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ONE HUNDRED TENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY

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October 6, 2008

The Honorable Michael B. Mukasey
Attorney General of the United States
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Mr. Attorney General:

We are writing to request information on the duties and powers of Acting United States Attorney Nora Dannehy. You recently appointed Ms. Dannehy in response to the call for the "special" appointment of a counsel to conduct further investigation and determine if criminal charges are warranted regarding the matters addressed in the Office of Inspector General/Office of Professional Responsibility Report titled "An Investigation Into the Removal of Nine U.S. Attorneys in 2006" (the Report). A number of these questions were raised with Department of Justice Inspector General Glenn Fine at the Judiciary Committee's hearing last week on the Report, and he indicated that they should be directed to the Department. Accordingly, please answer the following questions – which are critical to the public's evaluation of the Department's response to the serious issues raised in the Report – no later than Monday, October 13, 2008.

1. What issues are included within the scope of Acting United States Attorney Dannehy's investigation? Have you or anyone else imposed any limitations on the scope of the investigation and, if so, what are they?
2. If Acting United States Attorney Dannehy concludes that a particular area of investigation should be undertaken, will you or a future Attorney General have the power to overrule her? What steps have been or will be taken to ensure and safeguard Acting United States Attorney Dannehy's independence?
3. Is it accurate that Acting United States Attorney Dannehy will have the full powers of the United States Attorney for the District of Columbia for purposes of this investigation? If not, please describe any limitations on those powers that exist.

4. Do those powers include:
 - a. Power to issue and enforce subpoenas, including for documents in the possession of the White House?
 - b. Power to subpoena current and former Members of Congress and staff?
 - c. Power to subpoena current and former White House personnel and staff?
 - d. Power to litigate any resistance to such subpoenas?
 - e. Power to impanel a grand jury and seek indictments against private citizens or current or former government officials?
 - f. Power to immunize witnesses?
5. Will Acting United States Attorney Dannehy be required to seek authorization or permission from any Department official, or anyone else, before using any of the powers described above? Please describe.
6. In what other circumstances will Acting United States Attorney Dannehy be required to seek authorization or permission from any Department official or any one else before taking action? Please describe.
7. The Department is currently defending Harriet Miers's and Josh Bolten's refusal to provide testimony and documents to this Committee in federal court.
 - a. Do you believe that a conflict of interest could arise if Acting United States Attorney Dannehy concludes that the White House has inappropriately asserted executive privilege or other grounds for withholding documents in this matter?
 - b. Do you believe that a conflict of interest could arise if Acting United States Attorney Dannehy seeks to litigate the validity of any White House privilege or similar claims at the same time other Department lawyers are defending those claims?
 - c. Would you allow Ms. Dannehy to challenge the White House's claims of executive privilege or other grounds for withholding documents in court even if she presents

arguments that would conflict with or undermine the White House's claim of privilege related to the Committee's subpoena for documents?

8. If you, or a future Attorney General, or any other person overrules a decision of Ms. Dannehy or denies a request by Ms. Dannehy on any matter connected to this investigation, will you commit to informing the Chair and Ranking Members of the Congressional Judiciary Committees, as the special counsel regulations indicate would be appropriate in matters substantially affecting the public interest such as this one? If not, why not?
9. Press reports state, and Mr. Fine confirmed at the Committee's Friday hearing, that Acting United States Attorney Dannehy is to make some form of preliminary report to you and the Deputy Attorney General in approximately two months.
 - a. What issues do you expect to be covered by this report?
 - b. Do you plan to make a decision at that point whether the investigation will be allowed to continue?
 - c. What form will this report take – will there be a written document or have you requested an oral report?
 - d. Will you make the contents of this report available to the Congressional Judiciary Committees, with appropriate safeguards depending on the nature of the report and the status of the investigation?
 - e. If the report is such that neither public disclosure nor confidential disclosure to Congress would be appropriate, what information will you provide to Congress upon receiving this report?
10. As you know, the special counsel regulations require a report to the Attorney General at the conclusion of the investigation. At the conclusion of Acting United States Attorney Dannehy's investigation, what report will be made to you and to the public regarding her findings? In particular, if there are no indictments or public trials, will you commit to some public accounting of the matter so that there can be meaningful public assessment of the handling of the case? Similarly, if indictments or trials cover only some issues, but not others, will you commit to some public accounting of the remaining issues not resolved through trial?

The Honorable Michael B. Mukasey
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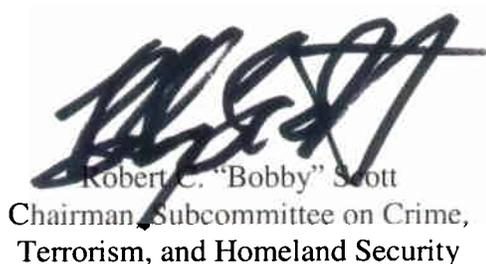
This is especially important given (i) the Report's identification of important unanswered questions about several of the forced resignations, and (ii) the damage that has been done to the Department's reputation and the need to begin restoring credibility and confidence in the Department's handling of politically sensitive matters.

Please direct your response and any questions to the Judiciary Committee Office no later than Monday, October 13, 2008 (tel: 202-225-3951; fax: 202-225-7680). Thank you very much for your attention to this matter.

Sincerely,



John Conyers, Jr.
Chairman



Robert C. "Bobby" Scott
Chairman, Subcommittee on Crime,
Terrorism, and Homeland Security



Linda T. Sánchez
Chair, Subcommittee on Commercial and
Administrative Law

cc: Hon. Lamar S. Smith
Hon. Chris Cannon
Hon. Louie Gohmert
Hon. Keith B. Nelson