

**MARCH 6, 2007**

**STATEMENT OF**

**ATLEE W. WAMPLER III AS 2006-2007**

**PRESIDENT OF**

**THE NATIONAL ASSOCIATION OF**

**FORMER UNITED STATES ATTORNEYS**

**REGARDING**

**H.R. 580, RESTORING CHECKS AND**

**BALANCES**

**IN THE CONFIRMATION PROCESS OF**

**UNITED STATES ATTORNEYS**

# *The National Association of Former United States Attorneys*



## ***President 2006-2007***

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I am the President of the National Association of Former United States Attorneys ("NAFUSA"). NAFUSA was founded in March 1979 to promote, defend and further the integrity and the preservation of the litigating authority and independence of the Office of the United States Attorney. Our membership includes United States Attorneys from every administration back to President Kennedy and includes former United States Attorneys from every state in the union. It is with this mission and with our cumulative experience as United States Attorneys that I am here today to present the position of this deeply concerned, bi-partisan organization, NAFUSA.

We are very troubled with recent press accounts concerning the termination of a sizable number of United States Attorneys. Historically, United States Attorneys have had a certain degree of independence because of the unique and integral role the United States Attorneys play in Federal law enforcement. Among other things, the United States Attorney establishes and maintains working and trusting relationships with key Federal, state and local law enforcement agencies. In many respects, while the United States Attorney is a representative of the Department of Justice in each district, the United States Attorney brings to bear his or her experience and knowledge of the law enforcement needs of the district in establishing priorities and allocating resources. Most importantly, United States Attorneys have maintained a strong tradition of insuring that the laws of the United States are faithfully executed, without favor to anyone and without regard to any political consideration. It is for these reasons that the usual practice has been for United States Attorneys to be permitted to serve for the duration of the administration that appointed them.

We are concerned that the role of the United States Attorneys may have been undermined by what may have been political considerations that run counter to the proper administration of justice and the tradition of the Department of Justice. While we certainly recognize that the United States Attorneys serve at the pleasure of the President, we would vigorously oppose any effort by any Attorney General to remove a United States Attorney as a result of political displeasure or for political reward. Any such effort would undermine the confidence of the Federal judiciary, Federal and local law enforcement agencies, the public, and the thousands of Assistant United States Attorneys working in those offices.

We do not mean to suggest that we know the reasons for each of the terminations or, for that matter, all of the relevant facts. Indeed, we encourage the Department of Justice and Congress to make as full and as complete a disclosure of the facts surrounding these firings as is permissible. Still, the reported facts are troubling, perhaps unique in the annals of the Department of Justice, and certainly raise questions as to whether political considerations prompted the decision to terminate so many United States Attorneys. It may well be that legislative attention or a written policy of the Department of Justice is necessary to deal with this and similar situations in the future to afford continuity and protection to United States Attorneys. We will be happy to assist the Department or Congress in any such effort.

We understand that there is a historical unwritten and necessary tradition to maintain a United States Attorney, appointed by the President of the United States and confirmed by the United States Senate, until the end of an administration's term(s) unless the United States Attorney is found to be in dereliction of his or her duties.

We believe that this tradition must be memorialized in legislative history.

Although the Attorney General of the United States is in charge of the United States Department of Justice and sets policies and procedures of the Department, each of the ninety-three (93) United States Attorneys who is Presidentially appointed and United States Senate confirmed, has a substantial degree of independence due to the unique and integral role the United States Attorney has in Federal public law forum of carrying out the prosecution function in the District in which the United States Attorney is confirmed.

The United States Attorney cannot be perceived to be biased toward, nor influenced by the political party in power, nor by politically prominent people, nor people of great wealth. This polestar requirement manifests itself in the principle that the United States Attorney must have substantial independence.

The United States Attorney is the chief Federal law enforcement officer in the District and, through the United States Attorney's experiences in managing the office: (1) establishes and maintains working and trusting relationships with key Federal, state and local law enforcement agencies; (2) gains confidential and sensitive intelligence information from Federal, state and local law enforcement agencies in conducting investigations to use in the gathering of evidence for prosecutions of violations of Federal law; and (3) gains education, training, experience and wisdom over the four to eight years in managing the office to carry out the public law prosecution function.

Thus, the United States Attorney is an essential component of a district's Federal administration of justice and should not be removed by the Attorney General for whim, political displeasure, nor for political reward to another to hold a title of this important office.

United States Attorneys' tasks are extremely demanding and require total commitment of United States Attorneys' public and private lives. To the public, the United States Attorneys' performance of duties is like an iceberg. The public can see only a tiny fraction of the cases and matters that are in open courts and in or awaiting trials. The rest of a United States Attorneys'

waking hours involve participation in planning and execution of undercover operations by Federal investigative agencies, court authorized wire and oral interception operations, long-term Federal grand jury investigations, complex civil cases, and managing a major law firm's criminal and civil caseload and administration. The United States Attorneys' work is so extremely demanding that the usual problem at the end of an administration's term(s) is keeping these highly experienced men and women in office, rather than having them depart to lucrative positions in private law firms. Firing performing United States Attorneys does not foster the tradition of public service to the end of an administration.

### **BRIEF HISTORY**

The Office the United States Attorney was established by the First Congress of the United States, The Judiciary Act of 1789, passed September 24, 1789 in 1 Stat. 73, Chapter XX, Section 35. The Congressional birth of the United States Attorney began; "and there shall be appointed in each district a meet person learned in the law to act as attorney for the United States in such district, . . .". The United States Attorney's duties were set out as: to prosecute in such district all delinquents for crimes and offenses, cognizable under the authority of the United States, and all civil actions in which the United States shall be concerned (except for the Supreme Court). The First Congress continued, "And there shall also be appointed a meet person learned in the law, to act as attorney-general of the United States . . ." whose duties were to conduct cases before the Supreme Court in which the United States was concerned and to give his advice when requested by the President of the United States or the heads of the departments.

Although the Attorney General's position was originally a part-time job, the case and matter load of the Attorney General increased dramatically to the point that, in 1870 after the Civil War, it necessitated a very expensive retention of a large number of private attorneys to handle the workload. A purse string minded Congress passed an Act to Establish the Department of Justice, Chapter 150, 16 Stat. 162 (1870) which set up an executive department of the Government of the United States beginning July 1, 1870. The Act of 1870 gave the Attorney General and the Department of Justice general control over Federal criminal prosecutions and civil suits in which the United States had an interest and general control over Federal law enforcement.

The United States Attorneys' Mission Statement is set out in the United States Attorneys' Manual ("USAM"). It states that the United States Attorneys serve as the Nation's litigators under the direction of the Attorney General. It further states, "Each United States Attorney exercises wide discretion in the use of his/her resources to further the priorities of the local jurisdictions and needs of their communities. United States Attorneys have been delegated full authority and control in the areas of personnel management, financial management, and procurement."

### UNITED STATES ATTORNEYS' STATUTORILY REQUIRED DUTIES

The duties of the United States Attorney are set forth by Congress in 28 U.S.C.A. Section 547 as follows: "Except as otherwise provided by law, each United States Attorney, within his district shall - - (1) prosecute for all offenses against the United States; (2) prosecute or defend, for the Government, all civil actions, suits or proceedings in which the United States is concerned; (3) appear in behalf of the defendants in all civil actions, suits or proceedings pending in his district against collectors, or other officers of the revenue or customs for any act done by them or for the recovery of any money exacted by or paid to these officers, and by them paid into the Treasury; (4) institute and prosecute proceedings for the collection of fines, penalties, and forfeitures incurred for violation of any revenue law, unless satisfied on investigation that justice does not require the proceedings; and (5) make such reports as the Attorney General may direct."

USAM 1-2.101 Office of the Attorney General states that the Attorney General serves as head the Department of Justice and the Chief Law Enforcement Officer of the Federal Government. The Attorney General is assisted by the Attorney General's Advisory Committee of the United States Attorneys consisting of fifteen (15) United States Attorneys representing the geographic areas of the nation.

USAM 3-2.100 states that the United States Attorney serves as the Chief Law Enforcement Officer in each judicial district and is responsible for coordinating multiple agency investigations in the district. The USAM then states "Today, as in 1789, the United States Attorney retains among other responsibilities, the duty "to prosecute all offenses against the United States." citing 28 U.S.C. Section 547(1); and then states that the duty is to be discharged under the supervision of the Attorney General, citing 28 U.S.C. Section 519.

USAM 3-2.120 states the procedure of appointments set out by Congress in citing 28 U.S.C. Section 541 that the United States Attorneys are appointed by the President with the advice and consent of the Senate for a 4-year term. It then goes on to say that, "Upon expiration of this term (4 Years) the United States Attorney continues to perform the duties of the office until a successor is confirmed." The USAM continues stating, "The United States Attorneys are subject to removal at the will of the President".

USAM 3-2.140 Authority, states the duties and authority of the United States Attorney within his or her district as set out in 28 U.S.C. Section 547 (which are set out above) and then states the following:

"By virtue of this granting of statutory authority and of the practical realities of representing the United States throughout the country, the United States Attorneys conduct most of the trial work in which the United States is a party. They are the principal Federal Law Enforcement Officers in their judicial districts. In the exercise of their prosecutorial discretion, United States Attorneys construe and implement the policy of the Department of Justice. Their professional abilities and the need for their impartiality in administering justice directly affect the public's perception of Federal Law Enforcement."

### CONCLUSION

The removal of a United States Attorney without cause unnecessarily disrupts the continuity of Federal investigations and prosecutions, gives rise to speculation of undue influence, and wastes valuable Government resources. The removal of a United States Attorney without cause undermines the confidence of the Federal judiciary, Federal and state law enforcement authorities, Assistant United States Attorneys, Federal public defenders and the body public in the integrity of the Federal system of justice.

Although the President has the right to remove a United States Attorney for any reason, the general policy of the United States Department of Justice should be not to remove a United States Attorney appointed by the President and confirmed by the United States Senate without cause until the end of an administration's term(s).

**NATIONAL ASSOCIATION OF FORMER UNITED STATES ATTORNEYS**

A handwritten signature in black ink, appearing to read "Atlee W. Wampler III", written in a cursive style.

**ATLEE W. WAMPLER III  
PRESIDENT 2006-2007**

## Curriculum Vitae



**ATLEE W. WAMPLER III**, President of Wampler Buchanan Walker Chabrow Banciella & Stanley, PA, [www.wbwcb.com](http://www.wbwcb.com), an AV rated diverse law firm located in Miami, Florida that was created in January 1988 and has evolved into a full service firm of seven (7) lawyers today.

Mr. Wampler was born in Baltimore, Maryland, March 27, 1942; admitted to Bar, 1967, Maryland; 1980, Florida and U.S. Supreme Court; 1981, U.S. Court of Appeals, Fifth and Eleventh Circuits; U.S. District Courts, Southern District of Florida, Middle District of Florida and Northern District of Florida. Education: Lehigh University (B.A., 1964); University of Maryland (LL.B.1967). Martindale-Hubbell "AV" Rating. Special Attorney, U.S. Department of Justice, Organized Crime Strike Forces WDC; Detroit, Tampa, 1970-1975; Attorney-In-Charge, U.S. Department of Justice, Miami Organized Crime Strike Force, 1975-1980; U.S. Attorney Southern District of Florida, 1980-1982; Member: Dade County (Chairman, Legislative Committee, Eleventh Judicial Circuit, 1982-1983), Maryland State and Federal (President, South Florida Chapter, 1980-1981) Bar Associations; The Florida Bar (Vice Chairman, Health Law Committee, 1983-1985); American Health Lawyers Association; National Association of Former United States Attorneys (President 2006-2007, Director, 1989-1993, 2001 to present) [www.nafusa.org](http://www.nafusa.org) [Capt. Military Intel., Counterintelligence OPS., U.S. Army, 1968-1970.

**PRACTICE AREAS:** Complex Civil Litigation; RICO; Qui Tam Litigation; White Collar Criminal Litigation, Health Law; Environmental Law.

**CURRENT COMMUNITY SERVICE:** DIRECTOR, The Melissa Institute for Violence Prevention and Treatment [www.melissainstitute.org](http://www.melissainstitute.org); Director, Florida Grand Opera [www.fgo.org](http://www.fgo.org); Member, Two Hundred Club of Greater Miami; three times President, Church Council, Christ the King Lutheran Church and is a choir soloist, and the Good News Band Leader [www.ctkmiami.org](http://www.ctkmiami.org)

**PUBLICATIONS INCLUDE:** "Conducting Internal Investigations, Part II", American Bar Association, Corporate Counsel, Summer 2003; "Sharks In The Corporate Swimming Pool", National Association of Former United States Attorneys, C.L.E. 2001; "False Claims Act The Impact Of Recent Decisions On Qui Tam Litigation", C.L.E. 2001, 4th Annual C.L.E. Seminar, Southeastern Healthcare Fraud Institute; "The False Claims Act and Qui Tam Actions", Update 2000, National Association of Former United States Attorneys C.L.E. Seminar, September 2000; "The Hospital Medical Staff Fair Hearing Process", Florida Bar, Health Care Law Update, January 1991