factors. As an example, a significant proportion of unlawful use of a vehicle charges are no papered when the stolen car is being operated with a key at the time police stop the vehicle. The U.S. Attorney's Office typically will "no paper" a case where prosecutors do not believe they can prove beyond a reasonable doubt that the driver, much less the passenger(s), knew that the car was stolen.

For some arrests, the U.S. Attorney's Office may "no paper" a case but continue with the investigation to try to develop sufficient evidence to go forward with a criminal prosecution. In a few cases, for instance where the defendant has a drug or mental health issue and is amenable to treatment, the U.S. Attorney's Office may permit the defendant to enter a diversion program and, if the defendant is successful in complying with the conditions of the program, the Office will dismiss the felony charges.

The U.S. Attorney's Office may dismiss cases for a variety of reasons. For instance, tragically, some cases have been dismissed because key witnesses have been murdered. Others have been dismissed for reasons such as the following: witnesses become unavailable through death, sickness, or leaving the jurisdiction; witnesses change their accounts; witnesses fail to appear for trial and cannot be immediately found; prosecutors obtain evidence that seriously undermines the credibility of a key witness; forensic evidence does not inculcate the defendant; one case is dismissed after the defendant pleads guilty in another case; and/or multiple continuances result in the unavailability of witnesses or fading memories.

The category of "no disposition" refers to cases that are listed as pending. For recent years, it is likely that the case has not yet gone to trial. For older cases, the reasons for "no disposition" might include a defendant's abscondence; the defendant's cooperation in a case that has not yet gone to trial; the defendant's incompetency to stand trial; or recordkeeping errors including the court's failure to enter a disposition or perhaps miscoding a disposition.<sup>1</sup>

As we mentioned in our prior correspondence, the U.S. Attorney's Office is very committed to making information available to the citizens it serves. For your information, we are also enclosing a copy of a sample "Court Report" which is distributed at the monthly community meetings held in each district.

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<sup>1</sup> The U.S. Attorney's Office does not collect data independently but instead uses data provided to it by the Superior Court.

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We hope this information is helpful. Given the good faith efforts by Mr. Phillips and the Department to respond promptly and thoroughly to your requests for additional information, it is our sincere hope that the Committee will proceed as soon as possible in advancing this nomination. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'PJ Kadzik', written in a cursive style.

Peter J. Kadzik  
Assistant Attorney General

Enclosures

cc: The Honorable Patrick J. Leahy  
Ranking Member