## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Tuesday, August 08, 2006 3:17 PM
**To:** 'Robert_F._Hoyt@who.eop.gov'
**Subject:** RE: W.D. Wash.

I assume Seattle, but am not sure.

-----Original Message-----
From: Robert_F._Hoyt@who.eop.gov [mailto:Robert_F._Hoyt@who.eop.gov]
Sent: Tuesday, August 08, 2006 3:11 PM
To: Sampson, Kyle
Subject: RE: W.D. Wash.

I'll inquire about what happened with him.

Which seat was he looking for -- Seattle or Tacoma?

-----Original Message-----
From: Kyle.Sampson@usdoj.gov [mailto:Kyle.Sampson@usdoj.gov]
Sent: Tuesday, August 08, 2006 3:03 PM
To: Hoyt, Robert F.
Subject: W.D. Wash.

I heard that our U.S. Attorney, John McKay, got screwed by Washington's judicial selection commission. What do you know? Can we let them know that we want to consider him along with the recommended candidates?



OAG000000200

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Wednesday, August 09, 2006 6:23 PM
**To:** 'Robert_F._Hoyt@who.eop.gov'
**Subject:** W.D. Wash.

Additional info regarding the district court position in WDWA (Seattle):

Two Dem Senators from the state strongly support USA John McKay being interviewed. They will also support his nomination. Especially since all Ds on bi-partisan comm voted for him. They will also call the WH to request interviewing the three plus McKay.

Local GOP members will also call WH expressing support for McKay and indicating he has strong Rep ties and credentials. Also, the 2 prominent Rs in the state, former and strongly support him.



OAG000000201

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Wednesday, August 09, 2006 6:43 PM
**To:** Yang, Debra Wong (USACAC)
**Subject:** RE: Follow-Up on McKay

1. Yes. What's your home address?
2. And, re John, it's highly unlikely that we could do better in Seattle.
3. Re Scott, do I detect some reservation?

-----Original Message-----
From: Yang, Debra Wong (USACAC)
Sent: Wednesday, August 09, 2006 6:37 PM
To: Sampson, Kyle
Subject: RE: Follow-Up on McKay

Regarding

2. Great. He'd be terrific in that job and has really done good work as the USA, but you know that already.

1. Could you make them single, good looking and articulate? Oh yeah, and skiiers too and willing to retire to Utah (too much to ask??).

D

PS: heard you all are looking at and others regarding job. I know him well because of California work, interactions and abilities. If you need more info, let me know.

-----Original Message-----
From: Sampson, Kyle
Sent: Wednesday, August 09, 2006 06:23 PM Eastern Standard Time
To: Yang, Debra Wong (USACAC)
Subject: RE: Follow-Up on McKay

1. I'm sending some missionaries to your house.
2. Info re McKay is very helpful; I'm on it.

-----Original Message-----
From: Yang, Debra Wong (USACAC)
Sent: Wednesday, August 09, 2006 3:08 PM
To: Sampson, Kyle
Subject: Follow-Up on McKay

Kyle:

Still reeling over that Samoa and Tonga info you gave me.

Additional info regarding the district court position in WDWA (Seattle). Two Dem Senators from the state strongly support his being interviewed. They will also support his nomination. Especially since all Ds on bi-partisan comm voted for him. They will also call the WH to request interviewing the three plus McKay.

Local GOP members will also call WH expressing support for McKay and indicating he has strong Rep ties and credentials. Also, the 2 prominent Rs in the state, former and the elected DA strongly support him.

Let me know what you think his chances are. Also let me know if you need more info.



OAG000000202

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Wednesday, August 09, 2006 7:15 PM
**To:** Yang, Debra Wong (USACAC)
**Subject:** RE: Follow-Up on McKay

Thx!

-----Original Message-----
From: Yang, Debra Wong (USACAC)
Sent: Wednesday, August 09, 2006 6:55 PM
To: Sampson, Kyle
Subject: RE: Follow-Up on McKay

1.
Good luck trying to get past guards.
2. He's a great soldier.
3. Absolutely not. I think he's a comer. Got a great background, including military service and good looking family, federalist etc. I also think he's interested in running in California and I've been trying to get him broader exposure. This would be great for ATF (who is beleagured and need a shot in the arm), would give Greg great exposure and put more good ones in the pipeline.

PS: will call some corp folks regarding myself later this month and will share other info.

Aloha!!

-----Original Message-----
From: Sampson, Kyle
Sent: Wednesday, August 09, 2006 06:41 PM Eastern Standard Time
To: Yang, Debra Wong (USACAC)
Subject: RE: Follow-Up on McKay

1. Yes. What's your home address?
2. And, re John, it's highly unlikely that we could do better in Seattle.
3. Re Scott, do I detect some reservation?

-----Original Message-----
From: Yang, Debra Wong (USACAC)
Sent: Wednesday, August 09, 2006 6:37 PM
To: Sampson, Kyle
Subject: RE: Follow-Up on McKay

Regarding

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1. Could you make them single, good looking and articulate? Oh yeah, and skiiers too and willing to retire to Utah (too much to ask??).

D

PS: heard you all are looking at
job. I know him well because of California work, interactions and abilities. If you need more info, let me know.

-----Original Message-----
From: Sampson, Kyle
Sent: Wednesday, August 09, 2006 06:23 PM Eastern Standard Time

To: Yang, Debra Wong (USACAC)
Subject: RE: Follow-Up on McKay

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Sent: Wednesday, August 09, 2006 3:08 PM
To: Sampson, Kyle
Subject: Follow-Up on McKay

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Additional info regarding the district court position in WDWA (Seattle). Two Dem Senators from the state strongly support his being interviewed. They will also support his nomination. Especially since all Ds on bi-partisan comm voted for him. They will also call the WH to request interviewing the three plus McKay.

Local GOP members will also call WH expressing support for McKay and indicating he has strong Rep ties and credentials. Also, the 2 prominent Rs in the state, former and strongly support him.

Let me know what you think his chances are. Also let me know if you need more info.

D

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Monday, August 14, 2006 6:51 AM
**To:** 'SJennings@gwb43.com'
**Subject:** RE: Tax Court

Traveling with the AG -- call me on my cell

-----Original Message-----
From: SJennings@gwb43.com [mailto:SJennings@gwb43.com]
Sent: Sunday, August 13, 2006 10:42 PM
To: Sampson, Kyle
Subject: RE: Tax Court

are you around MOnday - I'd like to talk to you about Tim Griffin -

---

From: Kyle.Sampson@usdoj.gov [mailto:Kyle.Sampson@usdoj.gov]
Sent: Thu 7/20/2006 9:38 AM
To: Jon Seaton; Scott Jennings
Subject: RE: Tax Court

---

-----Original Message-----
From: SJennings@gwb43.com [mailto:SJennings@gwb43.com]
Sent: Thursday, July 20, 2006 8:30 AM
To: Sampson, Kyle; jseaton@gwb43.com
Subject: FW: Tax Court

---

J. Scott Jennings

Special Assistant to the President and

Deputy Political Director

The White House



OAG000000205

Washington D.C. 20502

sjennings@gwb43.com

Office: 202-456-5275

---

From: Robert M. McCallum [mailto: ]
Sent: Wednesday, July 19, 2006 11:44 AM
To: Jon Seaton
Subject: RE: Tax Court

Jon:

If you could give me the name and telephone number of the woman in charge of Tax Court appointments perhaps I could contact her directly so you don't have to deal with this.

Thanks.

Rob



OAG000000206

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Thursday, August 17, 2006 8:18 PM
**To:** Yang, Debra Wong (USACAC)
**Subject:** Re: John McKay

1. I already have raised, on behalf of AG, the issue with the White House folks (Counsel's office and Political Affairs). I will get them this add'l info.
2. I'm out the week of 8/28; let's get lunch when you are here in September.

-----Original Message-----
From: Yang, Debra Wong (USACAC)
To: Sampson, Kyle
Sent: Thu Aug 17 18:59:07 2006
Subject: John McKay

Kyle:

Sorry we've been playing phone tag. Completely sleep deprived today and trying to get a million things done. Both of us have been too busy. Anyway, I wanted to forward some additional inside information to you re John's situation. Apparently, the Seattle paper is about to run an article that would be embarassing to the Republicans, saying essentially that they have dissed one of their own in their ranks. I think the sentiment up there is that if John gets to be interviewed, it's one way of combatting that issue. However, more importantly is the issue of seeing if he can get the nod for the district court. To that end, here's some local info from Seattle that might help:

It was three (Republicans) of the six committee members who declined to support John. They pointed to the fact that he "lacked trial experience" when in reality John once served as the head of the litigation department in a very well-regarded law firm in Seattle. As you know, this is the local gamesmanship that goes on, when in actuality it should always be the White House should be making the final decision whether its U.S. attorney has the trial credentials to be a federal judge. In addition, John also has strong political credentials (e.g., he took a year off between college and law school to manage a Republican congressional campaign and served as a fulltime volunteer at the 1996 GOP convention in San Diego). Should John be nominated, it is the understanding from people close to that they will support this choice.
Thank you for taking the time to speak with me last week concerning U.S. Attorney John McKay's candidacy for federal district judge in the W.D. of Washington. In response to your question about the nature of support John enjoys from Republicans in Washington State we are making available to you the following political and legal leaders:

---- ---- He has already put in a call to the White House and looks forward to explaining why the White House should interview John, along with the other three candidates.

Office:
Cell:

states that he looks forward to



OAG000000207

telling the White House that John is "head and shoulders" above the other candidates and should be interviewed and nominated by the White House.

Anyway, I hope this is helpful. Any sense of the AG's willingness to ask the WH to interview John?

I'll be in DC next week on the 24th, then on the 31st and then at the end of Sept on the 28th. Are you around on any of those dates just to catch up?

Deb



OAG000000208

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Wednesday, August 30, 2006 12:56 AM
**To:** Goodling, Monica
**Subject:** Re: Timing

Great, who is the OLP counsel.

-----Original Message-----
From: Goodling, Monica
To: Sampson, Kyle
Sent: Wed Aug 30 00:41:16 2006
Subject: FW: Timing

FYI, below - I think ATF will be good to go for Thursday and has agreed to go into ATF with Mike for a couple weeks. paperwork is at the WH and Lu meets with him on Tuesday. Sensenbrenner's COS knows is under consideration and is so supportive on these issues that he's happy to have move over to DOJ without a full two weeks notice, if we need him fast for the good of the order. So, I think this one looks good and am keeping ODAG in the loop.

And last but not least, Crim agreed to put Tim Griffin into one of their spots, so I'm going forward with the plan we discussed -- and his PPO paperwork is in. We also found someone for a counsel spot for OLP - so that should help Rachel out a little....

-----Original Message-----
From: Sullivan, Michael (USAMA)
Sent: Wednesday, August 30, 2006 12:16 AM
To: Goodling, Monica
Cc: Harris, Gregory
Subject: RE: Timing

Monica thank you for all your help and support. I can be down there first thing Thursday. I will give you a call tomorrow morning. I look forward to speaking with Greg. I appreciate your willingness to assist in the transition Greg. Thanks again. Regards, Mike.

Press conferences went well.

-----Original Message-----
From: Goodling, Monica
Sent: Tuesday, August 29, 2006 10:05 PM Eastern Standard Time
To: Sullivan, Michael (USAMA)
Cc: Harris, Gregory
Subject: Timing

Mike -- I hope your press conference went well today. Yesterday's received some good press -- congratulations!

I wanted to let you know that the WH is looking at Thursday morning for your announcement. While it's not set in stone yet, I'm fairly confident this will happen and wanted to see.

if you could arrange to be here for Thursday and Friday. Personnel announcements do not generally go out until 10 a.m. at the earliest, so you could easily fly down that day if you'd prefer and meet with some of the folks here at Main who may want to help get you up to speed before you go over to ATF, after the announcement is public.

Mike - One thing I would like to chat with you over the phone about is housing. If you could give me a call tomorrow, that would be great. Thanks so much -- and if I didn't mention this already, congratulations and thank you for your willingness to serve!

All the best,
Monica

**********

Monica M. Goodling
White House Liaison & Senior Counsel to the Attorney General
Department of Justice
950 Pennsylvania Ave N.W.
Washington, D.C. 20530
202.353.4435 (phone)
202.305.9687 (fax)

"[W]e rededicate ourselves to the ideals that inspired our founders. During that hot summer in Philadelphia more than 200 years ago, from our desperate fight for independence to the darkest days of a civil war, to the hard-fought battles of the 20th century, there were many chances to lose our heart, our nerve, or our way. But Americans have always held firm, because we have always believed in certain truths: We know that the freedom we defend is meant for all men and women, and for all times. And we know that when the work is hard, the proper response is not retreat; it is courage." - President George W. Bush, July 4, 2005



OAG000000210

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Sunday, September 17, 2006 3:42 PM
**To:** 'Harriet_Miers@who.eop.gov'
**Subject:** Re: United States Attorneys

No worries. At your convenience.

-----Original Message-----
From: Harriet_Miers@who.eop.gov <Harriet_Miers@who.eop.gov>
To: Sampson, Kyle
Sent: Sun Sep 17 15:14:30 2006
Subject: RE: United States Attorneys

Kyle, thanks for this. I have not forgotten I need to follow up on the info, but things have been crazy. Will be back in touch!

-----Original Message-----
From: Kyle.Sampson@usdoj.gov [mailto:Kyle.Sampson@usdoj.gov]
Sent: Wednesday, September 13, 2006 4:23 PM
To: Miers, Harriet
Subject: RE: United States Attorneys

Harriet, the U.S. Attorney ranks currently break down as follows:

I. Vacancies w/o Candidates

D. Alaska
E.D. Tenn.
S.D.W.V.

II. USAs Who Have Been (Or Will Be) Nominated for Other Things (I am strongly of the view that we should be working now to get their replacements selected and in the pipeline)

III. USAs Who, Rumor Has It, Will Be Leaving in Coming Months

IV. USA in the Process of Being Pushed Out

E.D. Ark. (Bud Cummins)

V. USAs We Now Should Consider Pushing Out

D. Ariz. (Paul Charlton)
S.D. Cal. (Carol Lam)

W.D. Mich. (Margaret Chiara)
D. Nev. (Dan Bogden)

W.D. Wash. (John McKay)

VI. Summary

I am only in favor of executing on a plan to push some USAs out if we really are ready and willing to put in the time necessary to select candidates and get them appointed -- it will be counterproductive to DOJ operations if we push USAs out and then don't have replacements ready to roll immediately. In addition, I strongly recommend that, as a matter of Administration policy, we utilize the new statutory provisions that authorize the AG to make USA appointments. We can continue to do selection in JSC, but then should have DOJ take over entirely the vet and appointment. By not going the PAS route, we can give far less deference to home-State Senators and thereby get (1) our preferred person appointed and (2) do it far faster and more efficiently, at less political cost to the White House.

Let me know when you have read this; I have one follow up item I would want to do over the phone. What say you?

Kyle

-----Original Message-----
From: Harriet_Miers@who.eop.gov [mailto:Harriet_Miers@who.eop.gov]
Sent: Wednesday, September 13, 2006 2:39 PM
To: Sampson, Kyle
Subject: United States Attorneys

Kyle, any current thinking on holdover U. S. Attorneys? Any recent word on intentions?

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Tuesday, November 07, 2006 6:21 PM
**To:** Elston, Michael (ODAG)
**Subject:** U.S. Attorney Replacement Plan

**Importance:** High

**Attachments:** USA replacement plan.doc

Please review and provide comments ASAP. I'd like to get this to Harriet tonight, if possible. I've pasted it into the e-mail for your convenience.

**PLAN FOR REPLACING CERTAIN UNITED STATES ATTORNEYS**

November 7, 2006

**STEP 1**

U.S. Attorney calls: On or about November 8-10, Mike Battle contacts the following U.S. Attorneys:

- Paul Charlton (D. Ariz.)
- Carol Lam (S.D. Cal.)

- Margaret Chiara (W.D. Mich.)
- Dan Bogden (D. Nev.)

- John McKay (W.D. Wash.)
- David Iglesias (D.N.M.)

Battle informs the U.S. Attorneys as follows:

- What are your plans with regard to continued service as U.S. Attorney?
- The Administration is grateful for your service as U.S. Attorney, but has determined to give someone else the opportunity to serve as U.S. Attorney in your district for the final two years of the Administration.
- We will work with you to make sure that there is a smooth transition, but intend to have a new Acting or Interim U.S. Attorney in place by January 1st.

**STEP 2**

Senator calls: On or about November 8-10 (very important that Senator calls and U.S. Attorney calls happen simultaneously), Bill Kelley or appropriate Associate Counsel contacts the following Senators:

- Jon Kyl (re Charlton)



OAG000000213

- John Ensign (re Bogden)
- Pete Domenici (re Iglesias)

Kelley informs the Senators as follows:

- The Administration has determined to give someone else the opportunity to serve as U.S. Attorney in [relevant district] for the final two years of the Administration. [If pushed, this determination is based on a thorough review of the U.S. Attorney's performance.]
- [Relevant U.S. Attorney] has been informed of this determination and knows that we intend to have a new Acting or Interim U.S. Attorney in place by the end of the year.
- We will look to you, Senator, to recommend candidates that we should consider for appointment as the new U.S. Attorney. As always, we ask that you recommend at least three candidates for the President's consideration.

**STEP 3**

Evaluation and Selection of "Interim" Candidates: During November-December 2006, the Department of Justice, in consultation with the Office of the Counsel to the President, evaluates and selects candidates for Attorney General-appointment (or candidates who may become Acting U.S. Attorney by operation of law) to serve upon the resignation of above-listed U.S. Attorneys.

**STEP 4**

Selection, Nomination, and Appointment of New U.S. Attorneys: Beginning as soon as possible in November 2006, Office of the Counsel to the President and Department of Justice carry out (albeit on an expedited basis) the regular U.S. Attorney appointment process: obtain recommendations from Senators, other state political leadership, and other sources; evaluate candidates; make recommendations to the President; conduct background investigations; have President make nominations and work to secure confirmations of U.S. Attorney nominees.

USA replacement plan.doc (35 K...

Kyle Sampson
Chief of Staff
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2001 wk.
(202) 305-5289 cell
kyle.sampson@usdoj.gov

| Tracking: | Recipient | Read |
|---|---|---|
| | Elston, Michael (ODAG) | Read: 11/7/2006 6:24 PM |

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Tuesday, November 07, 2006 6:46 PM
**To:** Elston, Michael (ODAG)
**Subject:** Re: U.S. Attorney Replacement Plan

Yes. And I'll wait for the DAG's input (but no longer than tomorrow).

---
Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Elston, Michael (ODAG)
To: Sampson, Kyle
Sent: Tue Nov 07 18:29:04 2006
Subject: Re: U.S. Attorney Replacement Plan

This looks fine to me -- trying to get Paul's input as well.

The only concern I have is that Paul just visited and asked that not be on the list. He does seem to be running things well (if somewhat independent of DOJ). On the other hand, mentioned a scandal rumor that is of great concern to me. Should we mark him as tentative while we talk that out?

-----Original Message-----
From: Sampson, Kyle
To: Elston, Michael (ODAG)
Sent: Tue Nov 07 18:21:01 2006
Subject: U.S. Attorney Replacement Plan

Please review and provide comments ASAP. I'd like to get this to Harriet tonight, if possible. I've pasted it into the e-mail for your convenience.

PLAN FOR REPLACING CERTAIN
UNITED STATES ATTORNEYS

November 7, 2006

STEP 1

U.S. Attorney calls: On or about November 8-10, Mike Battle contacts the following U.S. Attorneys:

* Paul Charlton (D. Ariz.)
* Carol Lam (S.D. Cal.)
*
*
* Margaret Chiara (W.D. Mich.)
* Dan Bogden (D. Nev.)
*
* John McKay (W.D. Wash.)
* David Iglesias (D.N.M.)

Battle informs the U.S. Attorneys as follows:

* What are your plans with regard to continued service as U.S. Attorney?
* The Administration is grateful for your service as U.S. Attorney, but has determined to give someone else the opportunity to serve as U.S. Attorney in your district for the final two years of the Administration.
* We will work with you to make sure that there is a smooth transition, but intend to

have a new Acting or Interim U.S. Attorney in place by January 1st.

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*
*
*
* John Ensign (re Bogden)
*
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Kelley informs the Senators as follows:

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* [Relevant U.S. Attorney] has been informed of this determination and knows that we intend to have a new Acting or Interim U.S. Attorney in place by the end of the year.
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<<USA replacement plan.doc>>

Kyle Sampson
Chief of Staff
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2001 wk.
(202) 305-5289 cell
kyle.sampson@usdoj.gov

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Wednesday, November 15, 2006 12:08 PM
**To:** 'Harriet_Miers@who.eop.gov'; William_K._Kelley@who.eop.gov
**Cc:** McNulty, Paul J
**Subject:** RE: USA replacement plan

Who will determine whether whether this requires the President's attention?

-----Original Message-----
From: Harriet_Miers@who.eop.gov [mailto:Harriet_Miers@who.eop.gov]
Sent: Wednesday, November 15, 2006 11:39 AM
To: Sampson, Kyle; William_K._Kelley@who.eop.gov
Cc: McNulty, Paul J
Subject: RE: USA replacement plan

Not sure whether this will be determined to require the boss's attention. If it does, he just left last night so would not be able to accomplish that for some time. We will see. Thanks.

-----Original Message-----
From: Kyle.Sampson@usdoj.gov [mailto:Kyle.Sampson@usdoj.gov]
Sent: Wednesday, November 15, 2006 11:02 AM
To: Kelley, William K.; Miers, Harriet
Cc: Paul.J.McNulty@usdoj.gov
Subject: USA replacement plan
Importance: High

Harriet/Bill, please see the attached. Please note (1) the plan, by its terms, would commence this week; (2) I have consulted with the DAG, but not yet informed others who would need to be brought into the loop, including Acting Associate AG Bill Mercer, EOUSA Director Mike Battle, and AGAC Chair Johnny Sutton (nor have I informed anyone in Karl's shop, another pre-execution necessity I would recommend); and (3) I am concerned that to execute this plan properly we must all be on the same page and be steeled to withstand any political upheaval that might result (see Step 3); if we start caving to complaining U.S. Attorneys or Senators then we shouldn't do it -- it'll be more trouble than it is worth.

We'll stand by for a green light from you. Upon the green light, we'll (1) circulate the below plan to the list of folks in Step 3 (and ask that you circulate it to Karl's shop), (2) confirm that Kelley is making the Senator/Bush political lead calls, and (3) get Battle making the calls to the USAs. Let us know.

Kyle Sampson
Chief of Staff
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2001 wk.
(202) 305-5289 cell
kyle.sampson@usdoj.gov

**Tracking:**

| Recipient | Read |
|---|---|
| 'Harriet_Miers@who.eop.gov' | |
| William_K._Kelley@who.eop.gov | |



OAG000000217

| Recipient | Read |
| --- | --- |
| McNulty, Paul J | Read: 11/16/2006 4:32 PM |

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Wednesday, November 15, 2006 4:58 PM
**To:** Goodling, Monica; Blomquist, Kathleen M; Elston, Michael (ODAG)
**Subject:** Re: USA Kevin Ryan question needing a response

I agree w/ Monica's proposed response.

---
Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Goodling, Monica
To: Blomquist, Kathleen M; Sampson, Kyle; Elston, Michael (ODAG)
Sent: Wed Nov 15 16:47:57 2006
Subject: RE: USA Kevin Ryan question needing a response

Kat - As a general matter, we do not comment on these sort of personnel questions (we have received others like it this year since many of the U.S. Attorneys have passed the four year mark). Traditionally, OPA's response has been something simple like, "All U.S. Attorneys serve at the pleasure of the President, and we do not comment on personnel matters."

Kyle/Mike - Any desire to say anything different here?

(P.S. Technically, yes, it is a four year term but there is an automatic hold-over provision, so the four year term does not really mean anything and a large number of our USAs are serving well past their four year mark.)

---

From: Blomquist, Kathleen M
Sent: Wednesday, November 15, 2006 2:46 PM
To: Goodling, Monica
Subject: USA Kevin Ryan question needing a response

Hi Monica,

How should we respond to questions about the status of Kevin Ryan?

Thanks,

kat

---

From: Hale, Laura K
Sent: Wednesday, November 15, 2006 2:25 PM
To: Smith, Kimberly A
Subject: Peter Blumberg, San Francisco Daily Journal, 415-296-2443

He wanted to know if Kevin Ryan, the USA for the Northern District of California, is going to be reappointed or replaced. His term was up in July.

Kathleen Blomquist
Office of Public Affairs
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
202/514-2007



OAG000000219

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Wednesday, November 22, 2006 11:44 AM
**To:** Ward, Brent
**Subject:** RE: JM Productions case

thx, brent

---

**From:** Ward, Brent
**Sent:** Wednesday, November 22, 2006 10:22 AM
**To:** Sampson, Kyle
**Subject:** RE: JM Productions case

Thank you, Kyle. That would be great news. I appreciate your attention to this. I hope your are able to enjoy some extra time with your family on Thanksgiving. We have a great deal to be thankful for. Best wishes.

Brent

---

**From:** Kyle.Sampson@usdoj.gov [mailto:Kyle.Sampson@usdoj.gov]
**Sent:** Wednesday, November 22, 2006 10:02 AM
**To:** Ward, Brent
**Subject:** RE: JM Productions case

i'm told this is now on track
Charlton has been directed to provide an AUSA

---

**From:** Ward, Brent
**Sent:** Monday, November 20, 2006 5:31 PM
**To:** Sampson, Kyle
**Subject:** JM Productions case

Kyle,

FYI I wanted to let you know that I have just sent the following email to Sigal Mandelker, DAAG in CRM DIV.

Sigal,

We have just been notified that the trial in U.S. v. , has been set for 2007 in the District of Arizona. As you know, my position is that we will not be in the best position to prevail at trial without the active participation of an AUSA from that District, which has thus far been refused. The notice of trial brings the issue squarely into focus whether or not we will be able to put the case in the best posture for success.

For an AUSA to be useful in assisting at the trial will require that an assignment be made very soon and that the assigned AUSA be someone capable of making the requisite contributions to the trial of the case.

It is very exasperating to be in the position of not knowing what, if anything, has been done above me in the Department to secure the cooperation of the U.S. Attorney in this case, even after the passage of more than seven months since I began seeking help in gaining that cooperation. I can only assume that something has been done by someone in the DAG's office, albeit without any apparent effect. I also assume that the AG has not yet personally weighed in. If that is the case, now is the time for him to do so.

This case will become something of a benchmark, because it will be the first trial of a Task Force case. The outcome is bound to have an exaggerated effect on the level of participation and cooperation we can expect to receive from other U.S. Attorneys in future cases. For these reasons I request that the AG direct the U.S. Attorney in Arizona to immediately join with us in the prosecution of this case.

Thank you.

Brent

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Monday, December 04, 2006 6:12 PM
**To:** 'Kelley, William K.'
**Cc:** Miers, Harriet
**Subject:** RE: US Atty Plan

**Importance:** High

Great. We would like to execute this on Thursday, December 7 (all the U.S. Attorneys are in town for our Project Safe Childhood conference until Wednesday; we want to wait until they are back home and dispersed, to reduce chatter). So, on Thursday morning, we'll need the calls to be made as follows:

* AG calls Sen. Kyl
* Harriet/Bill call Sens. Ensign and Domenici (alternatively, the AG could make these calls and, if Senators express any concern, offer briefings re why the decision was made -- let me know)
* White House OPA calls California, Michigan, and Washington "leads"

EOUSA Director Mike Battle then will call the relevant U.S. Attorneys. Okay?

---

**From:** Kelley, William K. [mailto:William_K._Kelley@who.eop.gov]
**Sent:** Monday, December 04, 2006 4:48 PM
**To:** Sampson, Kyle
**Cc:** Miers, Harriet
**Subject:** US Atty Plan

We're a go for the US Atty plan. WH leg, political, and communications have signed off and acknowledged that we have to be committed to following through once the pressure comes.

# December 07, 2006

Thursday

December 2006

| S | M | T | W | T | F | S |
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January 2007

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| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 | 31 | | | |

7 am

8 00

9 00

9:30am-9:35am Phone Call with Senator Kyl

10 00

11 00

12 pm

1 00

2 00

3 00

4 00

5 00

6 00

TaskPad

TaskPad

Notes



OAG00000223

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Thursday, December 07, 2006 10:36 AM
**To:** 'Kelley, William K.'
**Subject:** RE:

Great. Sen. Kyl is fine.
Is OPA calling the political leads in CA, WA, and MI?
We will commence calling the USAs in the next hour or so.

---

**From:** Kelley, William K. [mailto:William_K._Kelley@who.eop.gov]
**Sent:** Thursday, December 07, 2006 10:29 AM
**To:** Sampson, Kyle
**Subject:**

Domenici's COS is happy as a clam and will get us names forthwith.

Left message for Ensign's COS. Said I needed to talk to him asap, but didn't give details.

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Thursday, December 07, 2006 11:33 AM
**To:** 'William_K._Kelley@who.eop.gov'
**Subject:** Re:

Too late, right? Calls to USAs are happening as we speak. And Sens. Kyl and Domenici already have been notified (and are ok). Do they think Sen. Ensign will be concerned (I don't)? And none of these USAs has been promoted by a House member.

---
Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Kelley, William K. <William_K._Kelley@who.eop.gov>
To: Sampson, Kyle
Sent: Thu Dec 07 11:19:04 2006
Subject: Re:

Our leg folks are all up in arms that we are doing this on the last day when things can be gummed up by unhappy Senators. There's no way to pull back til tomorrow, is there? I should have flagged the timing for them earlier -- but they never raised the issue of timing until things were underway.

-----Original Message-----
From: Sampson, Kyle
To: Kelley, William K.
Sent: Thu Dec 07 10:36:22 2006
Subject: RE:

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Subject:

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Left message for Ensign's COS. Said I needed to talk to him asap, but didn't give details.

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Thursday, December 07, 2006 11:46 AM
**To:** 'William_K._Kelley@who.eop.gov'
**Subject:** Re:

Good. The Nevada USA's appt predates Ensign's election, and I'm not aware of them having any relationship.

---
Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Kelley, William K. <William_K._Kelley@who.eop.gov>
To: Sampson, Kyle
Sent: Thu Dec 07 11:35:44 2006
Subject: Re:

I told them it is too late, but said I would confirm with you. I think it is clear that they are overreacting, and I've told them that. I don't know if Ensign is close to the Nevada guy, but I would think he'd welcome a new patronage opportunity.

-----Original Message-----
From: Sampson, Kyle
To: Kelley, William K.
Sent: Thu Dec 07 11:32:57 2006
Subject: Re:

Too late, right? Calls to USAs are happening as we speak. And Sens. Kyl and Domenici already have been notified (and are ok). Do they think Sen. Ensign will be concerned (I don't)? And none of these USAs has been promoted by a House member.

---
Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Kelley, William K. <William_K._Kelley@who.eop.gov>
To: Sampson, Kyle
Sent: Thu Dec 07 11:19:04 2006
Subject: Re:

Our leg folks are all up in arms that we are doing this on the last day when things can be gummed up by unhappy Senators. There's no way to pull back til tomorrow, is there? I should have flagged the timing for them earlier -- but they never raised the issue of timing until things were underway.

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From: Sampson, Kyle
To: Kelley, William K.
Sent: Thu Dec 07 10:36:22 2006
Subject: RE:

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Is OPA calling the political leads in CA, WA, and MI?

We will commence calling the USAs in the next hour or so.

---

From: Kelley, William K. [mailto:William_K._Kelley@who.eop.gov]
Sent: Thursday, December 07, 2006 10:29 AM
To: Sampson, Kyle
Subject:

Domenici's COS is happy as a clam and will get us names forthwith.

Left message for Ensign's COS. Said I needed to talk to him asap, but didn't give details.

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Thursday, December 07, 2006 3:06 PM
**To:** Mercer, William W
**Subject:** RE: Heads up

All Senators have been notified and are fine/no objections.
All USAs have been notified, except Iglesias and Chiara (Battle has left messages for them).
Who is calling you? Charlton? McKay?

-----Original Message-----
From: Mercer, William W
Sent: Thursday, December 07, 2006 1:58 PM
To: Sampson, Kyle
Subject: Re: Heads up

I have what I assume is my first call. Before I respond, do you have a status report?

-----Original Message-----
From: Sampson, Kyle
To: Mercer, William W
Sent: Tue Dec 05 22:50:48 2006
Subject: Heads up

Administration has determined to ask some underperforming USAs to move on (you'll remember I beat back a much broader -- like across the board -- plan that WHCO was pushing after 2004). Calls will go out on Thursday. Wanted you to know in case you get some calls from the field and so you can help manage the chatter that may result. See the attached for the details.

<<USA replacement plan.doc>>

| **Tracking:** | **Recipient** | **Read** |
|---|---|---|
| | Mercer, William W | Read: 12/7/2006 3:41 PM |



OAG000000228

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Thursday, December 07, 2006 4:09 PM
**To:** 'Kelley, William K.'
**Subject:** RE:

didn't wh opa get to him before he got to them?

---

**From:** Kelley, William K. [mailto:William_K._Kelley@who.eop.gov]
**Sent:** Thursday, December 07, 2006 4:04 PM
**To:** Sampson, Kyle
**Subject:**

FYI Jerry Parsky has put in an outraged call protesting the fact of Ryan's departure and the manner in which the msg was delivered.

And he's having lunch with the President next week.

**Sampson, Kyle**

**From:** Sampson, Kyle
**Sent:** Thursday, December 07, 2006 4:12 PM
**To:** Battle, Michael (USAEO)
**Subject:** RE: Your Call

good

---

**From:** Battle, Michael (USAEO) [mailto:Michael.Battle@usdoj.gov]
**Sent:** Thursday, December 07, 2006 3:56 PM
**To:** Sampson, Kyle
**Subject:** FW: Your Call

FYI.

---

**From:** McKay, John (USAWAW)
**Sent:** Thursday, December 07, 2006 3:10 PM
**To:** Battle, Michael (USAEO)
**Subject:** Your Call

Mike,

Please forgive me for not thanking you for your friendship. I very much appreciate that the call came from you. All the best, and we'll stay in touch.

I may need some guidance from you on how to time this for my staff, I'm hoping this can stay closely held until after Christmas. If you think not, would you let me know. Again, thanks very much my friend.

- JOHN

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Thursday, December 07, 2006 9:07 PM
**To:** Sampson, Kyle; 'Kelley, William K.'
**Subject:** RE:

bill, please forward to Jennings, thx

---

**From:** Sampson, Kyle
**Sent:** Thursday, December 07, 2006 9:06 PM
**To:** 'Kelley, William K.'
**Cc:** 'sjennings@who.eop.gov'
**Subject:** RE:

do not mind at all
scott – call me
[redacted] hm
[redacted] cell
(202) 514-3892 desk

---

**From:** Kelley, William K. [mailto:William_K._Kelley@who.eop.gov]
**Sent:** Thursday, December 07, 2006 6:15 PM
**To:** Sampson, Kyle
**Subject:**

Kyle--Do you mind talking to Scott Jennings about the particulars of Ryan's situation? Ryan is the only one so far calling in political chits (which is reason enough to justify the decision, in my view), but Karl would like to know some particulars as he fields these calls.

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Monday, December 18, 2006 1:06 PM
**To:** Goodling, Monica
**Cc:** Mercer, William W; Moschella, William; McNulty, Paul J; Battle, Michael (USAEO)
**Subject:** RE: USA Resignation

---

**From:** Goodling, Monica
**Sent:** Monday, December 18, 2006 12:47 PM
**To:** Sampson, Kyle
**Subject:** FW: USA Resignation

FYI

---

**From:** Nowacki, John (USAEO) [mailto:John.Nowacki@usdoj.gov]
**Sent:** Monday, December 18, 2006 10:25 AM
**To:** Goodling, Monica; Elston, Michael (ODAG)
**Subject:** USA Resignation

Paul Charlton has notified us that he will announce his resignation today, effective 31 January 2007.

**Tracking:**

| Recipient | Read |
|---|---|
| Goodling, Monica | |
| Mercer, William W | Read: 12/18/2006 1:32 PM |
| Moschella, William | Read: 12/18/2006 1:17 PM |
| McNulty, Paul J | |
| Battle, Michael (USAEO) | |

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Friday, January 05, 2007 11:50 AM
**To:** Elston, Michael (ODAG); Goodling, Monica; McNulty, Paul J
**Subject:** Re: USAs

And we granted 1-month extensions for Dan and Margaret, but not Carol -- right?

---
Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Elston, Michael (ODAG)
To: Goodling, Monica; Sampson, Kyle; McNulty, Paul J
Sent: Fri Jan 05 11:36:01 2007
Subject: Re: USAs

Do you want me to call Kevin? I have a pretty good relationship with him.

-----Original Message-----
From: Goodling, Monica
To: Sampson, Kyle; McNulty, Paul J; Elston, Michael (ODAG)
Sent: Fri Jan 05 11:34:48 2007
Subject: RE: USAs

I have not yet heard or seen anything from these offices. Lam, Bogden, and Chiara have asked Mike Battle for extensions.

---

From: Sampson, Kyle
Sent: Thursday, January 04, 2007 7:34 PM
To: McNulty, Paul J; Elston, Michael (ODAG); Goodling, Monica
Subject: USAs

Of our list, I'm aware of Iglesias, Charlton, and McKay making it known publicly that they are leaving. Have Lam, Ryan, Bogden, or Chiara done so yet? What is the status of these?

Kyle Sampson
Chief of Staff
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2001 wk.
(202) 305-5289 cell
kyle.sampson@usdoj.gov



OAG000000233

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Friday, January 05, 2007 7:13 PM
**To:** McNulty, Paul J
**Subject:** Re: USAs

Yes.

---
Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: McNulty, Paul J
To: Sampson, Kyle
Sent: Fri Jan 05 19:07:49 2007
Subject: RE: USAs

Just talked to Iglesias and he is working at lining up a job. He has a couple of interviews next week and hopes things will work out quickly. Overall, he has a positive attitude, especially from a spiritual perspective. However, he's anxious about the deadline coming and not having anything finalized. Albuquerque is a small legal market and he's not certain how it will all shake out. He has four kids with a stay-at-home wife. He wants to know if he will have some flexibility if nothing is lined up by 1/31. I told him I would get back to him next week. I would like to tell him to work hard with the assumption that he only has until the end of the month, but we can be flexible if he needs a little more time. Doesn't sound like it will take even another full month. OK with you?

-----Original Message-----
From: Sampson, Kyle
Sent: Friday, January 05, 2007 11:50 AM
To: Elston, Michael (ODAG); Goodling, Monica; McNulty, Paul J
Subject: Re: USAs

And we granted 1-month extensions for Dan and Margaret, but not Carol -- right?

---
Sent from my BlackBerry Wireless Handheld

-----Original Message-----
From: Elston, Michael (ODAG)
To: Goodling, Monica; Sampson, Kyle; McNulty, Paul J
Sent: Fri Jan 05 11:36:01 2007
Subject: Re: USAs

Do you want me to call Kevin? I have a pretty good relationship with him.

-----Original Message-----
From: Goodling, Monica
To: Sampson, Kyle; McNulty, Paul J; Elston, Michael (ODAG)
Sent: Fri Jan 05 11:34:48 2007
Subject: RE: USAs

I have not yet heard or seen anything from these offices. Lam, Bogden, and Chiara have asked Mike Battle for extensions.

---

From: Sampson, Kyle
Sent: Thursday, January 04, 2007 7:34 PM
To: McNulty, Paul J; Elston, Michael (ODAG); Goodling, Monica

Subject: USAs

Of our list, I'm aware of Iglesias, Charlton, and McKay making it known publicly that they are leaving. Have Lam, Ryan, Bogden, or Chiara done so yet? What is the status of these?

Kyle Sampson
Chief of Staff
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2001 wk.
(202) 305-5289 cell
kyle.sampson@usdoj.gov



OAG000000235

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Friday, January 12, 2007 9:06 PM
**To:** Elston, Michael (ODAG); Goodling, Monica
**Subject:** RE:

ok

-----Original Message-----
From: Elston, Michael (ODAG)
Sent: Friday, January 12, 2007 9:04 PM
To: Goodling, Monica; Sampson, Kyle
Subject: Fw:

Sorry I sent the other one to Kevin -- don't know how that happened. Still, how do you think I should respond? I am inclined to say OK as long as he sends in his letter of resignation on Tuesday.

Mike

-----Original Message-----
From: Ryan, Kevin (USACAN) <Kevin.Ryan@usdoj.gov>
To: Elston, Michael (ODAG)
CC: Ryan, Kevin (USACAN)
Sent: Fri Jan 12 18:30:25 2007
Subject:

Mike,

Just checking in. We talked about the timing of my announcement and departure, and I am happy to abide by the time frame but would only ask if it is possible for me to make the announcement next Friday instead of this Monday since it is a federal holiday and I would like to get a few things in order before making the public announcement. The time frame for departure however is fine-- I see that the 15th is a Thursday, how about Friday the 16th?

Thanks,

Kevin

**Tracking:**

| Recipient | Read |
|---|---|
| Elston, Michael (ODAG) | Read: 1/12/2007 9:24 PM |
| Goodling, Monica | Read: 1/12/2007 9:45 PM |

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Monday, January 15, 2007 6:06 PM
**To:** Moschella, William
**Subject:** RE: Heads Up on WSJ USA Story

Not yet.

---

**From:** Moschella, William
**Sent:** Monday, January 15, 2007 4:46 PM
**To:** Sampson, Kyle
**Subject:** FW: Heads Up on WSJ USA Story

Is the AG ready to answer these questions on Thursday?

---

**From:** Roehrkasse, Brian
**Sent:** Monday, January 15, 2007 4:06 PM
**To:** Goodling, Monica; Elston, Michael (ODAG); Moschella, William; Sampson, Kyle
**Cc:** Scolinos, Tasia
**Subject:** Heads Up on WSJ USA Story

Our new *Wall Street Journal* beat reporter will publish a story tomorrow about the recent resignations of U.S. Attorneys. Through his reporting, he believes at least six U.S. Attys were forced to resign including USAs Ryan, Cummins, Lam, Bogden, Igelsias and Charlton. I didn't confirm, deny or otherwise comment beyond cautioning him that he better be careful his sources are accurate. He did speak with at least Cummins and Igelsias, and possibly others.

When he first contacted me about this story he raised questions about political motivations and the correlation to the recent legislative changes on the AG's appointment authority. However, with all of the background information we provided on the appointment authority and pointing him towards our recent nominations, I don't think it will be as politically focused. More likely, he will write that the Department is pushing out USAs because they are underperforming or not embracing the Department's priorities.

The story will be very critical of how the Bud Cummins situation was handled. He thinks despite the political pedigree, that Griffin is very qualified, but just the way in which it was handled with Cummins and Pryor will make it nearly impossible for him to be nominated or confirmed. The good news on this front is he finds Feinstein and Pryor's criticism that we don't intend to nominate USAs suspect and unwarranted.

***Talking Points:***

- In every case, it is a goal of this Administration to have a U.S. Attorney that is confirmed by the Senate. It is inconceivable for a member of Congress to believe that use of an appointment authority to fill a vacancy is in any way an attempt to circumvent the confirmation process. When a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office. Following such a situation, we consult with the home-state Senators prior to nomination regarding candidates for Senate consideration.

- Our record since this authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Specifically, since March 9, 2006, the Administration has nominated 13 individuals to serve as U.S. Attorney (12 have been confirmed). Additionally, since the appointment authority was amended, there have been 11 vacancies created by outgoing U.S. Attorneys -- of those 11 vacancies, the Administration nominated candidates to fill four of these positions to date and has already interviewed candidates for the other seven positions.

Brian Roehrkasse
Deputy Director of Public Affairs
U.S. Department of Justice
(202) 514-2007



OAG000000237

| Tracking: | Recipient | Read |
| --- | --- | --- |
| | Moschella, William | Read: 1/15/2007 7:39 PM |

## Sampson, Kyle

**From:** Elston, Michael (ODAG)
**Sent:** Wednesday, January 17, 2007 10:07 PM
**To:** Sampson, Kyle; Scolinos, Tasia; Roehrkasse, Brian; Goodling, Monica; Moschella, William
**Subject:** "Without Cause"

**Follow Up Flag:** Follow up
**Flag Status:** Red

I am not going to discuss whether a particular United States Attorney has been asked to resign or what the reasons might be for such a decision. But when a United States Attorney leaves, we have a process for filling that vacancy which we have followed throughout this Administration and which we will continue to follow. Than process includes nominating a candidate for consideration by the Senate. For each vacancy, we will seek well-qualified candidates who will support the Administration's priorities and enforce the law to the fullest extent.

While I will not comment on any particular United States Attorney's resignation, let me say this: I would never, never consent to the removal of a United States Attorney for political reasons. To suggest that a U.S. Attorney was removed to influence a case for political reasons is irresponsible, reckless and harmful to the criminal justice system.

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Wednesday, January 17, 2007 10:11 PM
**To:** Elston, Michael (ODAG); Scolinos, Tasia; Roehrkasse, Brian; Goodling, Monica; Moschella, William
**Subject:** Re: "Without Cause"

Got it.

-----Original Message-----
From: Elston, Michael (ODAG)
To: Sampson, Kyle; Scolinos, Tasia; Roehrkasse, Brian; Goodling, Monica; Moschella, William
Sent: Wed Jan 17 22:07:03 2007
Subject: "Without Cause"

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## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Wednesday, January 17, 2007 10:12 PM
**To:** Sampson, Kyle
**Subject:** Fw: "Without Cause"

-----Original Message-----
From: Elston, Michael (ODAG)
To: Sampson, Kyle; Scolinos, Tasia; Roehrkasse, Brian; Goodling, Monica; Moschella, William
Sent: Wed Jan 17 22:07:03 2007
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## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Thursday, January 18, 2007 10:58 AM
**To:** Elston, Michael (ODAG); Moschella, William; Goodling, Monica
**Cc:** Mercer, William W; McNulty, Paul J
**Subject:** Re: USAO-NDCA

Thx.

-----Original Message-----
From: Elston, Michael (ODAG)
To: Sampson, Kyle; Moschella, William; Goodling, Monica
CC: Mercer, William W; McNulty, Paul J
Sent: Thu Jan 18 10:57:32 2007
Subject: USAO-NDCA

Kyle:

Kevin Ryan's FAUSA, Eumi Choi, just called to let us know that Kevin is not returning calls from Sen. Feinstein or Carol Lam and doing his best to stay out of this. He wanted us to know that he's still a "company man." I gave her my talkers for McKay and Charlton and asked her to convey them to Kevin.

Mike



OAG000000242

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Thursday, January 25, 2007 5:34 PM
**To:** Hertling, Richard; Seidel, Rebecca; Goodling, Monica; Nowacki, John (USAEO)
**Cc:** Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
**Subject:** RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.
**Importance:** High

**Tracking:**

| Recipient | Read |
|---|---|
| Hertling, Richard | Read: 1/25/2007 5:34 PM |
| Seidel, Rebecca | Read: 1/25/2007 5:35 PM |
| Goodling, Monica | |
| Nowacki, John (USAEO) | |
| Moschella, William | Read: 1/25/2007 5:44 PM |
| Elston, Michael (ODAG) | Read: 1/25/2007 6:44 PM |
| Scott-Finan, Nancy | Read: 1/25/2007 7:14 PM |

Will/Mike, I think that the DAG should be the witness. We need to be serious and hit back hard. Will you ask him if he is willing?

---

**From:** Hertling, Richard
**Sent:** Thursday, January 25, 2007 5:23 PM
**To:** Seidel, Rebecca; Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO)
**Cc:** Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
**Subject:** RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

we need to decide who our witness will be

---

**From:** Seidel, Rebecca
**Sent:** Thursday, January 25, 2007 4:02 PM
**To:** Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Hertling, Richard
**Cc:** Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
**Subject:** FW: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

here is the notice for the hearing on the USA issue.

---

**From:** Butterfield, Jane (Judiciary-Rep) [mailto:Jane_Butterfield@judiciary-rep.senate.gov]
**Sent:** Thursday, January 25, 2007 8:56 AM
**To:** White, Brandi (Frist); Andrea Looney (Whitehouse); Bacak, Brooke (RPC); Bellocchi, Luke (RPC); Best, David T; Dianna Dunne (Whitehouse); Hicks, Allen (Frist); Hippe, Jim (Frist); Janette Evans-Lee ; Jeri Gronewold; Mark Braswell; Michael Allen (Whitehouse); Moschella, William; Seidel, Rebecca; Stout, Stacey L; Kebodeaux, Tiffany (DHS); Dewine; Peterlin,

January 25, 2007

## NOTICE OF FULL COMMITTEE HEARING

The Senate Committee on the Judiciary has scheduled a hearing on **"Preserving Prosecutorial**

**Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?"**

for Wednesday, February 7, 2007 at 9:30 a.m. in Room 226 of the Dirksen Senate Office Building.

Senator Schumer will chair the hearing.

By order of the Chairman

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Thursday, January 25, 2007 6:41 PM
**To:** Elston, Michael (ODAG); Moschella, William
**Cc:** Hertling, Richard
**Subject:** RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

Looping in Richard.

-----Original Message-----
From: Elston, Michael (ODAG)
Sent: Thursday, January 25, 2007 6:40 PM
To: Sampson, Kyle; Moschella, William
Subject: Re: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

DAG and I discussed it earlier today, and his choice is ... Moschella.

-----Original Message-----
From: Sampson, Kyle
To: Moschella, William
CC: Elston, Michael (ODAG)
Sent: Thu Jan 25 17:53:25 2007
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

hah. let me know what he says.

---

From: Moschella, William
Sent: Thursday, January 25, 2007 5:45 PM
To: Sampson, Kyle
Cc: Elston, Michael (ODAG)
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

are you crazy? no way, you ask him! . . .

Of course we will raise it with him.

---

From: Sampson, Kyle

Sent: Thursday, January 25, 2007 5:34 PM
To: Hertling, Richard; Seidel, Rebecca; Goodling, Monica; Nowacki, John (USAEO)
Cc: Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.
Importance: High

Will/Mike, I think that the DAG should be the witness. We need to be serious and hit back hard. Will you ask him if he is willing?

---

From: Hertling, Richard
Sent: Thursday, January 25, 2007 5:23 PM
To: Seidel, Rebecca; Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO)
Cc: Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

we need to decide who our witness will be

---

From: Seidel, Rebecca
Sent: Thursday, January 25, 2007 4:02 PM
To: Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Hertling, Richard
Cc: Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
Subject: FW: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

here is the notice for the hearing on the USA issue.

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From: Butterfield, Jane (Judiciary-Rep) [mailto:Jane_Butterfield@judiciary-rep.senate.gov]
Sent: Thursday, January 25, 2007 8:56 AM
To: White, Brandi (Frist); Andrea Looney (Whitehouse); Bacak, Brooke (RPC); Bellocchi, Luke (RPC); Best, David T; Dianna Dunne (Whitehouse); Hicks, Allen (Frist); Hippe, Jim (Frist); Janette Evans-Lee ; Jeri Gronewold; Mark Braswell; Michael Allen (Whitehouse); Moschella, William; Seidel, Rebecca; Stout, Stacey L; Kebodeaux, Tiffany (DHS); Dewine; Peterlin,

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By order of the Chairman

**Tracking:**

| Recipient | Read |
| --- | --- |
| Elston, Michael (ODAG) | Read: 1/25/2007 6:44 PM |
| Moschella, William | Read: 1/25/2007 7:03 PM |
| Hertling, Richard | Read: 1/25/2007 6:44 PM |

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Thursday, January 25, 2007 7:59 PM
**To:** Hertling, Richard
**Subject:** RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

10-4.

-----Original Message-----
From: Hertling, Richard
Sent: Thursday, January 25, 2007 7:12 PM
To: Sampson, Kyle
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

We need to nail this down. I continue to think DAG ought to do it and really knock this down. Plus, he has a good relationship with Schumer. I know no one wants to do this hearing, but I think it needs to be done at a senior political level. I really think that Paul would be best. If he just will not do it, I don't know who else could do it. Maybe we can chat tomorrow.

-----Original Message-----
From: Moschella, William
Sent: Thursday, January 25, 2007 7:05 PM
To: Elston, Michael (ODAG)
Cc: Hertling, Richard; Sampson, Kyle
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

Are you serious? I was going to be in El Paso on Wednesday.

-----Original Message-----
From: Sampson, Kyle
Sent: Thursday, January 25, 2007 6:41 PM
To: Elston, Michael (ODAG); Moschella, William
Cc: Hertling, Richard
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

Looping in Richard.

-----Original Message-----
From: Elston, Michael (ODAG)
Sent: Thursday, January 25, 2007 6:40 PM
To: Sampson, Kyle; Moschella, William
Subject: Re: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

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Sent: Thu Jan 25 17:53:25 2007
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From: Moschella, William
Sent: Thursday, January 25, 2007 5:45 PM
To: Sampson, Kyle
Cc: Elston, Michael (ODAG)
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.



OAG000000248

are you crazy? no way, you ask him! . . .

Of course we will raise it with him.

---

From: Sampson, Kyle
Sent: Thursday, January 25, 2007 5:34 PM
To: Hertling, Richard; Seidel, Rebecca; Goodling, Monica; Nowacki, John (USAEO)
Cc: Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.
Importance: High

Will/Mike, I think that the DAG should be the witness. We need to be serious and hit back hard. Will you ask him if he is willing?

---

From: Hertling, Richard
Sent: Thursday, January 25, 2007 5:23 PM
To: Seidel, Rebecca; Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO)
Cc: Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
Subject: RE: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

we need to decide who our witness will be

---

From: Seidel, Rebecca
Sent: Thursday, January 25, 2007 4:02 PM
To: Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Hertling, Richard
Cc: Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
Subject: FW: Notice of Full Committee Hearing for Wed., Feb. 7, 2007 at 9:30 a.m.

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From: Butterfield, Jane (Judiciary-Rep) [mailto:Jane_Butterfield@judiciary-rep.senate.gov]
Sent: Thursday, January 25, 2007 8:56 AM
To: White, Brandi (Frist); Andrea Looney (Whitehouse); Bacak, Brooke (RPC); Bellocchi, Luke (RPC); Best, David T; Dianna Dunne (Whitehouse); Hicks, Allen (Frist); Hippe, Jim



OAG000000249

(Frist); Janette Evans-Lee ; Jeri Gronewold; Mark Braswell; Michael Allen (Whitehouse); Moschella, William; Seidel, Rebecca; Stout, Stacey L; Kebodeaux, Tiffany (DHS); Dewine; Peterlin,

January 25, 2007

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Senator Schumer will chair the hearing.

By order of the Chairman

| **Tracking:** | **Recipient** | **Read** |
| --- | --- | --- |
| | Hertling, Richard | Read: 1/25/2007 8:01 PM |



OAG000000250

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Tuesday, January 30, 2007 4:06 PM
**To:** Hertling, Richard; Goodling, Monica; Elston, Michael (ODAG)
**Subject:** Re: Response to Pryor Letter

Thx, Rich.

-----Original Message-----
From: Hertling, Richard
To: Sampson, Kyle; Goodling, Monica; Elston, Michael (ODAG)
Sent: Tue Jan 30 15:45:45 2007
Subject: FW: Response to Pryor Letter

I tweaked this by adding "Mr." before Griffin in a few locations. Now that Mike has signed off on it, this is ready to go as soon as I get Monica's list.

---

From: Sampson, Kyle
Sent: Tuesday, January 30, 2007 11:31 AM
To: Elston, Michael (ODAG); Hertling, Richard
Cc: Goodling, Monica
Subject: Response to Pryor Letter
Importance: High

Mike/Richard, the attached letter incorporates DOJ edits and WH edits (and has been "cleared" by WH). I think that we need to get it up today, well in advance of Paul's hearing next week -- if (God forbid) Pryor shows up at the hearing as a witness and alleges that he wasn't consulted, we discriminated against the FAUSA, we have a conspiracy to keep Tim in office, etc., etc., then we'll want to have this letter to wave around.

Mike, given Paul's equities, I think you should review and clear. Once cleared, we should get it up ASAP.

Richard/Monica, the letter refers to the fact sheet, so Monica will need to provide the most up-to-date fact sheet to go with the letter as an enclosure.

Thanks! <<Pryor Letter re Griffin.doc>>

Kyle Sampson
Chief of Staff
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2001 wk.
(202) 305-5289 cell
kyle.sampson@usdoj.gov



OAG000000251

January 30, 2007

The Honorable Mark Pryor
United States Senate
257 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Pryor:

This is in response to your letter to the Attorney General dated January 11, 2007, regarding the Attorney General's appointment of J. Timothy Griffin to serve as interim United States Attorney for the Eastern District of Arkansas.

As the Attorney General informed you in his telephone conversations with you on December 13, 2006, and December 15, 2006, Mr. Griffin was chosen for appointment to serve as interim United States Attorney because of his excellent qualifications. To be clear, Mr. Griffin was not chosen because the First Assistant United States Attorney was on maternity leave and therefore was not able to serve as your letter states. As you know, Mr. Griffin has federal prosecution experience both in the Eastern District of Arkansas and in the Criminal Division in Washington, D.C. During his service in the Eastern District of Arkansas, Mr. Griffin established that district's successful Project Safe Neighborhoods initiative to reduce firearms-related violence. In addition, Griffin has served for more than a decade in the U.S. Army Reserve, Judge Advocate General's Corps, where he has prosecuted more than 40 criminal cases, including cases of national significance. Griffin's military experience includes recent service in Iraq, for which he was awarded the Combat Action Badge and the Army Commendation Medal. Importantly, Griffin is a "real Arkansan" with genuine ties to the community. For these qualifications, Griffin was selected to serve as interim United States Attorney.

As the Attorney General also has stated to you, the Administration is committed to having a Senate-confirmed United States Attorney for all 94 federal districts. At no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination and confirmation of a new United States Attorney. Not once.

The Eastern District of Arkansas is not different. As the Attorney General stated to you again two weeks ago, in a telephone conversation on January 17, 2007, the Administration is committed to having a Senate-confirmed United States Attorney in that

district too. That is why the Administration has consulted with you and Senator Lincoln for several months now regarding possible candidates for nomination, including Mr. Griffin. That is why the Attorney General has sought your views as to whether, if nominated, you would support Mr. Griffin's confirmation. The Administration awaits your decision.

If you decide that you would support Mr. Griffin's confirmation, then the President's senior advisors (after taking into account Senator Lincoln's views) likely would recommend that the President nominate him. With your support, Mr. Griffin almost certainly would be confirmed and appointed. We are convinced that, given his strong record as a federal prosecutor and as a military prosecutor, Mr. Griffin would serve ably as a Senate-confirmed United States Attorney. If, in contrast, you decide that for whatever reason you will not support Mr. Griffin's confirmation, then the Administration looks forward to considering any alternative candidates for nomination that you might put forward. In any event, your views (and the views of Senator Lincoln) will be given substantial weight in determining what recommendation to make to the President regarding who is nominated.

Last year's amendment to the Attorney General's appointment authority was necessary and appropriate. Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems. For example, some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments. In contrast, other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances. Contrary to your letter, nothing in the text or history of the statute even suggests that the Attorney General should articulate a national security or law enforcement need for making an interim appointment. Because the Administration is committed to having a Senate-confirmed United States Attorney for all 94 federal districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

Enclosed is information regarding the exercise of the Attorney General's authority to appoint interim United States Attorneys. As you will see, the enclosed information establishes conclusively that the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. Indeed, every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or – as with the Eastern District of Arkansas – the Administration is working,

in consultation with home-State Senators, to select a candidate for nomination. Such nominations are, of course, subject to Senate confirmation.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Blanche L. Lincoln

## Sampson, Kyle

**From:** Goodling, Monica
**Sent:** Tuesday, January 30, 2007 7:48 PM
**To:** Sampson, Kyle; Elston, Michael (ODAG); Moschella, William; Hertling, Richard; Seidel, Rebecca; Scolinos, Tasia; Roehrkasse, Brian
**Subject:** USA talkers & fact sheet - updated

**Attachments:** FACT SHEET - USA appointments.pdf; TPS - USA vacancy-appointments.pdf

Folks -- The attached version of the talkers and fact sheet include the vacancies and interim appointments of Sullivan (WDWA) who was sworn in on Saturday, Dummermuth (NDIA) who was sworn in today, and Knauss (AZ) who was just appointed and who will be sworn in tomorrow. I do not expect any additional vacancies prior to the hearing on February 7th, which the possible exception of Lisa Wood who will be resigning to take a position on the federal bench. Other than minor changes surrounding the numbers, I have not changed the original language we have been using for the talkers -- but we may be due for a refresher prior to the hearing. Let me know if you have questions.

FACT SHEET - USA appointments.... TPS - USA cancy-appointments



OAG000000255

## FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

### NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 15 individuals to serve as United States Attorney. The 15 nominations are:

- **Erik Peterson** – Western District of Wisconsin;
- **Charles Rosenberg** – Eastern District of Virginia;
- **Thomas Anderson** – District of Vermont;
- **Martin Jackley** – District of South Dakota;
- **Alexander Acosta** – Southern District of Florida;
- **Troy Eid** – District of Colorado;
- **Phillip Green** – Southern District of Illinois;
- **George Holding** – Eastern District of North Carolina;
- **Sharon Potter** – Northern District of West Virginia;
- **Brett Tolman** – District of Utah;
- **Rodger Heaton** – Central District of Illinois;
- **Deborah Rhodes** – Southern District of Alabama;
- **Rachel Paulose** – District of Minnesota;
- **John Wood** – Western District of Missouri; and
- **Rosa Rodriguez-Velez** – District of Puerto Rico.

All but Phillip Green, John Wood, and Rosa Rodriguez-Velez have been confirmed by the Senate.

### VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 13 new U.S. Attorney vacancies that have arisen. They have been filled as noted below.

For 4 of the 13 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made) until a nomination could be or can be submitted to the Senate. Those districts are:

- **Central District of California** – FAUSA George Cardona is acting United States Attorney
- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (a nomination was made last Congress for Phillip Green, but confirmation did not occur);

- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Sharon Potter was nominated and confirmed).

For 1 vacancy, the Department first selected the First Assistant United States Attorney to lead the office in an acting capacity under the Vacancies Reform Act, but the First Assistant retired a month later. At that point, the Department selected another employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) ("Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant"). This district is:

- **Northern District of Iowa** – FAUSA Judi Whetstine was acting United States Attorney until she retired and Matt Dummermuth was appointed interim United States Attorney.

For 8 of the 13 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) ("Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant"). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

**ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY**

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of 12 times since the authority was amended in March 2006.

In 2 of the 12 cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick

In 1 case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen

In 1 case, the Department originally selected the First Assistant to serve as acting United States Attorney; however, she retired from federal service a month later. At that point, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **Northern District of Iowa** – Matt Dummermuth

In the 8 remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;

- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

## TALKING POINTS: U.S. ATTORNEY NOMINATIONS AND INTERIM APPOINTMENTS BY THE ATTORNEY GENERAL

**Overview:**

- In every single case, it is a goal of the Bush Administration to have a U.S. Attorney that is confirmed by the Senate. Use of the AG's appointment authority is in no way an attempt to circumvent the confirmation process. To the contrary, when a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office during the period when there is not a presidentially-nominated, senate-confirmed (PAS) U.S. Attorney. Whenever a U.S. Attorney vacancy arises, we consult with the home-state Senators about candidates for nomination.

- Our record since the AG-appointment authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination.
  - ✓ Specifically, since March 9, 2006 (when the AG's appointment authority was amended), the Administration has nominated 15 individuals to serve as U.S. Attorney (12 have been confirmed to date).

**U.S. Attorneys Serve at the Pleasure of the President:**

- United States Attorneys serve at the pleasure of the President, and whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.

- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the U.S. Attorneys and ensuring that they are leading their offices effectively. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case.

**The Administration Must Ensure an Effective Transition When Vacancies Occur:**

- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation.

The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 125 confirmations of new U.S. Attorneys since January 20, 2001.

- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.

- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting U.S. Attorney; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition.

**The Administration Is Nominating Candidates for U.S. Attorney Positions:**

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 15 individuals for Senate consideration (12 have been confirmed to date).

- Since March 9, 2006, when the appointment authority was amended, 13 vacancies have been created. Of those 13 vacancies, the Administration nominated candidates to fill 5 of these positions (3 were confirmed to date), has interviewed candidates for 7 positions, and is waiting to receive names to set up interviews for 1 position – all in consultation with home-state Senators.

**The 13 Vacancies Were Filled on an Interim Basis Using a Range of Authorities, in Order To Ensure an Effective and Smooth Transition:**

- In 4 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.

- In 1 case, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). However, the First Assistant took federal retirement a month later and the Department had to select another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.

- In 7 cases, the Department selected another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.

- In 1 case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

**Amending the Statute Was Necessary:**

- Last year's amendment to the Attorney General's appointment authority was necessary and appropriate.

- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.

- Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems.

- The statute was amended for several reasons:

  1) The previous provision was constitutionally-suspect;
  2) Some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments;
  3) Other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances.

- Because the Administration is committed to having a Senate-confirmed United States Attorney in all districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Thursday, February 01, 2007 4:15 PM
**To:** Elston, Michael (ODAG); Hertling, Richard
**Cc:** Goodling, Monica; Moschella, William; McNulty, Paul J; Seidel, Rebecca
**Subject:** RE: Bud Cummins

I don't think he should. How would he answer:

Did you resign voluntarily?
Were you told why you were being asked to resign?
Who told you?
When did they tell you?
What did they say?
Did you ever talk to Tim Griffin about his becoming U.S. Attorney?
What did Griffin say?
Did Griffin ever talk about being AG appointed and avoiding Senate confirmation?
Were you asked to resign because you were underperforming?
If not, then why?
Etc., etc.

-----Original Message-----
From: Elston, Michael (ODAG)
Sent: Thursday, February 01, 2007 3:52 PM
To: Hertling, Richard
Cc: Sampson, Kyle; Goodling, Monica; Moschella, William; McNulty, Paul J; Seidel, Rebecca
Subject: Bud Cummins

just called to let me know that Pryor's and Schumer's staff have called and asked him to testify on Tuesday. He declined, but wanted to know if we wanted him to testify -- would tell the truth about his circumstances and would also strongly support our view of S 214.

Thoughts?

**Tracking:**

| Recipient | Read |
|---|---|
| Elston, Michael (ODAG) | Read: 2/1/2007 4:35 PM |
| Hertling, Richard | Read: 2/1/2007 4:45 PM |
| Goodling, Monica | Read: 2/1/2007 4:40 PM |
| Moschella, William | Read: 2/1/2007 4:39 PM |
| McNulty, Paul J | Read: 2/1/2007 6:10 PM |
| Seidel, Rebecca | Read: 2/1/2007 4:28 PM |

## Sampson, Kyle

**From:** Scott-Finan, Nancy
**Sent:** Friday, February 02, 2007 4:57 PM
**To:** Sampson, Kyle; Goodling, Monica
**Subject:** FW: (Clearance) AMS-110-15 (DAG Testimony on USA, S.214)

**Attachments:** ODAGMcNultyTestimonySJC2-6-07PoliticizationofUSAttorneysclearedfinal.doc; ODAGMcNultyTestimonySJC2-6-07PoliticizationofUSAttorneysclearedfinal.pdf

ODAGMcNultyTestimonySJC2-6-07P...

ODAGMcNultyTestimonySJC2-6-07P...

Paul's testimony has been cleared by OMB and is attached.

-----Original Message-----
From: Blackwood, Kristine
Sent: Friday, February 02, 2007 4:52 PM
To: Scott-Finan, Nancy
Cc: Seidel, Rebecca
Subject: RE: (Clearance) AMS-110-15 (DAG Testimony on USA, S.214)

Try this one
-----Original Message-----
From: Blackwood, Kristine
Sent: Friday, February 02, 2007 4:48 PM
To: Scott-Finan, Nancy
Cc: Seidel, Rebecca
Subject: RE: (Clearance) AMS-110-15 (DAG Testimony on USA, S.214)

Here's the corrected and cleared version.

-----Original Message-----
From: Seidel, Rebecca
Sent: Friday, February 02, 2007 4:36 PM
To: 'Simms, Angela M.'; Blackwood, Kristine
Cc: Scott-Finan, Nancy
Subject: RE: (Clearance) AMS-110-15 (DAG Testimony on USA, S.214)

Thank you for all your help Angie! We know you must be flooded today.

-----Original Message-----
From: Simms, Angela M. [mailto:Angela_M._Simms@omb.eop.gov]
Sent: Friday, February 02, 2007 4:36 PM
To: Blackwood, Kristine
Cc: Scott-Finan, Nancy; Seidel, Rebecca
Subject: (Clearance) AMS-110-15 (DAG Testimony on USA, S.214)

Kristine,

This testimony on S.214 is cleared, as amended.

Angie
202-395-3857

-----Original Message-----
From: Seidel, Rebecca [mailto:Rebecca.Seidel@usdoj.gov]
Sent: Friday, February 02, 2007 4:24 PM
To: Green, Richard E.; Simms, Angela M.
Cc: Scott-Finan, Nancy; Blackwood, Kristine
Subject: FW: DAG testimony on USA firings issue

Importance: High

see below, this is apparently the only comment from WH counsel's office. We accept. Does this mean it is cleared? I spoke with Todd Braunstein at a meeting we were at together and understood his comments were only suggestions. Has he responded to our response yet? Didn't get the impression he was going to push.

-----Original Message-----
From: Oprison, Christopher G.
[mailto:Christopher_G._Oprison@who.eop.gov]
Sent: Friday, February 02, 2007 4:02 PM
To: Seidel, Rebecca; Scott-Finan, Nancy
Cc: Gibbs, Landon M.; Brosnahan, Jennifer R.; McIntosh, Brent J.; Brady, Ryan D.
Subject: RE: DAG testimony on USA firings issue

Here are the comments I sent earlier today to our front office:

I have no legal objections. One minor wordsmithing edit: on Page 7, paragraph starting "As you know, ... ." In the third sentence, substitute "government" for "government's"

My apologies, ladies, for the delay. Thanks for following up.

Christopher G. Oprison
Associate Counsel to the President
phone: (202) 456-5871
fax: (202) 456-5104

-----Original Message-----
From: Seidel, Rebecca [mailto:Rebecca.Seidel@usdoj.gov]
Sent: Friday, February 02, 2007 3:55 PM
To: Scott-Finan, Nancy; Oprison, Christopher G.; Brosnahan, Jennifer R.; McIntosh, Brent J.
Cc: Gibbs, Landon M.
Subject: Re: DAG testimony on USA firings issue

As of 20 min ago, Angela at omb had not received anything from WH counsel.

-----Original Message-----
From: Scott-Finan, Nancy
To: 'Oprison, Christopher G.' <Christopher_G._Oprison@who.eop.gov>; Brosnahan, Jennifer R. <Jennifer_R._Brosnahan@who.eop.gov>; McIntosh, Brent J. <Brent_J._McIntosh@who.eop.gov>; Seidel, Rebecca
CC: Gibbs, Landon M. <Landon_M._Gibbs@who.eop.gov>
Sent: Fri Feb 02 15:49:04 2007
Subject: RE: DAG testimony on USA firings issue

We have not received comments from WH Counsel through the OMB passback process; only from DPC.

-----Original Message-----
From: Oprison, Christopher G.
[mailto:Christopher_G._Oprison@who.eop.gov]
Sent: Friday, February 02, 2007 3:46 PM
To: Brosnahan, Jennifer R.; McIntosh, Brent J.; Seidel, Rebecca
Cc: Scott-Finan, Nancy; Gibbs, Landon M.
Subject: RE: DAG testimony on USA firings issue

Correct - Landon forwarded them, I believe

-----Original Message-----

From: Brosnahan, Jennifer R.
Sent: Friday, February 02, 2007 3:45 PM
To: McIntosh, Brent J.; 'rebecca.seidel@usdoj.gov'
Cc: 'nancy.scott-finan@usdoj.gov'; Oprison, Christopher G.
Subject: RE: DAG testimony on USA firings issue

Chris reviewed and submitted comments, I believe...

-----Original Message-----
From: McIntosh, Brent J.
Sent: Friday, February 02, 2007 3:23 PM
To: 'rebecca.seidel@usdoj.gov'
Cc: 'nancy.scott-finan@usdoj.gov'; Brosnahan, Jennifer R.
Subject: Re: DAG testimony on USA firings issue

Not me. I'm on paternity leave. Ccing Jenny, who may know status.

-----Original Message-----
From: Seidel, Rebecca
To: McIntosh, Brent J.
CC: Scott-Finan, Nancy
Sent: Fri Feb 02 15:08:16 2007
Subject: DAG testimony on USA firings issue

OMB tells us they are only waiting to hear from WH counsel's office, otherwise it is cleared. Need to give to DAG to take home for weekend. Can u fin out who is reviewing for you guys and nudge? (Is it you ? :))

# Department of Justice

STATEMENT

OF

PAUL J. MCNULTY
DEPUTY ATTORNEY GENERAL
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

CONCERNING

"PRESERVING PROSECUTORIAL INDEPENDENCE:
IS THE DEPARTMENT OF JUSTICE
POLITICIZING THE HIRING AND FIRING
OF U.S. ATTORNEYS?"

PRESENTED ON

FEBRUARY 6, 2007

**Testimony**
**of**

**Paul J. McNulty**
**Deputy Attorney General**
**U.S. Department of Justice**

**Committee on the Judiciary**
**United States Senate**

**"Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?"**

February 6, 2007

Chairman Schumer, Senator Sessions, and members of the Committee, thank you for the invitation to discuss the importance of the Justice Department's United States Attorneys. As a former United States Attorney, I particularly appreciate this opportunity to address the critical role U.S. Attorneys play in enforcing our Nation's laws and carrying out the priorities of the Department of Justice.

I have often said that being a United States Attorney is one of the greatest jobs you can ever have. It is a privilege and a challenge—one that carries a great responsibility. As former Attorney General Griffin Bell said, U.S. Attorneys are "the front-line troops charged with carrying out the Executive's constitutional mandate to execute faithfully the laws in every federal judicial district." As the chief federal law-enforcement officers in their districts, U.S. Attorneys represent the Attorney General before Americans who may not otherwise have contact with the Department of Justice. They lead our efforts to protect America from terrorist attacks and fight violent crime, combat illegal drug trafficking, ensure the integrity of government and the marketplace, enforce our immigration laws, and prosecute crimes that endanger children and families—including child pornography, obscenity, and human trafficking.



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U.S. Attorneys are not only prosecutors; they are government officials charged with managing and implementing the policies and priorities of the Executive Branch. United States Attorneys serve at the pleasure of the President. Like any other high-ranking officials in the Executive Branch, they may be removed for any reason or no reason. The Department of Justice—including the office of United States Attorney—was created precisely so that the government's legal business could be effectively managed and carried out through a coherent program under the supervision of the Attorney General. And unlike judges, who are supposed to act independently of those who nominate them, U.S. Attorneys are accountable to the Attorney General, and through him, to the President—the head of the Executive Branch. For these reasons, the Department is committed to having the best person possible discharging the responsibilities of that office at all times and in every district.

The Attorney General and I are responsible for evaluating the performance of the United States Attorneys and ensuring that they are leading their offices effectively. It should come as no surprise to anyone that, in an organization as large as the Justice Department, U.S. Attorneys are removed or asked or encouraged to resign from time to time. However, in this Administration U.S. Attorneys are never—repeat, never—removed, or asked or encouraged to resign, in an effort to retaliate against them, or interfere with, or inappropriately influence a particular investigation, criminal prosecution, or civil case. Any suggestion to the contrary is unfounded, and it irresponsibly undermines the reputation for impartiality the Department has earned over many years and on which it depends.

Turnover in the position of U.S. Attorney is not uncommon. When a presidential election results in a change of administration, every U.S. Attorney leaves and the new President nominates a successor for



OAG000000269

confirmation by the Senate. Moreover, U.S. Attorneys do not necessarily stay in place even during an administration. For example, approximately half of the U.S. Attorneys appointed at the beginning of the Bush Administration had left office by the end of 2006. Given this reality, career investigators and prosecutors exercise direct responsibility for nearly all investigations and cases handled by a U.S. Attorney's Office. While a new U.S. Attorney may articulate new priorities or emphasize different types of cases, the effect of a U.S. Attorney's departure on an existing investigation is, in fact, minimal, and that is as it should be. The career civil servants who prosecute federal criminal cases are dedicated professionals, and an effective U.S. Attorney relies on the professional judgment of those prosecutors.

The leadership of an office is more than the direction of individual cases. It involves managing limited resources, maintaining high morale in the office, and building relationships with federal, state and local law enforcement partners. When a U.S. Attorney submits his or her resignation, the Department must first determine who will serve temporarily as interim U.S. Attorney. The Department has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's Office during the period when there is not a presidentially-appointed, Senate-confirmed United States Attorney. Often, the Department looks to the First Assistant U.S. Attorney or another senior manager in the office to serve as U.S. Attorney on an interim basis. When neither the First Assistant nor another senior manager in the office is able or willing to serve as interim U.S. Attorney, or when the appointment of either would not be appropriate in the circumstances, the Department has looked to other, qualified Department employees.

At no time, however, has the Administration sought to avoid the Senate confirmation process by appointing an interim U.S. Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination, confirmation and appointment of a new U.S. Attorney. The appointment

of U.S. Attorneys by and with the advice and consent of the Senate is unquestionably the appointment method preferred by both the Senate and the Administration.

In every single case where a vacancy occurs, the Bush Administration is committed to having a United States Attorney who is confirmed by the Senate. And the Administration's actions bear this out. Every time a vacancy has arisen, the President has either made a nomination, or the Administration is working—in consultation with home-state Senators—to select candidates for nomination. Let me be perfectly clear—at no time has the Administration sought to avoid the Senate confirmation process by appointing an interim United States Attorney and then refusing to move forward, in consultation with home-State Senators, on the selection, nomination and confirmation of a new United States Attorney. Not once.

Since January 20, 2001, 125 new U.S. Attorneys have been nominated by the President and confirmed by the Senate. On March 9, 2006, the Congress amended the Attorney General's authority to appoint interim U.S. Attorneys, and 13 vacancies have occurred since that date. This amendment has not changed our commitment to nominating candidates for Senate confirmation. In fact, the Administration has nominated a total of 15 individuals for Senate consideration since the appointment authority was amended, with 12 of those nominees having been confirmed to date. Of the 13 vacancies that have occurred since the time that the law was amended, the Administration has nominated candidates to fill five of these positions, has interviewed candidates for nomination for seven more positions, and is waiting to receive names to set up interviews for the final position—all in consultation with home-state Senators.

However, while that nomination process continues, the Department must have a leader in place to carry out the important work of these offices. To ensure an effective and smooth transition during U.S. Attorney



OAG000000271

vacancies, the office of the U.S. Attorney must be filled on an interim basis. To do so, the Department relies on the Vacancy Reform Act ("VRA"), 5 U.S.C. § 3345(a)(1), when the First Assistant is selected to lead the office, or the Attorney General's appointment authority in 28 U.S.C. § 546 when another Department employee is chosen. Under the VRA, the First Assistant may serve in an acting capacity for only 210 days, unless a nomination is made during that period. Under an Attorney General appointment, the interim U.S. Attorney serves until a nominee is confirmed the Senate. There is no other statutory authority for filling such a vacancy, and thus the use of the Attorney General's appointment authority, as amended last year, signals nothing other than a decision to have an interim U.S. Attorney who is not the First Assistant. It does not indicate an intention to avoid the confirmation process, as some have suggested.

No change in these statutory appointment authorities is necessary, and thus the Department of Justice strongly opposes S. 214, which would radically change the way in which U.S. Attorney vacancies are temporarily filled. S. 214 would deprive the Attorney General of the authority to appoint his chief law enforcement officials in the field when a vacancy occurs, assigning it instead to another branch of government.

As you know, before last year's amendment of 28 U.S.C. § 546, the Attorney General could appoint an interim U.S. Attorney for the first 120 days after a vacancy arose; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases where a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in recurring problems. Some district courts recognized the conflicts inherent in the appointment of an interim U.S. Attorney who would then have matters before the court—not to mention the oddity of one branch of government appointing officers of another—and simply refused to exercise the appointment authority. In those cases, the Attorney General was consequently required to make multiple successive 120-day interim appointments. Other district

courts ignored the inherent conflicts and sought to appoint as interim U.S. Attorneys wholly unacceptable candidates who lacked the required clearances or appropriate qualifications.

In most cases, of course, the district court simply appointed the Attorney General's choice as interim U.S. Attorney, revealing the fact that most judges recognized the importance of appointing an interim U.S. Attorney who enjoys the confidence of the Attorney General. In other words, the most important factor in the selection of past court-appointed interim U.S. Attorneys was the Attorney General's recommendation. By foreclosing the possibility of judicial appointment of interim U.S. Attorneys unacceptable to the Administration, last year's amendment to Section 546 appropriately eliminated a procedure that created unnecessary problems without any apparent benefit.

S. 214 would not merely reverse the 2006 amendment; it would exacerbate the problems experienced under the prior version of the statute by making judicial appointment the only means of temporarily filling a vacancy—a step inconsistent with sound separation-of-powers principles. We are aware of no other agency where federal judges—members of a separate branch of government—appoint the interim staff of an agency. Such a judicial appointee would have authority for litigating the entire federal criminal and civil docket before the very district court to whom he or she was beholden for the appointment. This arrangement, at a minimum, gives rise to an appearance of potential conflict that undermines the performance or perceived performance of both the Executive and Judicial Branches. A judge may be inclined to select a U.S. Attorney who shares the judge's ideological or prosecutorial philosophy. Or a judge may select a prosecutor apt to settle cases and enter plea bargains, so as to preserve judicial resources. *See* Wiener, Inter-Branch Appointments After the Independent Counsel: Court Appointment of United States Attorneys, 86 Minn. L. Rev. 363, 428 (2001) (concluding that court appointment of interim U.S. Attorneys is unconstitutional).



OAG000000273

Prosecutorial authority should be exercised by the Executive Branch in a unified manner, consistent with the application of criminal enforcement policy under the Attorney General. S. 214 would undermine the effort to achieve a unified and consistent approach to prosecutions and federal law enforcement. Court-appointed U.S. Attorneys would be at least as accountable to the chief judge of the district court as to the Attorney General, which could, in some circumstances become untenable. In no context is accountability more important to our society than on the front lines of law enforcement and the exercise of prosecutorial discretion, and the Department contends that the chief prosecutor should be accountable to the Attorney General, the President, and ultimately the people.

Finally, S. 214 seems to be aimed at solving a problem that does not exist. As noted, when a vacancy in the office of U.S. Attorney occurs, the Department typically looks first to the First Assistant or another senior manager in the office to serve as an Acting or interim U.S. Attorney. Where neither the First Assistant nor another senior manager is able or willing to serve as an Acting or interim U.S. Attorney, or where their service would not be appropriate under the circumstances, the Administration has looked to other Department employees to serve temporarily. No matter which way a U.S. Attorney is temporarily appointed, the Administration has consistently sought, and will continue to seek, to fill the vacancy—in consultation with home-State Senators—with a presidentially-nominated and Senate-confirmed nominee.

Thank you again for the opportunity to testify, and I look forward to answering the Committee's questions.



OAG000000274

## Sampson, Kyle

**From:** Goodling, Monica
**Sent:** Monday, February 05, 2007 6:04 AM
**To:** Sampson, Kyle; Elston, Michael (ODAG); Moschella, William; Hertling, Richard; Seidel, Rebecca; Scott-Finan, Nancy; Scolinos, Tasia; Roehrkasse, Brian
**Cc:** Nowacki, John (USAEO)
**Subject:** USA Info (not all is for public use)

**Attachments:** TPS - US Attorney vacancy-appointment points.pdf; FACT SHEET - USA appointments.pdf; USA stats.doc; Current & upcoming vacancies.doc; Vacancies over the past year.doc; Griffin Talkers.doc; ARK Biographies.doc

Folks -- Please find attached various materials for use in the prep session and in the upcoming hearings (with thanks to John and Angela for their late-night assistance). There are additional materials coming later, but I am awaiting confirmation of a few facts for the others. Also, I have some piles of materials (i.e. resumes for various categories of people and appointment authorities together) that I'll bring to the prep and hearing for reference. Please let me know if you have thoughts or edits on any of the materials below. Thanks.

Current talking points on USAs **(has changed; replace old versions)**:

TPS - US Attorney vacancy-appo...

Current fact sheet on USAs (has not changed):

FACT SHEET - USA appointments....

Interesting USA stats:

USA stats.doc (38 KB)

List of status of current and upcoming vacancies (DO NOT DISTRIBUTE OUTSIDE DOJ):

Current & upcoming vacancies.d...

List of vacancies over the past year (DO NOT DISTRIBUTE OUTSIDE DOJ):

Vacancies over the past year.d...

Talking points on Tim Griffin:

Griffin Talkers.doc
(30 KB)

Griffin and prior nominees in the state of Arkansas (his experience is well within the norm):

ARK
ographies.doc (46 K

## TALKING POINTS: U.S. ATTORNEY NOMINATIONS AND INTERIM APPOINTMENTS BY THE ATTORNEY GENERAL

**Overview:**

- In every single case, it is a goal of the Bush Administration to have a U.S. Attorney that is confirmed by the Senate. Use of the AG's appointment authority is in no way an attempt to circumvent the confirmation process. To the contrary, when a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office during the period when there is not a presidentially-nominated, senate-confirmed (PAS) U.S. Attorney. Whenever a U.S. Attorney vacancy arises, we consult with the home-state Senators about candidates for nomination.

- Our record since the AG-appointment authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination.
    - ✓ Specifically, since March 9, 2006 (when the AG's appointment authority was amended), the Administration has nominated 15 individuals to serve as U.S. Attorney (12 have been confirmed to date).

**U.S. Attorneys Serve at the Pleasure of the President:**

- United States Attorneys are at the forefront of the Department of Justice's efforts. They are leading the charge to protect America from acts of terrorism; reduce violent crime, including gun crime and gang crime; enforce immigration laws; fight illegal drugs, especially methamphetamine; combat crimes that endanger children and families like child pornography, obscenity, and human trafficking; and ensure the integrity of the marketplace and of government by prosecuting corporate fraud and public corruption.

- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.

- United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or

inappropriately influence a particular investigation, criminal prosecution or civil case.

- Whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.

- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the U.S. Attorneys and ensuring that they are leading their offices effectively. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case.

**The Administration Must Ensure an Effective Transition When Vacancies Occur:**

- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation. The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 124 confirmations of new U.S. Attorneys since January 20, 2001.

- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.

- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting U.S. Attorney; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition, often another senior manager from that office or an experienced attorney from within the Department.

**The Administration Is Nominating Candidates for U.S. Attorney Positions:**

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 15 individuals for Senate consideration (12 have been confirmed to date).

- Since March 9, 2006, when the appointment authority was amended, 13 vacancies have been created. Of those 13 vacancies, the Administration nominated candidates to fill 5 of these positions (3 were confirmed to date), has interviewed candidates for 7 positions, and is waiting to receive names to set up interviews for 1 position – all in consultation with home-state Senators.

**The 13 Vacancies Were Filled on an Interim Basis Using a Range of Authorities, in Order To Ensure an Effective and Smooth Transition:**

- In 4 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.

- In 1 case, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). However, the First Assistant took federal retirement a month later and the Department had to select another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.

- In 7 cases, the Department selected another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.

- In 1 case, the First Assistant resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

**Amending the Statute Was Necessary:**

- Last year's amendment to the Attorney General's appointment authority was necessary and appropriate.

- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.

- Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on

the Attorney General's appointment authority resulted in numerous, recurring problems.

- The statute was amended for several reasons:

  1) The previous provision was constitutionally-suspect in that it is inappropriate and inconsistent with sound separation of powers principles to vest federal courts with the authority to appoint a critical Executive Branch officer such as a United States Attorney;
  2) Some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments;
  3) Other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances.

- Court appointments raise significant conflict questions. After being appointed by the court, the judicial appointee would have authority for litigating the entire federal criminal and civil docket for this period before the very district court to whom he was beholden for his appointment. Such an arrangement at a minimum gives rise to an appearance of potential conflict that undermines the performance of not just the Executive Branch, but also the Judicial one. Furthermore, prosecutorial authority should be exercised by the Executive Branch in a unified manner, with consistent application of criminal enforcement policy under the supervision of the Attorney General.

- Because the Administration is committed to having a Senate-confirmed United States Attorney in all districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

## FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

### NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 15 individuals to serve as United States Attorney. The 15 nominations are:

- **Erik Peterson** – Western District of Wisconsin;
- **Charles Rosenberg** – Eastern District of Virginia;
- **Thomas Anderson** – District of Vermont;
- **Martin Jackley** – District of South Dakota;
- **Alexander Acosta** – Southern District of Florida;
- **Troy Eid** – District of Colorado;
- **Phillip Green** – Southern District of Illinois;
- **George Holding** – Eastern District of North Carolina;
- **Sharon Potter** – Northern District of West Virginia;
- **Brett Tolman** – District of Utah;
- **Rodger Heaton** – Central District of Illinois;
- **Deborah Rhodes** – Southern District of Alabama;
- **Rachel Paulose** – District of Minnesota;
- **John Wood** – Western District of Missouri; and
- **Rosa Rodriguez-Velez** – District of Puerto Rico.

All but Phillip Green, John Wood, and Rosa Rodriguez-Velez have been confirmed by the Senate.

### VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 13 new U.S. Attorney vacancies that have arisen. They have been filled as noted below.

For 4 of the 13 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made) until a nomination could be or can be submitted to the Senate. Those districts are:

- **Central District of California** – FAUSA George Cardona is acting United States Attorney
- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (a nomination was made last Congress for Phillip Green, but confirmation did not occur);

- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Sharon Potter was nominated and confirmed).

For 1 vacancy, the Department first selected the First Assistant United States Attorney to lead the office in an acting capacity under the Vacancies Reform Act, but the First Assistant retired a month later. At that point, the Department selected another employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) ("Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant"). This district is:

- **Northern District of Iowa** – FAUSA Judi Whetstine was acting United States Attorney until she retired and Matt Dummermuth was appointed interim United States Attorney.

For 8 of the 13 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) ("Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant"). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

**ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY**

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of 12 times since the authority was amended in March 2006.

In 2 of the 12 cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick

In 1 case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen

In 1 case, the Department originally selected the First Assistant to serve as acting United States Attorney; however, she retired from federal service a month later. At that point, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **Northern District of Iowa** – Matt Dummermuth

In the 8 remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;

- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned.

# UNITED STATES ATTORNEYS STATISTICS

**Average Ages of U.S. Attorneys:**

- Average age of President George W. Bush U.S. Attorneys: 44.82 years
- Average age of President Bill Clinton U.S. Attorneys: 44.67 years

**Status of Our U.S. Attorneys' Four-Year Terms:**

- 43 districts are currently being led by a U.S. Attorney nominated by President George W. Bush and confirmed by the Senate in 2001 or 2002. All of these U.S. Attorneys have completed their four year terms and continue to serve at the pleasure of the President (5 of the 43 have announced their resignations).

- Only 6 districts are currently being led by the first U.S. Attorney nominated by President Bush and confirmed by the Senate -- but who are still serving their four year terms.

- 44 districts are either being led by their second Presidentially-nominated and Senate-confirmed U.S. Attorney, or are currently awaiting a nomination. These U.S. Attorneys have not completed their four year terms.

**This Administration Has Demonstrated that It Values Prosecution Experience. Of the 124 Individuals President George W. Bush Has Nominated Who Have Been Confirmed by the Senate:**

- 98 had prior experience as prosecutors (79 %)
    - 71 had prior experience as federal prosecutors (57 %)
    - 54 had prior experience as state or local prosecutors (44%)
- 104 had prior experience as prosecutors or government litigators on the civil side (84 %)
- 10 had judicial experience (8%); 13 had Hill experience (10%)
- Of the 10 who had worked at Main Justice in the George W. Bush Administration before being nominated for a U.S. Attorney position, please note that 8 were either career AUSAs or former career AUSAs.

**In Comparison, of President Clinton's 122 Nominees Who Were Confirmed by the Senate:**

- 84 had prior experience as prosecutors (69 %)
    - 56 had prior experience as federal prosecutors (46 %)
    - 40 had prior experience as state or local prosecutors (33 %)
- 87 had prior experience as prosecutors or government litigators on the civil side (71 %)
- 12 had judicial experience (9 %); 10 had Hill experience (8 %)

**Since the Attorney General's Appointment Authority Was Amended on March 9, 2006, the Backgrounds of Our Nominees Has Not Changed. Of the 15 Nominees Since that Time:**

- 13 of the 15 had prior experience as prosecutors (87%) – *a higher percentage than before.*
    - 11 of the 15 had prior experience as federal prosecutors (73%) – *a higher percentage than before the change*; 10 were career AUSAs or former career AUSAs and 1 had federal prosecution experience as an Assistant Attorney General of the Civil Rights Division
    - 4 of the 15 nominees had experience as state or local prosecutors (27%)

**Those Chosen To Be Acting/Interim U.S. Attorneys since the Attorney General's Appointment Authority Was Amended on March 9, 2006, Have Continued To Be Highly Qualified.** Of the 13 districts in which vacancies have occurred, 14 acting and/or interim appointments have been made:

- 13 of the 14 had prior experience as federal prosecutors (93%)

## CURRENT & UPCOMING VACANCIES

**Current vacancies (15):**

- **Maine** (since 2001) – still continuing to request names from senators
- **Southern District of West Virginia** (since 2005) - waiting on names from congresswoman
- **Eastern District of Tennessee** (since 2005) – candidate selected but waiting on home-state senator sign-off
- **Alaska** (since 1/06) – waiting on names from senators
- **Southern District of Illinois** (since 2005 or 3/06, depending) - nomination sent to last Congress but not approved; on hold
- **Western District of Missouri** (since 3/06) - nomination pending
- **Puerto Rico** (since 6/06) - nomination pending
- **District of Columbia** (since 9/06) - candidate in background review
- **Nebraska** (since 10/06) - candidate in background review
- **Middle District of Tennessee** (since 10/06) - waiting on additional names from senators
- **Central District of California** (since 11/06) – working with home-state commission
- **Eastern District of Arkansas** (since 12/06) - candidate in background
- **Northern District of Iowa** (since 12/06) - candidate selected but waiting on home-state senator sign-off
- **District of Arizona** (since 1/07) – would like to request more names from senators
- **Western District of Washington** (since 1/07) – interviews being scheduled

**Publicly-announced or known upcoming resignations (9):**

- **Nevada**, Dan Bogden, 2/28/07 – waiting on names
- **Southern District of California**, Carol Lam, 2/15/07 – waiting on names
- **Northern District of California** Kevin Ryan, 2/16/07 – waiting on names
- **New Mexico,** David Iglesias, 2/28/07 – candidate selected but waiting on home-state senator sign-off

- **Southern District of Georgia,** Lisa Wood, 2/7/07, pending appointment to court – waiting on additional names from senators
- **Montana**, Bill Mercer, pending confirmation of new position
- **Northern District of Indiana**, Joe Van Bokkelen, pending confirmation of new position
- **Eastern District of New York,** Roslynn Mauskopf, pending confirmation of new position
- **Eastern District of Michigan**, Steve Murphy, pending confirmation of new position

**Non-public resignation (1):**

- **Western District of Michigan**, Margaret Chiara, 3/07

**VACANCIES OVER THE PAST YEAR:**
**(13 since March of 2006)**

- **There are many reasons why a U.S. Attorney may retire or resign.**

- **Nearly half were confirmed or appointed to new federal positions:**
  - ✓ Paul McNulty, EDVA, 3/06 (to become DAG)
  - ✓ Tom Johnston, NDWV, 4/06 (to become federal district court judge)
  - ✓ Frank Whitney, EDNC, 6/06 (to become federal district court judge)
  - ✓ Bert Garcia, PR, 6/06 (to return family to home state of Texas)
  - ✓ Ken Wainstein, DC, 9/06 (to become AAG of NSD)
  - ✓ Mike Heavican, NE, 10/06 (to become Chief Justice on the state's Supreme Court)

- **Others left to pursue private sector opportunities (i.e. Jim Vines, MDTN) or retired at the end of a long career (i.e. Charles Larson, NDIA).**

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**Full list of resignations since last March in reverse date order (13 total):**

- *John McKay, WDWA, 1/07 (has said he will teach at a law school)*
- *Paul Charlton, AZ, 1/07 (going into private practice)*
- *Bud Cummins, EDAR, 12/06 (pursuing private sector opportunities)*
- Chuck Larson, NDIA, 12/06 (to take federal retirement)
- Deb Yang, CDCA, 11/06 (to go into private practice)
- Jim Vines, MDTN, 10/06 (to move to D.C. and go into private practice)
- Mike Heavican, NE, 10/06 (to become Chief Justice on the state's Supreme Court)
- Ken Wainstein, DC, 9/06 (to become AAG of NSD)
- Frank Whitney, EDNC, 6/06 (to become federal district court judge)
- Bert Garcia, PR, 6/06 (to return family to home state of Texas)
- Tom Johnston, NDWV, 4/06 (to become federal district court judge)
- Todd Graves, WDMO, 3/06 (started his own firm)
- Paul McNulty, EDVA, 3/06 (to become DAG)

**Additional U.S. Attorneys are pending confirmation/appointment to new federal positions (5):**

- Lisa Godbey Wood, SDGA (confirmed to be federal district court judge, but not yet appointed)
- Bill Mercer, MT (to become Associate Attorney General)
- Joe Van Bokkelen, NDIN (to become federal district court judge)
- Roslynn Mauskopf, EDNY (to become federal district court judge)
- Steve Murphy, EDMI (to become federal court of appeals judge)

**TIMOTHY GRIFFIN AS INTERIM UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF ARKANSAS**

- The Attorney General appointed Tim Griffin as the interim U.S. Attorney following the resignation of Bud Cummins, who resigned on Dec. 20, 2006. Since early in 2006, Mr. Cummins had been talking about leaving the Department to go into private practice for family reasons.

- Timothy Griffin is highly qualified to serve as the U.S. Attorney for the Eastern District of Arkansas.

- Mr. Griffin has significant experience as a federal prosecutor at both the Department of Justice and as a military prosecutor. At the time of his appointment, he was serving as a federal prosecutor in the Eastern District of Arkansas. Also, from 2001 to 2002, Mr. Griffin served at the Department of Justice as Special Assistant to the Assistant Attorney General for the Criminal Division and as a Special Assistant U.S. Attorney in the Eastern District of Arkansas in Little Rock. In this capacity, Mr. Griffin prosecuted a variety of federal cases with an emphasis on firearm and drug cases and organized the Eastern District's Project Safe Neighborhoods (PSN) initiative, the Bush Administration's effort to reduce firearm-related violence by promoting close cooperation between State and federal law enforcement, and served as the PSN coordinator.

- Prior to rejoining the Department in the fall of 2006, Mr. Griffin completed a year of active duty in the U.S. Army, and is in his tenth year as an officer in the U.S. Army Reserve, Judge Advocate General's Corps (JAG), holding the rank of Major. In September 2005, Mr. Griffin was mobilized to active duty to serve as an Army prosecutor at Fort Campbell, Ky. At Fort Campbell, he prosecuted 40 criminal cases, including *U.S. v. Mikel*, which drew national interest after Pvt. Mikel attempted to murder his platoon sergeant and fired upon his unit's early morning formation. Pvt. Mikel pleaded guilty to attempted murder and was sentenced to 25 years in prison.

- In May 2006, Tim was assigned to the 501st Special Troops Battalion, 101st Airborne Division and sent to serve in Iraq. From May through August 2006, he served as an Army JAG with the 101st Airborne Division in Mosul, Iraq, as a member of the 172d Stryker Brigade Combat Team Brigade Operational Law Team, for which he was awarded the Combat Action Badge and the Army Commendation Medal.

- Like many political appointees, Mr. Griffin has political experience as well. Prior to being called to active duty, Mr. Griffin served as Special Assistant to the President and Deputy Director of the Office of Political Affairs at the White House, following a stint at the Republican National Committee. Mr. Griffin has also served as Senior Counsel to the House Government Reform Committee, as an Associate Independent Counsel for *In Re: Housing and Urban Development Secretary Henry Cisneros*, and as an associate attorney with a New Orleans law firm.

- Mr. Griffin has very strong academic credentials. He graduated *cum laude* from Hendrix College in Conway, Ark., and received his law degree, *cum laude*, from Tulane Law School. He also attended graduate school at Pembroke College at Oxford University. Mr. Griffin was raised in Magnolia, Ark., and resides in Little Rock with his wife, Elizabeth.

- The Attorney General has assured Senator Pryor that we are not circumventing the process by making an interim appointment and that the Administration would like to nominate Mr. Griffin. However, because the input of home-state Senators is important to the Administration, the Attorney General has asked Senator Pryor whether he would support Mr. Griffin if he was nominated. While the Administration consults with the home-state Senators on a potential nomination, however, the Department must have someone lead the office – and we believe Mr. Griffin is well-qualified to serve in this interim role until such time as a new U.S. Attorney is nominated and confirmed.

## BIOGRAPHIES OF U.S. ATTORNEYS FROM ARKANSAS

## EASTERN DISTRICT

**Attorney General Appointment of Tim Griffin (37 years old at appointment)**
Appointed 12/20/2006

Educational Background:

- B.A. from Hendrix College in Arkansas in 1990
- Graduate school at Pembroke College, Oxford University in 1991
- J.D. from Tulane Law School in 1994

Prosecution & Military Background:

- Officer—currently a major—in the U.S. Army Judge Advocate General's (JAG) Corps (over ten years), including service as a Brigade Judge Advocate, U.S. Army JAG Corps., Operation Iraqi Freedom, 101st Airborne Division (Air Assault) May-Aug 2006 (approx. 3 months)
- Special Assistant U.S. Attorney, Eastern District of Arkansas, Sept 2001-June 2002 (9 months)
- Special Assistant to the Assistant Attorney General for the Criminal Division, U.S. Department of Justice (approx. 15 months)
- Senior Investigative Counsel, Committee on Government Reform, U.S. House of Representatives, 1997-1999 (approx. 2 ½ years total)
- Associate Independent Counsel, U.S. Office of Independent Counsel David Barrett (16 months)
- Associate Attorney, Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P. (approx. one year)
- Military Honors: Army Commendation Medal with Five Oak Leaf Clusters; Army Achievement Medal with Four Oak Leaf Clusters; Army Reserve Components Achievement Medal with Two Oak Leaf Clusters; National Defense Service Medal; Iraq Campaign Medal; Global War on Terrorism Service Medal; Armed Forces Reserve Medal with Bronze Hourglass and "M" Devices; Army Service Ribbon; and Army Reserve Overseas Training Ribbon with "3" Device; and Combat Action Badge.

Political experience:

- Special Assistant to the President & Deputy Director, Office of Political Affairs, The White House (approximately 5 months; then on military leave)
- RNC Research Dir. & Dep. Communications Dir., 2004 Presidential Campaign (approx. 2 ½ years)
- RNC Dep. Research Director, 2000 Presidential Campaign (approx. 1 ½ years)

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**George W. Bush USA: H.E. "Bud" Cummins (42 years old at nomination)**
Nominated 11/30/2001; confirmed 12/20/2001

Talkers:

- Unlike Mr. Griffin, he did not attend top-rated universities.
- *However, like Mr. Griffin, he had political experience.* In 2000, he served as Arkansas Legal Counsel to the Bush/Cheney campaign, was part of the GOP Florida Ballot Recount Team in Broward County, and was an Arkansas Elector. He was also the Republican nominee for the U.S. Congress 2nd Congressional District in 1996.

Background:

- B.S./B.A. from University of Arkansas in 1981
- J.D. from University of Arkansas Little Rock School of Law in 1989

- Private Law Practice and State Director, NFIB/Arkansas (approximately 3 years)
- Chief Legal Counsel for the Arkansas Governor (approximately one year)
- Private Law Practice 1993-1996 (approximately 3 years)
- Clerk to Chief Judge, United States District Court, Eastern District of Arkansas (approximately one year)
- Clerk to United States Magistrate Judge, United States District Court, Eastern District of Arkansas (approximately 2 years)
- Five separate gubernatorial appointments as Special Justice to Supreme Court of Arkansas

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**Clinton USA: Paula Jean Casey (42 years old at nomination)**
Nominated 8/6/93; confirmed 9/21/93

Talkers:

- Unlike Mr. Griffin, she did not attend top-rated universities.
- Unlike Mr. Griffin, she did not have military or federal prosecution experience.
- *However, like Mr. Griffin, she had political experience.* She volunteered on the political campaigns of the President who nominated her and was a former student of his. In addition to owing the President her job, then-Governor Clinton had also appointed her husband to a state agency position. She was also a law student of then-Professor Bill Clinton. (See *Associated Press*, 11/10/93)

Background:

- B.A. from East Central Oklahoma University in 1973
- J.D. from University of Arkansas Law School in 1976

- Staff attorney for the Central Arkansas Legal Services (approximately 3 years)
- Deputy Public Defender (less than one year)
- Supervisor of Legal Clinic at University of Arkansas Law School (approximately 2 years)

- Professor at the University of Arkansas Law School (approximately 8 years)
- Chief Counsel & Legislative Director to Senator Dale Bumpers (approximately 3 years)
- Lobbyist for the Arkansas Bar Association (approximately 1 year)

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## WESTERN DISTRICT

**George W. Bush USA: Robert Cramer Balfe, III for WDAR (37 years old at nomination)**
Nominated 6/1/2004; confirmed 11/20/2004

Talkers:
- While he had local experience as a prosecutor, he did not have federal prosecution experience. Also, he did not attend top-rated universities.

Background:
- B.S. from Arkansas State University in 1990
- J.D. from University of Arkansas School of Law in 1994

- Prosecuting Attorney for the 19th Judicial District West (approximately 3 years)
- Deputy Prosecuting Attorney for the 19th Judicial District West (approximately 5 years)
- Secretary/Treasurer of the Arkansas Prosecuting Attorney's Association

**********

**George W. Bush USA for WDAR: Thomas C. Gean (39 years old at nomination)**
Nominated 8/2/2001; confirmed 10/23/2001

Talkers:
- While he did have local prosecution experience, he did not have any federal prosecution experience.

Background:
- Bachelor degree from University of Arkansas
- J.D. from Vanderbilt University Law School

- Prosecuting Attorney for the Sebastian County District Attorney's Office (approximately 4 years)
- Attorney with Gean, Gean, and Gean in Fort Smith, Arkansas (approximately 4 years)
- Attorney with Alston and Bird in Atlanta, Georgia (approximately 4 years)

**********

**Clinton USA for WDAR: Paul Kinloch Holmes, III (42 years old at nomination)**
Nominated 8/6/1993; confirmed 9/21/93

Talkers:

- ***Unlike Mr. Griffin, he did not have any military or federal prosecution experience. He also did not have any state or local prosecution experience. He also did not attend top-rated universities.***
- *Like Mr. Griffin, he had political experience.* He served as chairman of the Sebastian County Democratic Party and Sebastian County Election Commission from 1979-1983. (See *Arkansas Democrat-Gazette*, 10/19/00)

Background:

- B.A. from Westminster College in 1973
- J.D. from University of Arkansas in 1978

- Attorney for Warner and Smith, Fort Smith, Arkansas (approximately 15 years)

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# February 05, 2007

Monday

| | |
|---|---|
| 7 am | |
| 8 00 | |
| 9 00 | |
| 10 00 | |
| 11 00 | |
| 12 pm | |
| 1 00 | |
| 2 00 | PREP: DAG Hearing - U.S. Attorneys (RFK Bldg, Room 4111) |
| 3 00 | |
| 4 00 | |
| 5 00 | |
| 6 00 | |

TaskPad

Notes



DAG000000026

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Tuesday, February 06, 2007 2:17 PM
**To:** Scolinos, Tasia; McNulty, Paul J; Elston, Michael (ODAG); Moschella, William; Hertling, Richard; Goodling, Monica
**Subject:** RE: AP: Justice lawyer defends attorney firings

"McNulty told the Senate Judiciary Committee that **six or more** U.S. attorneys were telephoned last December and told to resign in January . . . . He also acknowledged that **seven others** were asked to leave . . . ." For a total of at least 13? Should OPA work with the reporter to get this clarified?

---

**From:** Scolinos, Tasia
**Sent:** Tuesday, February 06, 2007 2:10 PM
**To:** McNulty, Paul J; Sampson, Kyle; Elston, Michael (ODAG); Moschella, William; Hertling, Richard; Goodling, Monica
**Subject:** FW: AP: Justice lawyer defends attorney firings

**Justice lawyer defends attorney firings**

LAURIE KELLMAN
The Associated Press

WASHINGTON — A top Justice Department lawyer acknowledged Tuesday that more than a half-dozen U.S. attorneys were fired in the last year, in some cases without cause, but denied Democrats' charges that they were dismissed and replaced for political reasons.

Deputy Attorney General Paul McNulty told the Senate Judiciary Committee that six or more U.S. attorneys were telephoned last December and told to resign in January for reasons he would not divulge. He also acknowledged that seven others were asked to leave their posts last year.

But McNulty reminded the panel that federal prosecutors serve at the pleasure of the president. And he repeated Attorney General Alberto Gonzales' promise to submit the name of every replacement to the Senate for confirmation.

"The attorney general's appointment authority has not and will not be used to circumvent the confirmation process," McNulty told the Democrat-led panel. We never have and never will seek to remove a United States attorney to interfere with an ongoing investigation or prosecution or in retaliation for a prosecution."

McNulty spoke after weeks of accusations from Democrats that the forced resignations of prosecutors in Arkansas and California particularly were moves to reward Republican allies.

Democrats and Republicans blamed the situation on that fact that without their knowledge a little-known provision was slipped into the Patriot Act reauthorization to allow the attorney general to replace prosecutors indefinitely. They now are seeking legislation to give interim appointment authority to District Court judges, with a deadline by which the prosecutor must be confirmed by the Senate.

Judges often are not qualified to make those appointments, Gonzales told The Associated Press last month.

But lawmakers insisted that the Justice Department has used that provision to appoint political allies to the offices of the U.S. attorney.

In Arkansas, H.E. Bud Cummins received a call from a Justice Department official last year telling him to resign



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and assuring him there was no cause for the firing, a fact McNulty confirmed Tuesday. Cummins' replacement was to be J. Timothy Griffin, a former aide to presidential counselor Karl Rove and a former military prosecutor.

Also riling the Democrats is the case of former San Diego U.S. Attorney Carol Lam, whose pursuit of public corruption cases included the government's case against Randy "Duke" Cunningham, the former Republican congressman who pleaded guilty to taking $2.4 million in bribes.

McNulty denied she was fired in retaliation for Cunningham's conviction, calling Lam's pursuit of the case "a very good thing for the American people and the Department of Justice to accomplish."

"We are proud of that accomplishment," McNulty said.

**Tracking:**

| Recipient | Read |
|---|---|
| Scolinos, Tasia | |
| McNulty, Paul J | Read: 3/9/2007 3:56 PM |
| Elston, Michael (ODAG) | Read: 2/6/2007 4:39 PM |
| Moschella, William | |
| Hertling, Richard | Read: 2/6/2007 2:30 PM |
| Goodling, Monica | Read: 3/12/2007 12:44 PM |

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Wednesday, February 07, 2007 8:09 AM
**To:** Scolinos, Tasia; Roehrkasse, Brian
**Subject:** RE: This mornings clips

Paul reports this morning that: He's hearing good reports from the Committee. In particular, Sen. Schumer's counsel told him that the issue has basically run its course; that they need to get a little more information from us (i.e., the closed-door briefing that Paul promised them re the reasons for the resignations), but that will be it.

-----Original Message-----
From: Scolinos, Tasia
Sent: Wednesday, February 07, 2007 8:01 AM
To: Roehrkasse, Brian; Sampson, Kyle
Subject: RE: This mornings clips

I told Kyle yesterday that I didn't think the hearing had gone all that well. I will get back to you later with some thoughts

-----Original Message-----
From: Roehrkasse, Brian
Sent: Wednesday, February 07, 2007 7:07 AM
To: Scolinos, Tasia; Sampson, Kyle
Subject: This mornings clips

The Attorney General is extremely upset with the stories on the US Attys this morning. He also thought some of the DAG's statements were inaccurate.

Kyle can give me a call on my cell this morning? Tasia, he wants to know what we can do from a comms perspective. I suggested a clearly worded op-ed and reaching out to ed boards who will write in the coming days. I think from a straight news perspective we just want the stories to die.

**Tracking:**

| Recipient | Read |
|---|---|
| Scolinos, Tasia | Read: 2/7/2007 8:22 AM |
| Roehrkasse, Brian | Read: 2/7/2007 8:09 AM |

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Thursday, February 08, 2007 4:32 PM
**To:** Beck, Michael (OAG)
**Subject:** 2 of 2 – U.S. Attorney issue
**Attachments:** Document.pdf

**Tracking:**

| Recipient | Read |
|---|---|
| Beck, Michael (OAG) | Read: 2/8/2007 5:47 PM |

Please print (1) the attached letter and (2) the below e-mail for the AG. Thx.

---

**From:** Sampson, Kyle
**Sent:** Thursday, February 08, 2007 4:15 PM
**To:** Goodling, Monica; McNulty, Paul J; Elston, Michael (ODAG); Moschella, William; Hertling, Richard; Scolinos, Tasia
**Subject:** FW: Letter to Gonzales 2.8.07

My thoughts re the response:

- The full quotation (not the selective quote) of the AG's testimony more fairly represents his views about not asking U.S. Attorney to resign for so-called "political reasons," to wit: "I think I would never, ever make a change in a United States attorney for political reasons or **if it would in any way jeopardize an ongoing serious investigation. I just would not do it**" (emphasis added).
- The DAG's testimony clarifies that asking Cummins to resign, not because of underperformance, but to permit Griffin to serve, is not a "political reason":

> SEN. SCHUMER: . . . So here we have the attorney general adamant; here's his quote, "We would never, ever make a change in the U.S. attorney position for political reasons." Then we have now – for the first time, we learn that Bud Cummins was asked to leave for no reason and we're putting in someone who has all kinds of political connections – not disqualifiers, obviously, certainly not legally – and I'm sure it's been done by other administrations as well. But do you believe that firing a well-performing U.S. attorney to make way for a political operative is not a poltical reason?
>
> MR. MCNULTY: Yes, I believe that's it's **not** a political reason.
>
> SEN. SCHUMER: Okay, could you try to explain yourself there?
>
> MR. MCNULTY: . . . I think that the fact that he had political activities in his background does not speak to teh question of his qualifications for being the United Staets attorney in that district. . . . So he started off with a strong enough resume, and the fact that he was given an opportunity to step in – . . . [where Cummins] may have already been thinking about leaving at some point anyway. . . . And all those things came together to say in this case, this unique situation, we can make a change and this would still be good for the office.

- Griffin is not an inexperienced prosecutor: he had far more federal prosecution experience (in the Criminal Division and in the U.S. Attorney's Office) than Cummins did when he was appointed, in addition to substantial military prosecution experience.

As for the specific questions:

- The decision to appoint Tim Griffin to be interim U.S. Attorney in the Eastern District of Arkansas was made on or about December 15, 2006, after the second of the Attorney General's telephone conversations with Sen. Pryor. Appointing Griffin to be U.S. Attorney (for the Western District of Arkansas) was first contemplated in the spring of 2004 [Monica, please verify], when Griffin was one of three names recommended by Rep. Boozman to fill the U.S. Attorney vacancy in that district that arose because of the resignation of Tom Gean on [insert date]; ultimately, Griffin withdrew his name from consideration for that appointment. Appointing Griffin to be U.S. Attorney (for the Eastern District of Arkansas) was first contemplated in the spring of 2006 [Monica, please verify], after Griffin had left the employment of the White House due to his being activated for full-time military service.
- I am not aware of anyone (other than Mr. Griffin) lobbying, either inside or outside of the Administration, for appointment. In the spring of 2006 [Monica, please verify], White House Counsel Harriet Miers asked the Department if Mr. Griffin (who then was on active duty) could be considered for appointment as U.S. Attorney upon his return from Iraq. As Griffin was well known to the Department (from his service in the Criminal Division, the U.S. Attorney's Office, and the White House), this request was considered favorably.
- Cummins' continued service as U.S. Attorney was not considered at the same time as the other U.S. Attorneys that the DAG acknowledged were asked to resign for reasons related to their performance. As the DAG testified, with regard to Cummins' continued service, "there was a change made there that was not connected to, as was said, the performance of the incumbent, but more related to the opportunity to provide a fresh start with a new person in that position." (Or where the DAG testified that he was "not disputing [the] characterization" that Cummins was "fired simply to let someone else have a shot at the job.")
- I am not aware of Karl Rove playing any role in the Attorney General's decision to appoint Griffin.
- Agree wholeheartedly that "**[o]nce appointed**, U.S. Attorneys, perhaps more than any other public servance, must be above politics and beyond reproach; they must be seen to enforce the rule of law without fear or favor." Historically, many U.S. Attorneys, prior to their appointment have political experience.
- Hertling should sign.

---

**From:** Scott-Finan, Nancy
**Sent:** Thursday, February 08, 2007 1:25 PM
**To:** Sampson, Kyle; Goodling, Monica; Elston, Michael (ODAG); Moschella, William; Hertling, Richard; Seidel, Rebecca; Scolinos, Tasia
**Cc:** Cabral, Catalina; Long, Linda E; Green, Saralene E
**Subject:** FW: Letter to Gonzales 2.8.07

Senator Schumer's press secretary just emailed me this Schumer/Reid/Durbin/Murray letter with regard to Cummins/Griffin.

# United States Senate

WASHINGTON, DC 20510

February 8, 2007

The Honorable Alberto R. Gonzales
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

Dear Attorney General Gonzales:

As you know, the Senate Judiciary Committee held a hearing this week to examine the growing politicization of the hiring and firing of United States Attorneys, our nation's top federal prosecutors.

Unfortunately, the hearing only served to intensify, rather than assuage, our concerns, particularly given the circumstances surrounding the ouster of Bud Cummins, who was the U.S. Attorney in the Eastern District of Arkansas until last December.

When you testified before the Committee on January 18, 2007, you stated unequivocally that you "would never, ever make a change in a U.S. Attorney position for political reasons." In a stunning admission, however, Deputy Attorney General Paul McNulty, in his own testimony on February 6th, acknowledged that Mr. Cummins was pushed out for no reason other than to install – without Senate confirmation – Tim Griffin, a former aide to Karl Rove. At the time, Mr. Griffin had minimal federal prosecution experience, but was highly skilled in opposition research and partisan attacks for the Republican National Committee. This strikes us as a quintessentially "political" reason to make a change.

We recognize, of course, that United States Attorneys serve at the pleasure of the President, but as several highly respected and distinguished former officials of the Department of Justice have noted, the dismissal of a well-respected U.S. Attorney simply to reward an inexperienced partisan is unprecedented.

Although Senators expect soon to be briefed privately about the alleged performance issues of several other U.S. Attorneys, we hope that you will quickly and publicly address the most troubling aspects of the Cummins ouster and Griffin appointment. We look forward to a fuller explanation of why a concededly well-performing prosecutor was terminated in favor of such a partisan figure:

- In particular, when was the decision made to appoint Tim Griffin to replace Bud Cummins?

- Specifically, who lobbied on behalf of Tim Griffin's appointment, both inside and outside the Administration?

- Why was Bud Cummins told to resign in June of 2006, when the other dismissed officials were told in December of 2006? Was the reason to give the replacement, Tim Griffin, a chance to become ensconced at the U.S. Attorney's Office in Arkansas before making the appointment?

- In light of the unprecedented nature of the appointment, we are especially interested in understanding the role played by Karl Rove. In particular, what role did Karl Rove, with whom Griffin was closely associated, play in the decision to appoint Griffin?

Given that Mr. Rove was himself apparently still being investigated by a U.S. Attorney in June of 2006, it would be extremely untoward if he were at the same time leading the charge to oust a sitting U.S. Attorney and install his own former aide.

These questions go to the heart of the public's confidence in the fair administration of justice. Once appointed, U.S. Attorneys, perhaps more than any other public servant, must be above politics and beyond reproach; they must be seen to enforce the rule of law without fear or favor.

Given the issues raised in the recent hearing, we are naturally concerned about the Administration's professed commitment to keeping politics out of the Department of Justice. We hope that you will quickly put those concerns to rest.

Sincerely,

Harry Reid

Dick Durbin

Chuck Schumer

Patty Murray

# February 12, 2007

Monday

| | |
|---|---|
| 7 am | |
| 8 00 | |
| 9 00 | |
| 10 00 | |
| 11 00 | |
| 12 pm | |
| 1 00 | |
| 2 00 | |
| 3 00 | US Attorneys Meeting (AG's Conference Room ) |
| 4 00 | |
| 5 00 | |
| 6 00 | |

Task Pad

Notes



OAG0000003C

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Wednesday, February 21, 2007 7:22 PM
**To:** McNulty, Paul J; Moschella, William; Elston, Michael (ODAG); Margolis, David; Hertling, Richard; Goodling, Monica
**Subject:** Draft response to Reid/Durbin/Schumer/Murray letter re Cummins-Griffin

**Importance:** High

**Attachments:** reid letter re cummins-griffin.doc

All, can you please review and provide comments on my draft response to the above-referenced letter?
Richard, can you send the .pdf version of the above-referenced letter around to this group?
Thanks!

reid letter re cummins-griffin...

Kyle Sampson
Chief of Staff
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2001 wk.
(202) 305-5289 cell
kyle.sampson@usdoj.gov

**Tracking:**

| Recipient | Read |
|---|---|
| McNulty, Paul J | Read: 2/22/2007 11:33 AM |
| Moschella, William | Read: 2/21/2007 7:31 PM |
| Elston, Michael (ODAG) | Read: 2/21/2007 9:36 PM |
| Margolis, David | Read: 2/21/2007 8:50 PM |
| Hertling, Richard | Read: 2/21/2007 7:28 PM |
| Goodling, Monica | Read: 2/21/2007 7:40 PM |

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, D.C. 20510

Dear Senator Reid:

This is in response to your letter to the Attorney General dated February 8, 2007. An identical response has been sent to the other signatories of that letter.

The full quotation of the Attorney General's testimony at the Judiciary Committee hearing on January 18, 2007 (not the selective quote cited in your letter), more fairly represents his views about the appropriate reasons for asking a U.S. Attorney to resign. In full, the Attorney General stated: "I think I would never, ever make a change in a United States attorney for political reasons or *if it would in any way jeopardize an ongoing serious investigation. I just would not do it*" (emphasis added).

The Deputy Attorney General, at the hearing held on February 6, 2007, further stated the Department's view that asking U.S. Attorney Bud Cummins to resign so that Special Assistant U.S. Attorney Tim Griffin might have the opportunity to serve as U.S. Attorney is not, in the Department's view, an inappropriate "political reason." This is so, the Deputy Attorney General testified because, *inter alia*, Griffin was very well-qualified and had "a strong enough resume" to serve as U.S. Attorney, and Cummins "may have already been thinking about leaving at some point anyway." Indeed, at the time Griffin was appointed interim U.S. Attorney in December 2006 he had far more federal prosecution experience (in the Criminal Division and in the U.S. Attorney's office) than Cummins did at the time he was appointed U.S. Attorney in [insert month] 2001. In addition, Griffin has substantial military prosecution experience that Cummins does not have. And it was well-known, as early as December 2004, that Cummins intended to leave the office and seek employment in the private sector. *See* "The Insider Dec. 30," *Ark. Times* (Dec. 30, 2004) ("Cummins, 45, said that, with four children to put through college someday, he'll likely begin exploring career options. It wouldn't be 'shocking,' he said, for there to be a change in his office before the end of Bush's second term.").

In answer to your specific questions:

- The decision to appoint Tim Griffin to be interim U.S. Attorney in the Eastern District of Arkansas was made on or about December 15, 2006, after the second of the Attorney General's telephone conversations with Senator Pryor.
- The Department of Justice is not aware of anyone lobbying, either inside or outside of the Administration, for Griffin's appointment. In the spring of 2006,

following regular procedures, the Office of the Counsel to the President inquired of the Office of the Attorney General as to whether Griffin (who then was on active military duty) might be considered for appointment as U.S. Attorney upon his return from Iraq.

- As the Deputy Attorney General testified, Cummins' continued service as U.S. Attorney was not considered at the same time as the other U.S. Attorneys that the Deputy Attorney General acknowledged were asked to resign for reasons related to their performance. As the Deputy Attorney General testified, the request that Cummins resign was "related to the opportunity to provide a fresh start with a new person in that position."
- The Department is not aware of Karl Rove playing any role in the decision to appoint Griffin.

In conclusion, the Department wholeheartedly agrees with the principle that "[o]nce appointed, U.S. Attorneys, perhaps more than any other public servants, must be above politics and beyond reproach; they must be seen to enforce the rule of law without fear or favor." That many U.S. Attorneys, appointed by Presidents of both parties, have had political experience prior to their appointment does not undermine that principle.

Sincerely,

Richard A. Hertling
Acting Assistant Attorney General

# March 03, 2007

Saturday

| | |
|---|---|
| 7 am | |
| 8 00 | |
| 9 00 | |
| 10 00 | |
| 11 00 | |
| 12 pm | |
| 1 00 | |
| 2 00 | |
| 3 00 | |
| 4 00 | 4:00pm-4:45pm US Attorneys Issue |
| 5 00 | |
| 6 00 | |

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Notes



0A0000000306

## Sampson, Kyle

**From:** Goodling, Monica
**Sent:** Saturday, March 03, 2007 3:31 PM
**To:** Sampson, Kyle; Moschella, William; Scolinos, Tasia; Roehrkasse, Brian; Hertling, Richard; Elston, Michael (ODAG); Scott-Finan, Nancy; Seidel, Rebecca
**Subject:** Updated USA documents - PUBLIC

**Attachments:** TPS - US Attorney vacancy-appointment points.pdf; FACT SHEET - USA appointments.pdf; Examples of Difficult Transition Situations.pdf; USA prosecution only stats.pdf; WHY 120 DAYS IS NOT REALISTIC.doc; Griffin Talkers.doc; Griffin resume.doc

Attached please find updated documents in advance of this week's hearing. (These include the resignations in Nevada and New Mexico, where we elevated the First Assistant to the position of Acting U.S. Attorney under the Vacancy Reform Act; no additional resignations are expected before mid-March, when Chiara departs.) Please let me know if you have any questions. Thanks!

TPS - US Attorney vacancy-appo... | FACT SHEET - USA appointments.... | Examples of Difficult Transiti... | USA prosecution only stats.pdf... | WHY 120 DAYS IS NOT REALISTIC.... | Griffin Talkers.doc (33 KB) | Griffin resume.doc (89 KB)

## FACT SHEET: UNITED STATES ATTORNEY APPOINTMENTS

### NOMINATIONS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, when the Congress amended the Attorney General's authority to appoint interim United States Attorneys, the President has nominated 16 individuals to serve as United States Attorney. The 16 nominations are:

- **Erik Peterson** – Western District of Wisconsin;
- **Charles Rosenberg** – Eastern District of Virginia;
- **Thomas Anderson** – District of Vermont;
- **Martin Jackley** – District of South Dakota;
- **Alexander Acosta** – Southern District of Florida;
- **Troy Eid** – District of Colorado;
- **Phillip Green** – Southern District of Illinois;
- **George Holding** – Eastern District of North Carolina;
- **Sharon Potter** – Northern District of West Virginia;
- **Brett Tolman** – District of Utah;
- **Rodger Heaton** – Central District of Illinois;
- **Deborah Rhodes** – Southern District of Alabama;
- **Rachel Paulose** – District of Minnesota;
- **John Wood** – Western District of Missouri;
- **Rosa Rodriguez-Velez** – District of Puerto Rico; and
- **Jeffrey Taylor** – District of Columbia.

All but Phillip Green, John Wood, Rosa Rodriguez-Velez, and Jeffrey Taylor have been confirmed by the Senate – 12 of 16 nominations.

### VACANCIES AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

Since March 9, 2006, there have been 18 new U.S. Attorney vacancies that have arisen. They have been filled as noted below.

For 7 of the 18 vacancies, the First Assistant United States Attorney (FAUSA) in the district was selected to lead the office in an acting capacity under the Vacancies Reform Act, *see* 5 U.S.C. § 3345(a)(1) (first assistant may serve in acting capacity for 210 days unless a nomination is made) until a nomination could be or can be submitted to the Senate. Those districts are:

- **Central District of California** – FAUSA George Cardona is acting United States Attorney

- **Southern District of Illinois** – FAUSA Randy Massey is acting United States Attorney (a nomination was made last Congress for Phillip Green, but confirmation did not occur);
- **Eastern District of North Carolina** – FAUSA George Holding served as acting United States Attorney (Holding was nominated and confirmed);
- **Northern District of West Virginia** – FAUSA Rita Valdrini served as acting United States Attorney (Sharon Potter was nominated and confirmed);
- **Southern District of Georgia** – FAUSA Edmund A. Booth, Jr. is acting USA;
- **District of New Mexico** – FAUSA Larry Gomez is acting USA; and
- **District of Nevada** – FAUSA Steven Myhre is acting USA.

For 1 vacancy, the Department first selected the First Assistant United States Attorney to lead the office in an acting capacity under the Vacancies Reform Act, but the First Assistant retired a month later. At that point, the Department selected another employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) ("Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant"). This district is:

- **Northern District of Iowa** – FAUSA Judi Whetstine was acting United States Attorney until she retired and Matt Dummermuth was appointed interim United States Attorney.

For 10 of the 18 vacancies, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate, *see* 28 U.S.C. § 546(a) ("Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant"). Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);
- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division (Taylor has been nominated to fill the position permanently);
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);

- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Northern District of California** – Scott Schools was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **Southern District of California** – Karen Hewitt was appointed interim United States Attorney when incumbent United States Attorney resigned.

## ATTORNEY GENERAL APPOINTMENTS AFTER AMENDMENT TO ATTORNEY GENERAL'S APPOINTMENT AUTHORITY

The Attorney General has exercised the authority to appoint interim United States Attorneys a total of 14 times since the authority was amended in March 2006.

In 2 of the 14 cases, the FAUSA had been serving as acting United States Attorney under the Vacancies Reform Act (VRA), but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed that same FAUSA to serve as interim United States Attorney. These districts include:

- **District of Puerto Rico** – Rosa Rodriguez-Velez (Rodriguez-Velez has been nominated); and
- **Eastern District of Tennessee** – Russ Dedrick

In 1 case, the FAUSA had been serving as acting United States Attorney under the VRA, but the VRA's 210-day period expired before a nomination could be made. Thereafter, the Attorney General appointed another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **District of Alaska** – Nelson Cohen

In 1 case, the Department originally selected the First Assistant to serve as acting United States Attorney; however, she retired from federal service a month later. At that point, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. That district is:

- **Northern District of Iowa** – Matt Dummermuth

In the 10 remaining cases, the Department selected another Department employee to serve as interim United States Attorney until a nomination could be submitted to the Senate. Those districts are:

- **Eastern District of Virginia** – Pending nominee Chuck Rosenberg was appointed interim United States Attorney when incumbent United States Attorney

resigned to be appointed Deputy Attorney General (Rosenberg was confirmed shortly thereafter);

- **Eastern District of Arkansas** – Tim Griffin was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Columbia** – Jeff Taylor was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Assistant Attorney General for the National Security Division;
- **District of Nebraska** – Joe Stecher was appointed interim United States Attorney when incumbent United States Attorney resigned to be appointed Chief Justice of Nebraska Supreme Court;
- **Middle District of Tennessee** – Craig Morford was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Western District of Missouri** – Brad Schlozman was appointed interim United States Attorney when incumbent United States Attorney and FAUSA resigned at the same time (John Wood was nominated);
- **Western District of Washington** – Jeff Sullivan was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **District of Arizona** – Dan Knauss was appointed interim United States Attorney when incumbent United States Attorney resigned;
- **Northern District of California** – Scott Schools was appointed interim United States Attorney when incumbent United States Attorney resigned; and
- **Southern District of California** – Karen Hewitt was appointed interim United States Attorney when incumbent United States Attorney resigned.

## UNITED STATES ATTORNEYS' PROSECUTION STATISTICS

**This Administration Has Demonstrated that It Values Prosecution Experience. Of the 124 Individuals President George W. Bush Has Nominated Who Have Been Confirmed by the Senate:**

- 98 had prior experience as prosecutors (79 %)
    - 71 had prior experience as federal prosecutors (57 %)
    - 54 had prior experience as state or local prosecutors (44%)
- 104 had prior experience as prosecutors or government litigators on the civil side (84 %)

**In Comparison, of President Clinton's 122 Nominees Who Were Confirmed by the Senate:**

- 84 had prior experience as prosecutors (69 %)
    - 56 had prior experience as federal prosecutors (46 %)
    - 40 had prior experience as state or local prosecutors (33 %)
- 87 had prior experience as prosecutors or government litigators on the civil side (71 %)

**Since the Attorney General's Appointment Authority Was Amended on March 9, 2006, the Backgrounds of Our Nominees Has Not Changed. Of the 16 Nominees Since that Time:**

- 14 of the 16 had prior experience as prosecutors (88%) – *a higher percentage than before.*
    - 12 of the 16 had prior experience as federal prosecutors (75%) – *a higher percentage than before the change*; 11 were career AUSAs or former career AUSAs and 1 had federal prosecution experience as an Assistant Attorney General of the Civil Rights Division
    - 4 of the 15 nominees had experience as state or local prosecutors (27%)

**Those Chosen To Be Acting/Interim U.S. Attorneys since the Attorney General's Appointment Authority Was Amended on March 9, 2006, Have Continued To Be Highly Qualified.** Of the 18 districts in which new vacancies have occurred, 19 acting and/or interim appointments have been made:

- 18 of the 19 had prior experience as federal prosecutors (95%)

## Examples of Difficult Transition Situations

**Examples of Districts Where Judges Did Not Exercise Their Court Appointment (Making the Attorney General's Appointment Authority Essential To Keep the Position Filled until a Nominee Is Confirmed)**

1. **Southern District of Florida:** In 2005, a vacancy occurred in the SDFL. The Attorney General appointed Assistant Attorney General of the Civil Rights Division, Alex Acosta, for 120 days. At the end of the term, the Court indicated that they had (years earlier) appointed an individual who later became controversial. As a result, the Court indicated that they would not make an appointment unless the Department turned over its internal employee files and FBI background reports, so that the court could review potential candidates' backgrounds. Because those materials are protected under federal law, the Department declined the request. The court then indicated it would not use its authority at all, and that the Attorney General should make multiple, successive appointments. While the selection, nomination, and confirmation of a new U.S. Attorney was underway, the Attorney General made three 120-day appointments of Mr. Acosta. Ultimately, he was selected, nominated, and confirmed to the position.

2. **Eastern District of Oklahoma:** In 2000-2001, a vacancy occurred in the EDOK. The court refused to exercise the court's authority to make appointments. As a result, the Attorney General appointed Shelly Sperling to three 120-day appointments before Sperling was nominated and confirmed by the Senate (he was appointed by the Attorney General to a fourth 120-day term while the nomination was pending).

3. **In the Western District of Virginia:** In 2001, a vacancy occurred in the WDVA. The court declined to exercise its authority to make an appointment. As a result, the Attorney General made two successive 120-day appointments (two different individuals).

***This problem is not new ...***

4. **The District of Massachusetts.** In 1987, the Attorney General had appointed an interim U.S. Attorney while a nomination was pending before the Senate. The 120-day period expired before the nomination had been reviewed and the court declined to exercise its authority. The Attorney General then made another 120-day appointment. The legitimacy of the second appointment was questioned and was reviewed the U.S. District Court for the District of Massachusetts. The Judge upheld the validity of the second 120-day appointment where the court had declined to make an appointment. See 671 F. Supp. 5 (D. Ma. 1987).

**Examples Where Judges Discussed Appointing or Attempted to Appoint Unacceptable Candidates:**

1. **Southern District of West Virginia:** When a U.S. Attorney in the Southern District of West Virginia, David Faber, was confirmed to be a federal judge in 1987, the district went through a series of temporary appointments. Following the Attorney General's 120-day appointment of an individual named Michael Carey, the court appointed another individual as the U.S. Attorney. The court's appointee was not a DOJ-employee at the time and had not been subject of any background investigation. The court's appointee came into the office and started making inquiries into ongoing public integrity investigations, including investigations into Charleston Mayor Michael Roark and the Governor Arch Moore, both of whom were later tried and convicted of various federal charges. The First Assistant United States Attorney, knowing that the Department did not have the benefit of having a background examination on the appointee, believed that her inquiries into these sensitive cases were inappropriate and reported them to the Executive Office for United States Attorneys in Washington, D.C. The Department directed that the office remove the investigative files involving the Governor from the office for safeguarding. The Department further directed that the court's appointee be recused from certain criminal matters until a background examination was completed. During that time, the Reagan Administration sped up Michael Carey's nomination. Carey was confirmed and the court's appointee was replaced within two-three weeks of her original appointment.

2. **South Dakota:**

   In 2005, a vacancy arose in South Dakota. The First Assistant United States Attorney (FAUSA) was elevated to serve as acting United States Attorney under the Vacancies Reform Act (VRA) for 210 days. As that appointment neared an end without a nomination having yet been made, the Attorney General made an interim appointment of the FAUSA for a 120-day term. The Administration continued to work to identify a nominee; however, it eventually became clear that there would not be a nomination and confirmation prior to the expiration of the 120-day appointment.

   Near the expiration of the 120-day term, the Department contacted the court and requested that the FAUSA be allowed to serve under a court appointment. However, the court was not willing to re-appoint her. The Department proposed a solution to protect the court from appointing someone about whom they had reservations, which was for the court to refrain from making any appointment (as other district courts have sometimes done), which would allow the Attorney General to give the FAUSA a second successive, 120-day appointment.

   The Chief Judge instead indicated that he was thinking about appointing a non-DOJ employee, someone without federal prosecution experience, who had not been the subject of a thorough background investigation and did not have the

necessary security clearances. The Department strongly indicated that it did not believe this was an appropriate individual to lead the office.

The Department then notified the court that the Attorney General intended to ask the FAUSA to resign her 120-day appointment early (without the expiration of the 120-day appointment, the Department did not believe the court's appointment authority was operational). The Department notified the court that since the Attorney General's authority was still in force, he would make a new appointment of another experienced career prosecutor. The Department believed that the Chief Judge indicated his support of this course of action and implemented this plan.

The FAUSA resigned her position as interim U.S. Attorney and the Attorney General appointed the new interim U.S. Attorney (Steve Mullins). A federal judge executed the oath and copies of the Attorney General's order and the press release were sent to the court for their information. There was no response for over 10 days, when a fax arrived stating that the court had also attempted to appoint the non-DOJ individual as the U.S. Attorney.

This created a situation were two individuals had seemingly been appointed by two different authorities. Defense attorneys indicated their intention to challenge ongoing investigations and cases. The Department attempted to negotiate a resolution to this very difficult situation, but was unsuccessful. Litigating the situation would have taken months, during which many of the criminal cases and investigations that were underway would have been thrown into confusion and litigation themselves.

Needing to resolve the matter for the sake of the ongoing criminal prosecutions and litigation, after it was clear that negotiations would resolve the matter, the White House Counsel notified the court's purported appointee that even if his court order was valid and effective, then the President was removing him from that office pursuant to Article II of the Constitution and 28 U.S.C. § 541(c). Shortly thereafter, Mr. Mullins resigned his Attorney General appointment and was recess appointed by President Bush to serve as the U.S. Attorney for the District of South Dakota. The Department continued to work with the home-state Senators and identified and nominated a new U.S. Attorney candidate, who was confirmed by the Senate in the summer of 2006.

3. **Northern District of California:** In 1998, a vacancy resulted in NDCA, a district suffering from numerous challenges. The district court shared the Department's concerns about the state of the office and discussed the possibility of appointing of a non-DOJ employee to take over. The Department found the potential appointment of a non-DOJ employee unacceptable. A confrontation was avoided by the Attorney General's appointment of an experienced prosecutor from Washington, D.C. (Robert Mueller), which occurred with the court's concurrence. Mueller served under an AG appointment for 120 days, after which the district court gave him a court appointment. Eight months later, President Clinton nominated Mueller to fill the position for the rest of his term.

## TALKING POINTS: U.S. ATTORNEY NOMINATIONS AND INTERIM APPOINTMENTS BY THE ATTORNEY GENERAL

**Overview:**

- In every single case, it is a goal of the Bush Administration to have a U.S. Attorney that is confirmed by the Senate. Use of the AG's appointment authority is in no way an attempt to circumvent the confirmation process. To the contrary, when a United States Attorney submits his or her resignation, the Administration has an obligation to ensure that someone is able to carry out the important function of leading a U.S. Attorney's office during the period when there is not a presidentially-nominated, senate-confirmed (PAS) U.S. Attorney. Whenever a U.S. Attorney vacancy arises, we consult with the home-state Senators about candidates for nomination.

- Our record since the AG-appointment authority was amended demonstrates we are committed to working with the Senate to nominate candidates for U.S. Attorney positions. Every single time that a United States Attorney vacancy has arisen, the President either has made a nomination or the Administration is working, in consultation with home-State Senators, to select candidates for nomination.
    - ✓ Specifically, since March 9, 2006 (when the AG's appointment authority was amended), the Administration has nominated 16 individuals to serve as U.S. Attorney (12 have been confirmed to date).

**U.S. Attorneys Serve at the Pleasure of the President:**

- United States Attorneys are at the forefront of the Department of Justice's efforts. They are leading the charge to protect America from acts of terrorism; reduce violent crime, including gun crime and gang crime; enforce immigration laws; fight illegal drugs, especially methamphetamine; combat crimes that endanger children and families like child pornography, obscenity, and human trafficking; and ensure the integrity of the marketplace and of government by prosecuting corporate fraud and public corruption.

- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the United States Attorneys and ensuring that United States Attorneys are leading their offices effectively.

- United States Attorneys serve at the pleasure of the President. Thus, like other high-ranking Executive Branch officials, they may be removed for any reason or no reason. That on occasion in an organization as large as the Justice Department some United States Attorneys are removed, or are asked or encouraged to resign, should come as no surprise. United States Attorneys never are removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or

inappropriately influence a particular investigation, criminal prosecution or civil case.

- Whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.

- The Attorney General and the Deputy Attorney General are responsible for evaluating the performance the U.S. Attorneys and ensuring that they are leading their offices effectively. However, U.S. Attorneys are never removed, or asked or encouraged to resign, in an effort to retaliate against them or interfere with or inappropriately influence a particular investigation, criminal prosecution or civil case.

**The Administration Must Ensure an Effective Transition When Vacancies Occur:**

- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation. The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 124 confirmations of new U.S. Attorneys since January 20, 2001.

- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important work conducted by these offices, and the need to ensure that the office is being managed effectively and appropriately, the Department uses a range of options to ensure continuity of operations.

- In some cases, the First Assistant U.S. Attorney is an appropriate choice. However, in other cases, the First Assistant may not be an appropriate option for reasons including that he or she: resigns or retires at the same time as the outgoing U.S. Attorney; indicates that he/she does not want to serve as Acting U.S. Attorney; has ongoing or completed OPR or IG matters in their file, which may make his/her elevation to the Acting role inappropriate; or is subject of an unfavorable recommendation by the outgoing U.S. Attorney or otherwise does not enjoy the confidence of those responsible for ensuring ongoing operations and an appropriate transition until such time as a new U.S. Attorney is nominated and confirmed by the Senate. In those cases, the Attorney General has appointed another individual to lead the office during the transition, often another senior manager from that office or an experienced attorney from within the Department.

**The Administration Is Nominating Candidates for U.S. Attorney Positions:**

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 16 individuals for Senate consideration (12 have been confirmed to date).

- Since March 9, 2006, when the appointment authority was amended, 18 vacancies have been created. Of those 18 vacancies, the Administration nominated candidates to fill 6 of these positions (3 were confirmed to date), has interviewed candidates for 8 positions, and is waiting to receive names to set up interviews for the remaining positions – all in consultation with home-state Senators.

**The 18 Vacancies Were Filled on an Interim Basis Using a Range of Authorities, in Order To Ensure an Effective and Smooth Transition:**

- In 7 cases, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). That authority is limited to 210 days, unless a nomination is made during that period.

- In 1 case, the First Assistant was selected to lead the office and took over under the Vacancy Reform Act's provision at: 5 U.S.C. § 3345(a)(1). However, the First Assistant took federal retirement a month later and the Department had to select another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate.

- In 10 cases, the Department selected another Department employee to serve as interim under AG appointment until such time as a nomination is submitted to the Senate. In 1 of those 10 cases, the First Assistant had resigned at the same time as the U.S. Attorney, creating a need for an interim until such time as a nomination is submitted to the Senate.

**Amending the Statute Was Necessary:**

- Last year's amendment to the Attorney General's appointment authority was necessary and appropriate.

- We are aware of no other federal agency where federal judges, members of a separate branch of government and not the head of the agency, appoint interim staff on behalf of the agency.

- Prior to the amendment, the Attorney General could appoint an interim United States Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim United States Attorney. In cases where a Senate-confirmed United States Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in numerous, recurring problems.

- The statute was amended for several reasons:

    1) The previous provision was constitutionally-suspect in that it is inappropriate and inconsistent with sound separation of powers principles to vest federal courts with the authority to appoint a critical Executive Branch officer such as a United States Attorney;
    2) Some district courts – recognizing the oddity of members of one branch of government appointing officers of another and the conflicts inherent in the appointment of an interim United States Attorney who would then have many matters before the court – refused to exercise the court appointment authority, thereby requiring the Attorney General to make successive, 120-day appointments;
    3) Other district courts – ignoring the oddity and the inherent conflicts – sought to appoint as interim United States Attorney wholly unacceptable candidates who did not have the appropriate experience or the necessary clearances.

- Court appointments raise significant conflict questions. After being appointed by the court, the judicial appointee would have authority for litigating the entire federal criminal and civil docket for this period before the very district court to whom he was beholden for his appointment. Such an arrangement at a minimum gives rise to an appearance of potential conflict that undermines the performance of not just the Executive Branch, but also the Judicial one. Furthermore, prosecutorial authority should be exercised by the Executive Branch in a unified manner, with consistent application of criminal enforcement policy under the supervision of the Attorney General.

- Because the Administration is committed to having a Senate-confirmed United States Attorney in all districts, changing the law to restore the limitations on the Attorney General's appointment authority is unnecessary.

## WHY 120 DAYS IS NOT REALISTIC

- One hundred twenty days is not a realistic period of time to permit any Administration to **solicit and wait for home-state political leaders to identify a list of potential candidates**, provide the time needed to **interview and select a candidate for background investigation**, provide the FBI with adequate time to **do the full-field background investigation, prepare and submit the nomination**, and to be **followed by the Senate's review and confirmation** of a new U.S. Attorney.

- The **average number of days between the resignation of one Senate-confirmed U.S. Attorney and the President's nomination of a candidate for Senate consideration is 273 days** (including 250 USAs during the Clinton Administration and George W. Bush Administration to date). Once nominated, the Senate has taken an additional period of time to review the nominations of the Administration's law enforcement officials.

- The **average number of days between the nomination of a new U.S. Attorney candidate and Senate confirmation has been 58 days for President George W. Bush's USA nominees** (note - the majority were submitted to a Senate that was controlled by the same party as the President) and **81 days for President Bill Clinton's USA nominees** (note - 70% of nominees were submitted in the first two years to a Senate controlled by the same party as the President, others were submitted in the later six years to a party that was not).

- Simply adding the two averages of 273 and 58 days would mean a **combined average of 331 days from resignation of one USA to confirmation of the next.**

- The substantial time period between resignation and nomination is often due to factors outside the Administration's control, such as: 1) the Administration is waiting for home-state political leaders to develop and transmit their list of names for the Administration to begin interviewing candidates; 2) the Administration is awaiting feedback from home-state Senators on the individual selected after the interviews to move forward into background; and 3) the Administration is waiting for the FBI to complete its full-field background review. (The FBI often uses 2-4 months to do the background investigation -- and sometimes needs additional time if they identify an issue that requires significant investigation.)

## TIMOTHY GRIFFIN AS INTERIM UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF ARKANSAS

- The Attorney General appointed Tim Griffin as the interim U.S. Attorney following the resignation of Bud Cummins, who resigned on Dec. 20, 2006. Since early in 2006, Mr. Cummins had been talking about leaving the Department to go into private practice for family reasons.

- Timothy Griffin is highly qualified to serve as the U.S. Attorney for the Eastern District of Arkansas.

- Mr. Griffin has significant experience as a federal prosecutor at both the Department of Justice and as a military prosecutor. At the time of his appointment, he was serving as a federal prosecutor in the Eastern District of Arkansas. Also, from 2001 to 2002, Mr. Griffin served at the Department of Justice as Special Assistant to the Assistant Attorney General for the Criminal Division and as a Special Assistant U.S. Attorney in the Eastern District of Arkansas in Little Rock. In this capacity, Mr. Griffin prosecuted a variety of federal cases with an emphasis on firearm and drug cases and organized the Eastern District's Project Safe Neighborhoods (PSN) initiative, the Bush Administration's effort to reduce firearm-related violence by promoting close cooperation between State and federal law enforcement, and served as the PSN coordinator.

- Prior to rejoining the Department in the fall of 2006, Mr. Griffin completed a year of active duty in the U.S. Army, and is in his tenth year as an officer in the U.S. Army Reserve, Judge Advocate General's Corps (JAG), holding the rank of Major. In September 2005, Mr. Griffin was mobilized to active duty to serve as an Army prosecutor at Fort Campbell, Ky. At Fort Campbell, he prosecuted 40 criminal cases, including *U.S. v. Mikel*, which drew national interest after Pvt. Mikel attempted to murder his platoon sergeant and fired upon his unit's early morning formation. Pvt. Mikel pleaded guilty to attempted murder and was sentenced to 25 years in prison.

- In May 2006, Tim was assigned to the 501st Special Troops Battalion, 101st Airborne Division and sent to serve in Iraq. From May through August 2006, he served as an Army JAG with the 101st Airborne Division in Mosul, Iraq, as a member of the 172d Stryker Brigade Combat Team Brigade Operational Law Team, for which he was awarded the Combat Action Badge and the Army Commendation Medal.

- Like many political appointees, Mr. Griffin has political experience as well. Prior to being called to active duty, Mr. Griffin served as Special Assistant to the President and Deputy Director of the Office of Political Affairs at the White House, following a stint at the Republican National Committee. Mr. Griffin has also served as Senior Counsel to the House Government Reform Committee, as an Associate Independent Counsel for *In Re: Housing and Urban Development Secretary Henry Cisneros*, and as an associate attorney with a New Orleans law firm.

- Mr. Griffin has very strong academic credentials. He graduated *cum laude* from Hendrix College in Conway, Ark., and received his law degree, *cum laude*, from Tulane Law School. He also attended graduate school at Pembroke College at Oxford University. Mr. Griffin was raised in Magnolia, Ark., and resides in Little Rock with his wife, Elizabeth.

- The Attorney General assured Senator Pryor that we are not circumventing the process by making an interim appointment and that the Administration intended to nominate Mr. Griffin. However, Senator Pryor refused to support Mr. Griffin if he was nominated. As a result of the lack of support shown by his home-state Senators, Mr. Griffin has withdrawn his name from consideration.

- While the Administration consults with the home-state Senators on a potential nomination, however, the Department must have someone lead the office – and we believe Mr. Griffin is well-qualified to serve in this interim role until such time as a new U.S. Attorney is nominated and confirmed.

# J. TIMOTHY GRIFFIN

## EDUCATION

**Tulane University Law School.** New Orleans, Louisiana. Juris Doctor, *cum laude*, May 1994. Cumulative G.P.A.: 3.25/4.00; Rank: 80/319, Top 25%. Common law and civil law curricula. Legal Research and Writing grade: A.

- Senior Fellow, Legal Research and Writing Program. Taught first year law students legal research and writing.
- Volunteer, The New Orleans Free Tutoring Program, Inc.

**Oxford University**, Pembroke College. Oxford, England. Graduate School, British and European History, 1990-1991.

- Under-secretary and Treasurer, Oxford University Clay Pigeon Shooting Club.

**Hendrix College.** Conway, Arkansas. Bachelor of Arts in Economics and Business, *cum laude*, June 1990. Cumulative G.P.A.: Major 3.79/4.00, Overall 3.78/4.00; Rank: 22/210, Top 10%.

- Oxford Overseas Study Course, September 1988-May 1989, Oxford, England.

## LEGAL EXPERIENCE

*U.S. Attorney (Interim).* **Eastern District of Arkansas, U.S. Department of Justice.** Little Rock, Arkansas. December 2006-present.

- Served as a Special Assistant U.S. Attorney, Eastern District of Arkansas, September-December 2006.

*Trial Counsel, U.S. Army JAG Corps.* **Criminal Law Branch, Office of the Staff Judge Advocate.** Fort Campbell, Kentucky, September 2005-May 2006; August-September 2006.

- Successfully prosecuted U.S. v. Mikel, involving a soldier's attempted murder of his platoon sergeant.
- Provided legal advice to E Co., 1st and 3rd Brigade Combat Teams, 101st Airborne Division (Air Assault)(R)(P).
- Prosecuted 40 Army criminal cases at courts-martial and federal criminal cases as a Special Assistant U.S. Attorney, Western District of Kentucky and Middle District of Tennessee, and handled 90 administrative separations.

*Brigade Judge Advocate, U.S. Army Judge Advocate General's (JAG) Corps. Operation Iraqi Freedom. Task Force Band of Brothers.* **501st STB, 101st Airborne Division (Air Assault).** Mosul, Iraq, May-August 2006.

- Served on the Brigade Operational Law Team (BOLT), 172d Stryker Brigade Combat Team, FOB Marez, Iraq.
- Provided legal advice on various topics, including financial investigations, rules of engagement, and rule of law.

*Special Assistant to the Assistant Attorney General.* **Criminal Division, U.S. Department of Justice.** Washington, D.C. and Little Rock, Arkansas. March 2001-June 2002.

- Tracked issues for Assistant Attorney General Michael Chertoff and worked with the Office of International Affairs (OIA) on matters involving extradition, provisional arrest and mutual legal assistance treaties (MLATs).
- Prosecuted federal firearm and drug cases and served as the coordinator for Project Safe Neighborhoods, a strategy to reduce firearm-related violence through cooperation between state and federal law enforcement, as a Special Assistant U.S. Attorney, Eastern District of Arkansas, in Little Rock, September 2001-June 2002.

*Senior Investigative Counsel.* **Committee on Government Reform, U.S. House of Representatives.** Washington, D.C. January 1997-February 1998; June 1998-September 1999.

- Developed hearing series entitled "National Problems, Local Solutions: Federalism at Work" to highlight innovative and successful reforms at the state and local levels, including: "Fighting Crime in the Trenches," featuring New York City Mayor Rudolph Giuliani, and "Tax Reform in the States."
- Pursuant to the Committee's campaign finance investigation, interviewed Johnny Chung and played key role in hearing detailing his illegal political contributions; organized, supervised and conducted the financial investigation of individuals and entities; interviewed witnesses; drafted subpoenas; and briefed Speaker of the House Newt Gingrich.

*Associate Independent Counsel.* **U.S. Office of Independent Counsel David M. Barrett.** *In re: Henry G. Cisneros, Secretary of Housing and Urban Development (HUD).* Washington, D.C. September 1995-January 1997.

- Interviewed numerous witnesses with the F.B.I. and supervised the execution of a search warrant.
- Drafted subpoenas and pleadings and questioned witnesses before a federal grand jury.

*Associate Attorney*. **General Litigation Section. Jones, Walker, Waechter, Poitevent, Carrere & Denegre, L.L.P.** New Orleans, Louisiana. September 1994-September 1995.

- Drafted legal memoranda and pleadings and conducted depositions.

## ADDITIONAL WORK EXPERIENCE

*Special Assistant to the President and Deputy Director*. **Office of Political Affairs, The White House.** Washington, D.C. April-September 2005. On military leave after mobilization to active duty, September 2005-September 2006.

- Advised President George W. Bush and Vice-President Richard B. Cheney.
- Organized and coordinated support for the President's agenda.

*Research Director and Deputy Communications Director*. **2004 Presidential Campaign, Republican National Committee (RNC).** Washington, D.C. June 2002-December 2004.

- Briefed Vice-President Richard B. Cheney and other Bush-Cheney 2004 (BC04) and RNC senior staff.
- Managed RNC Research, the primary research resource for BC04, with over 25 staff.
- Worked daily with BC04 senior staff on campaign and press strategy, ad development and debate preparation.

*Deputy Research Director*. **2000 Presidential Campaign, Republican National Committee (RNC).** Washington, D.C. September 1999-February 2001.

- Managed RNC Research, the primary research resource for Bush-Cheney 2000 (BC00), with over 30 staff.
- Served as legal advisor in Volusia and Brevard Counties for BC00 Florida Recount Team.

*Campaign Manager*. **Betty Dickey for Attorney General.** Pine Bluff, Arkansas. February 1998-May 1998.

## SUMMARY OF MILITARY SERVICE

*Major*. **JAG Corps, U.S. Army Reserve.** Commissioned First Lieutenant, June 1996.

- Served on active duty in Mosul, Iraq with the 101st Airborne Division (Air Assault), and at Fort Campbell, Kentucky, September 2005-September 2006.
- Authorized to wear 101st Airborne Division (Air Assault) "Screaming Eagle" combat patch.
- Medals, Ribbons and Badges: Army Commendation Medal with Five Oak Leaf Clusters; Army Achievement Medal with Four Oak Leaf Clusters; Army Reserve Components Achievement Medal with Two Oak Leaf Clusters; National Defense Service Medal; Iraq Campaign Medal; Global War on Terrorism Service Medal; Armed Forces Reserve Medal with Bronze Hourglass and "M" Devices; Army Service Ribbon; and Army Reserve Overseas Training Ribbon with "3" Device; and Combat Action Badge.

## ACTIVITIES AND ASSOCIATIONS

**Arkansas Bar Association.** Little Rock, Arkansas. *Member*, 1995-present. Annual Meeting Subcommittee on Technology, 2002. Admitted to Arkansas Bar, April 26, 1995.

**Friends of Central Arkansas Libraries (FOCAL).** Little Rock, Arkansas. *Life Member*.

**Florence Crittenton Services, Inc.** Little Rock, Arkansas. *Member*, Board of Directors, 2001-2002.

**Louisiana State Bar Association.** New Orleans, Louisiana. *Member*. Admitted October 7, 1994. Currently inactive.

**The Oxford Union Society.** Oxford, England. *Member*, 1990-present.

**Pulaski County Bar Association.** Little Rock, Arkansas. *Member*, 2001-2002. *Co-chair*, Law School Liaison Committee, 2001-2002.

**Reserve Officers Association.** Washington, D.C. *Life Member*.



0AG000000324

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Monday, March 05, 2007 2:30 PM
**To:** McNulty, Paul J; Moschella, William; Hertling, Richard; Scolinos, Tasia; Battle, Michael (USAEO)
**Cc:** Elston, Michael (ODAG); Roehrkasse, Brian; Goodling, Monica; Washington, Tracy T
**Subject:** FW:
**Importance:** High

**Tracking:**

| Recipient | Read |
|---|---|
| McNulty, Paul J | Read: 3/5/2007 3:37 PM |
| Moschella, William | |
| Hertling, Richard | |
| Scolinos, Tasia | Read: 3/5/2007 2:35 PM |
| Battle, Michael (USAEO) | |
| Elston, Michael (ODAG) | Read: 3/5/2007 2:31 PM |
| Roehrkasse, Brian | Read: 3/5/2007 2:30 PM |
| Goodling, Monica | Read: 3/5/2007 2:42 PM |
| Washington, Tracy T | Read: 3/5/2007 2:30 PM |

All, please see the below. I propose to you all that I propose 5pm to Bill -- I assume they'll want us to go over there. Thoughts?

---

**From:** Kelley, William K. [mailto:William_K._Kelley@who.eop.gov]
**Sent:** Monday, March 05, 2007 1:57 PM
**To:** Sampson, Kyle
**Subject:**

Kyle--We've been tasked with getting a meeting together with you, Paul, Will, DOJ leg and pa, and maybe Battle -- today -- to go over the Administration's position on all aspects of the US Atty issue, including what we are going to say about the proposed legislation and why the US Attys were asked to resign. There's a hearing tomorrow at which Will is scheduled to testify, so we have to get this group together with some folks here asap. Can you look into possible times? Thanks, and sorry to impose.

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**Subject:** RE:
**Importance:** High

**Tracking:**

| Recipient | Read |
|---|---|
| McNulty, Paul J | Read: 3/5/2007 3:37 PM |
| Moschella, William | |
| Hertling, Richard | |
| Scolinos, Tasia | |
| Battle, Michael (USAEO) | |
| Elston, Michael (ODAG) | Read: 3/5/2007 2:52 PM |
| Roehrkasse, Brian | Read: 3/5/2007 2:51 PM |
| Goodling, Monica | |
| Washington, Tracy T | Read: 3/5/2007 2:49 PM |

Okay -- two things:

1. We are set for 5pm at the White House. I need WAVES info from each of you: DOBs and SSNs.
2. Kelley says that among other things they'll want to cover (1) Administration's position on the legislation (Will's written testimony says that we oppose the bill, raising White House concerns); and (2) how we are going to respond substantively to each of the U.S. Attorney's allegations that they were dismissed for improper reasons.

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**Subject:** FW:
**Importance:** High

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**From:** Sampson, Kyle
**Sent:** Monday, March 05, 2007 2:52 PM
**To:** Scolinos, Tasia
**Subject:** RE:

**Tracking:** **Recipient** **Read**
Scolinos, Tasia Read: 3/5/2007 2:52 PM

yes, and already told him so

---

**From:** Scolinos, Tasia
**Sent:** Monday, March 05, 2007 2:50 PM
**To:** Sampson, Kyle
**Subject:** RE:

are you okay with Brian coming too? He asked to come and he has been extremely involved on this issue

---

**From:** Sampson, Kyle
**Sent:** Monday, March 05, 2007 2:49 PM
**To:** McNulty, Paul J; Moschella, William; Hertling, Richard; Scolinos, Tasia; Battle, Michael (USAEO)
**Cc:** Elston, Michael (ODAG); Roehrkasse, Brian; Goodling, Monica; Washington, Tracy T
**Subject:** RE:
**Importance:** High

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**Sampson, Kyle**

**From:** Seidel, Rebecca
**Sent:** Monday, March 05, 2007 2:53 PM
**To:** Sampson, Kyle; Goodling, Monica; Moschella, William; Nowacki, John (USAEO); Scott-Finan, Nancy; Scolinos, Tasia; Roehrkasse, Brian
**Cc:** Smith, Kimberly A
**Subject:** FW: [USA issue] Witness List for Full Committee Hearing on Tuesday, March 6, 2007 at 10:00 a.m.
**Attachments:** 3-6-07 Witness List.doc

assuming you already knew this. looks like they got 4 without subpoenas. Cummins, Iglesias, Lam and McKay

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**From:** Butterfield, Jane (Judiciary-Dem) [mailto:Jane_Butterfield@Judiciary-dem.senate.gov]
**Sent:** Monday, March 05, 2007 11:57 AM
**To:** All Judiciary Users; Alexander, Elizabeth (Biden); Brannon, Ike (Hatch); Carle, David (Leahy); Cota, Greg (Leahy); Del'Aguila, Andrea (Durbin); Galyean, James (L. Graham); Ginsberg, Daniel (Leahy); Kuhn, Walt (L. Graham); Nuebel, Kathy (Grassley); Orloff, Nancy (Biden); Pagano, Ed (Leahy); Sandgren, Matthew (Hatch); Saunders, Chris (Leahy); Tardibono, Timothy (Coburn); Upton, Marianne (Appropriations); Wilson, Alexis (Feinstein); Branca, Arlene (Kohl); Dowd, John (Leahy); Fay, Scott (Kennedy); Hinck, Kaaren (Whitehouse); Kidera, Daniel (Schumer); Lapia, Joe (Dem-Secretary); Magee, Kimberly (Schumer); McDonald, Kevin (Leahy); Sebern, Will (Feingold); Smith, Michele (Biden); Yamada, Debbie (Cardin); Berwick, Sally (Brownback); Edwards, Lauren (L. Graham); Hollis, Kate (Sessions); Jafari, Beth (Cornyn); Larrabee, Jill (Kyl); Lisa Dennis (Court Reporter); Montoya, Ruth (Hatch); Plakoudas, Maria (Specter); Shadegg, Courtney (Coburn); Shimp, Leah (Grassley); Stewart, Christine (Cornyn)
**Subject:** Witness List for Full Committee Hearing on Tuesday, March 6, 2007 at 10:00 a.m.

**Witness List**

**Hearing before the**
**Senate Judiciary Committee**

**On**

**"Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?—Part II"**

Tuesday, March 6, 2007
10:00 a.m. Dirksen Senate Office Building, Room 226

**H.E. "Bud" Cummins, III**
Former U.S. Attorney
Eastern District of Arkansas
Little Rock, AR

**David C. Iglesias**
Former U.S. Attorney
District of New Mexico
Albuquerque, NM

**Carol Lam**
Former U.S. Attorney
Southern District of California
San Diego, CA

**John McKay**
Former U.S. Attorney
Western District of Washington
Seattle, WA

**Witness List**

**Hearing before the**
**Senate Judiciary Committee**

**On**

**"Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?—Part II"**

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District of New Mexico
Albuquerque, NM

**Carol Lam**
Former U.S. Attorney
Southern District of California
San Diego, CA

**John McKay**
Former U.S. Attorney
Western District of Washington
Seattle, WA

## Sampson, Kyle

**From:** Seidel, Rebecca
**Sent:** Monday, March 05, 2007 2:55 PM
**To:** Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Scolinos, Tasia; Hertling, Richard; Moschella, William; Elston, Michael (ODAG); Scott-Finan, Nancy
**Subject:** FW: US ATTY II Hearing 3/6/07: Cummins, Iglesias, Lam and McKay Joint Testimony & Individual Bios
**Importance:** High
**Attachments:** 03-06-07 US ATTY II Hearing - Joint Testimony.pdf; 03-06-07 US Atty II Hearing - Cummins Bio.pdf; 03-06-07 US Atty II Hearing - Iglesias Bio.pdf; 03-06-07 US Atty II Hearing - Lam Bio.pdf; 03-06-07 US Atty II Hearing - McKay Bio.pdf

did you already get these?

---

**From:** Evans, Ryan (Judiciary-Rep) [mailto:Ryan_Evans@judiciary-rep.senate.gov]
**Sent:** Monday, March 05, 2007 2:25 PM
**To:** Seidel, Rebecca
**Subject:** FW: US ATTY II Hearing 3/6/07: Cummins, Iglesias, Lam and McKay Joint Testimony & Individual Bios

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**From:** Burroughs, Nikole (Judiciary-Dem) [mailto:Nikole_Burroughs@Judiciary-dem.senate.gov]
**Sent:** Monday, March 05, 2007 11:59 AM
**To:** All Judiciary Users
**Subject:** US ATTY II Hearing 3/6/07: Cummins, Iglesias, Lam and McKay Joint Testimony & Individual Bios

Attached please find joint testimony and individual bios submitted by Mr. Cummins, Mr. Iglesias, Ms. Lam and Mr. McKay to the March 6, 2007 hearing entitled "Part II–Preserving Prosecutorial Independence: Is the Department of Justice Politicizing the Hiring and Firing of U.S. Attorneys?"

Thank you

# Joint Statement of Former United States Attorneys Before Senate Committee on the Judiciary

## March 6, 2007

Good morning Chairman Leahy, and members of the Committee. My name is Carol Lam. Until recently, I was the United States Attorney for the Southern District of California. In the interest of conserving time, I will be making introductory remarks on behalf of all the former United States Attorneys before you on the panel today, with whom I had the great privilege of serving as a colleague, from the following districts: Bud Cummins, Eastern District of Arkansas; David Iglesias, District of New Mexico; and John McKay, Western District of Washington. Each of us was subpoenaed to testify this afternoon on the same subject matter before a subcommittee of the House Committee on the Judiciary, and we were informed that in short order we would be receiving subpoenas to testify before this Committee, and so we are making our appearances before both Committees today. We respect the oversight responsibilities of the Senate Committee on the Judiciary over the Department of Justice, as well as the important role this Committee plays in the confirmation process of United States Attorneys.

Each of us is very appreciative of the President and our home state Senators and Representatives who entrusted us five years ago with appointments as United States Attorneys. The men and women in the United States Attorney's Offices in 94 federal judicial districts throughout the country have the great distinction of representing the United States in criminal and civil cases in federal court. They are public servants who carry voluminous case loads and work tirelessly to protect the country from threats both foreign and domestic. It was our privilege to lead them and to serve with our fellow United States Attorneys around the country.

As United States Attorneys, our job was to provide leadership in each of our districts, to coordinate federal law enforcement, and to support the work of Assistant United States Attorneys as they prosecuted a wide variety of criminals, including drug traffickers, violent offenders and white collar defendants. As the first United States Attorneys appointed after the terrible events of September 11, 2001, we took seriously the commitment of the President and the Attorney General to lead our districts in the fight against terrorism. We not only prosecuted terrorism-related cases, but also led our law enforcement partners at the federal, state and local levels in preventing and disrupting potential terrorist attacks.

Like many of our United States Attorney colleagues across this country, we focused our efforts on international and interstate crime, including the investigation and prosecution of drug traffickers, human traffickers, violent criminals and organized crime figures. We also prosecuted, among others, fraudulent corporations and their executives, criminal aliens, alien smugglers, tax cheats, computer hackers, and child pornographers.



OAG000000333

Every United States Attorney knows that he or she is a political appointee, but also recognizes the importance of supporting and defending the Constitution in a fair and impartial manner that is devoid of politics. Prosecutorial discretion is an important part of a United States Attorney's responsibilities. The prosecution of individual cases must be based on justice, fairness, and compassion – not political ideology or partisan politics. We believed that the public we served and protected deserved nothing less.

Toward that end, we also believed that within the many prosecutorial priorities established by the Department of Justice, we had the obligation to pursue those priorities by deploying our office resources in the manner that best and most efficiently addressed the needs of our districts. As Presidential appointees in particular geographic districts, it was our responsibility to inform the Department of Justice about the unique characteristics of our districts. All of us were longtime, if not lifelong, residents of the districts in which we served. Some of us had many years of experience as Assistant U.S. Attorneys, and each of us knew the histories of our courts, our agencies, and our offices. We viewed it as a part of our duties to engage in discussion about these priorities with our colleagues and superiors at the Justice Department. When we had new ideas or differing opinions, we assumed that such thoughts would always be welcomed by the Department and could be freely and openly debated within the halls of that great institution.

Recently, each of us was asked by Department of Justice officials to resign our posts. Each of us was fully aware that we served at the pleasure of the President, and that we could be removed for any or no reason. In most of our cases, we were given little or no information about the reason for the request for our resignations. This hearing is not a forum to engage in speculation, and we decline to speculate about the reasons. We have every confidence that the excellent career attorneys in our offices will continue to serve as aggressive, independent advocates of the best interests of the people of the United States. We continue to be grateful for having had the opportunity to serve and to have represented the United States during challenging and difficult times for our country.

While the members of this panel all agree with the views I have just expressed, we will be responding individually to the Committee's questions, and those answers will be based on our own individual situations and circumstances.

The members of the panel regret the circumstances that have brought us here to testify today. We hope those circumstances do not in any way call into question the good work of the United States Attorneys Offices we led and the independence of the career prosecutors who staff them. And while it is never easy to leave a position one cares deeply about, we leave with no regrets, because we served well and upheld the best traditions of the Department of Justice.



OAG000000334

We welcome the questions of the Chair and Members of the Committee. Thank you.

Bud Cummins, *Little Rock, Arkansas*

David Iglesias, *Albuquerque, New Mexico*

Carol Lam, *San Diego, California*

John McKay, *Seattle, Washington*



OAG000000335

**BUD CUMMINS**

Bud Cummins was born in Enid, Oklahoma, where his family operated a construction business. He earned a B.S./B.A. from the University of Arkansas in 1981. After working for several years for Arkansas construction companies, he returned to school and earned a law degree from the UALR School of Law. He clerked for United States Magistrate Judge John F. Forster, Jr., and then for Chief United States District Judge Stephen M. Reasoner, both in the Eastern District of Arkansas. Cummins then entered private practice in Little Rock, with two interruptions. First, he ran for Congress in 1996, and in 1997-98 he served as Chief Legal Counsel to Governor Mike Huckabee. He was nominated in 2001 by President George W. Bush to serve as the United States Attorney for the Eastern District of Arkansas. He was confirmed by the Senate and served in that capacity until December, 2006. He is now engaged as a consultant for a biofuel company.

**DAVID C. IGLESIAS**

**Professional Experience**

| | |
|---|---|
| **2001-2007** | **United States Attorney**<br>**District of New Mexico**, Albuquerque, NM<br>-Chief Federal law enforcement official in New Mexico |
| **2002-2005** | **Chair, Border and Immigration Subcommittee**, U.S. Justice Dept.<br>-Supervise 150 member office<br>**-Security Clearance: TS/SCI, Q** |
| **1998-2001** | **Chief Counsel**<br>**NM Taxation and Revenue Department**, Santa Fe, NM<br>-Advised Secretary of Taxation on legal issues<br>-Supervised eight attorneys and eight staff members |
| **1998** | **Republican Nominee for New Mexico Attorney General**<br>-Received 48.6% of vote in state-wide race |
| **1995-1998** | **Chief Counsel**<br>**NM State Risk Management**, Santa Fe, NM<br>-Office Defended State Government in Civil Litigation<br>-Supervised Seven Attorneys and staff<br>-Oversight Involving 50 Private Law Firm Contractors |
| **1994-1995** | **White House Fellow**<br>**White House Fellowship**, Washington, DC<br>-Special Assistant to Secretary of Transportation Federico Peña<br>**-Security Clearance: Top Secret** |
| **1994**<br>**1991-1994** | **Director of Public Safety Division**<br>**-Albuquerque City Attorney's Office**<br>-Supervised Five Attorneys, Four Detectives and staff<br>-Defended City and Police in Civil Rights Lawsuits |
| **1988-1991** | **Prosecutor**<br>**New Mexico Attorney General's Office**<br>Office of Special Prosecutions, Santa Fe, NM<br>-White Collar Cases: Fraud, RICO, Securities Fraud |
| **1984-1988** | **Military Attorney**<br>**Lieutenant, United States Navy**, Judge Advocate General's Corps, Washington, DC<br>**Criminal Defense Counsel** in:<br>-*A Few Good Men* Court-martial, Guantanamo Bay, Cuba |

-Navy SEAL Team Commander Marcinko case (Author of *New York Times* best-selling *Rogue Warrior* books)
**-Security Clearance: Secret**

**1988-Present** **United States Navy Reserve**
Captain, Judge Advocate General's Corps
-Staff Judge Advocate, Readiness Command, Southwest, San Diego, CA
-Adjunct Instructor, Defense Institute of International Legal Studies, Newport, RI,
-Adjunct Instructor, Joint Special Operations University, Hurlburt Field, FL
**-Security Clearance: Top Secret**

## Education and Licenses

**1980** **B.A.** - Wheaton College, Wheaton, Illinois
**1984** **J.D.** - University of New Mexico School of Law
**1984-1992** Licensed in New Mexico, U.S. Military Courts, U.S. District Court (NM), Tenth Circuit Court of Appeals, U.S. Supreme Court

## Honors

**2001** **Reserve Officer of the Year**, United States Special Operations Command, Tampa, FL

**2000** **Outstanding Reserve Career Judge Advocate**, Judge Advocates Association

**1988-Present** Six personal awards including **Defense Meritorious Service Award**, U.S. Navy Reserve

**1980** 1st Place in Annual Writing Contest (poetry), Wheaton College

## References

Available upon Request

# CAROL C. LAM

## EDUCATION

1982-1985 **Stanford Law School,** J.D. 1985
*Stanford Law Review,* Associate Editor
Semifinalist, 1984 Kirkwood Moot Court Competition
1984-1985 Kirkwood Moot Court Board
Principal flute, Stanford Symphony Orchestra (Winner, 1984 Stanford Symphony Orchestra Concerto Competition)

1977-1981 **Yale University,** B.A. Philosophy 1981
Honors: *Cum Laude;* Distinction in the Philosophy major
President, Yale University Bands

## EXPERIENCE

2/26/07 – Present and **QUALCOMM Incorporated,** San Diego, CA. Senior Vice-President Legal Counsel.

9/4/02 – 2/15/07 **United States Attorney for the Southern District of California.** Interim U.S. Attorney (9/4/02-11/17/02); Presidential Appointment on 11/18/02.

12/1/00 - 9/3/02 **Superior Court Judge, County of San Diego, California.** Criminal trials, sentencings, preliminary hearings, law and motion calendar.

10/1/86-11/31/00 **United States Attorney's Office,** San Diego, CA. Assistant United States Attorney; Chief of the Major Frauds and Economic Crimes Section (1997-2000). Health Care Fraud Coordinator (1996-1999).

***Awards and Commendations:***
Attorney General's Award for Distinguished Service (1997)
Executive Office of U.S. Attorneys' Director's Award for Superior Performance as an Assistant U.S. Attorney (1994)
Department of Justice Special Achievement Awards (1990, 1992, 1993, 1994, 1996, 1997, 1998, 1999)
Health and Human Services Inspector General's Award for Exceptional Achievement (1997)
Health and Human Services Inspector General's Integrity Award (1995)
Commendation from FBI Director Louis Freeh (1993, 1997)

1985-1986 Law clerk to the **Honorable Irving R. Kaufman,** United States Court of Appeals for the Second Circuit, New York, New York.

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|---|---|
| Fall 1984 | Internship with the **Honorable Earl B. Gilliam**, United States District Court Judge for the Southern District of California, San Diego, California. |
| Summer 1984 | **United States Department of Justice, Washington, D.C.** Law Clerk, Appellate Tax Division and Office of Special Litigation. |
| | **Skadden, Arps, Slate, Meagher & Flom**, New York, New York. Summer law associate. |
| Summer 1983 | **Sutherland, Asbill & Brennan**, Washington, D.C. Summer law associate. |
| Summer | **Jiao Tong University**, Shanghai, People's Republic of China. Instructor of English conversation and American literature. |
| Summers 1980, 1981 | *Newsweek* **Magazine**, New York, New York. Reporter and researcher. |

**BAR MEMBERSHIP**

| | |
|---|---|
| 1986 | Admitted to New York bar |
| 1987 | Admitted to California bar |

**PUBLICATION**

Lam, Carol C. and Loucks, Michael K., *Prosecuting and Defending Health Care Fraud Cases,* BNA Books (2000).

(CAROL C. LAM, cont.)

## SIGNIFICANT CASES

United States v. National Health Laboratories, Inc. (1992) -- Huge fraud by national blood laboratory chain involving deceptive marketing and billing practices, resulting in losses of millions of dollars by Medicare, Medicaid and other insurers. In a global settlement, National Health Laboratories ("NHL") and its president pled guilty and paid total criminal and civil fines of $111.4 million -- at the time by far the largest health care fraud recovery in history. (Prior to the NHL settlement, the next largest recovery in a Medicare fraud case had been $4 million.) The massive global plea negotiations involving the San Diego U.S. Attorney's Office, the Department of Justice Civil Division, 33 state Medicaid Fraud Control Units, the Department of Health and Human Services, and defense counsel for the corporation and several individuals.

United States v. Allied Clinical Laboratories, Inc. (San Diego Regional Laboratory (1997) - San Diego regional laboratory of Allied Clinical Laboratories, a national independent clinical blood laboratory, pled guilty to Medicare fraud and paid a $5 million criminal fine. The parent corporation, Laboratory Corporation of America, paid a total of $187 million in combined criminal and civil penalties as a result of government investigation into several allegations of marketing and billing fraud. With the benefit of knowledge gained from the National Health Laboratories prosecution (see case #1, above), the government team was able to efficiently and effectively target and investigate similar Medicare fraud schemes committed by other laboratories. The new approach to tackling fraud schemes on a national level, and the successful results of the project ($640 million recovered and two corporate guilty pleas obtained) earned each member of the Labscam investigative team the U.S. Attorney General's Award for Distinguished Service.

United States v. Carlisi et al. (1993) -- RICO indictment of ten Chicago organized crime figures involved in scheme to gain control of gambling operations at the Rincon Indian Reservation, and extortions of four individuals. The convicted defendants received sentences ranging from four months to 117 months in custody. Successfully briefed and argued the appeal before the Ninth Circuit, resulting in the first appellate opinion in the country upholding the constitutionality of the "roving wiretap."

United States v. Jeffrey Jay Rutgard (1995) -- Ophthalmologist committed large-scale Medicare fraud by performing thousands of unnecessary cataract and eyelid surgeries on elderly patients. Rutgard was convicted after a five-month trial, the longest federal trial in San Diego history, and was sentenced to 60 months in custody. Member of three-attorney prosecution team.

# JOHN McKAY

Seattle University School of Law
Seattle, Washington
jmckay@seattleu.edu
(206) 697-2053


## EMPLOYMENT:

| | |
|---|---|
| 2007 – Present | **Visiting Professor of Law,** Seattle University School of Law |
| 2001 – 2007 | **United States Attorney,** Western District of Washington, Seattle<br>Presidentially appointed federal prosecutor responsible for criminal and civil matters in courts of the United States |
| 1997 - 2001 | **President,** Legal Services Corporation, Washington, D.C.<br>President of Congressionally chartered not-for-profit delivering civil legal services to low-income Americans throughout the United States |
| 1992-97 | **Partner,** Cairncross & Hempelmann, Seattle<br>Chief litigation partner; supervised all firm litigation in state and federal courts<br>Managing partner (1995-97) |
| 1990-92 | **Litigation Partner**, Lane Powell Spears Lubersky, Seattle |
| 1989-90 | **White House Fellow**, Special Assistant to Director of Federal Bureau of Investigation, Washington, D.C. |
| 1984-97 | **Judge Pro Tem**, King County District Court, Federal Way, Washington |
| 1982-89 | **Associate Attorney,** Lane Powell Moss & Miller, Seattle |
| 1978-79 | **Legislative Assistant**, Congressman Joel Pritchard (R-WA) |

## LEGAL AND COMMUNITY:

| | |
|---|---|
| *2007* | *Distinguished Public Service Award*, United States Navy<br>Received Department of the Navy's highest civilian award for innovative leadership in Federal law enforcement |
| 2005 | *St. Thomas More Award,* Christian Legal Society, University of Washington School of Law |

| | |
|---|---|
| 2002 | *Commencement Speaker,* Seattle University School of Law |
| 2001 | *Cruz Reynoso – Ralph Abascal Don Quijote Award,* California Rural Legal Assistance |
| 2001 | *Award of Merit,* Washington State Bar Association Highest Award for Distinguished Service |
| 2000 | *Commencement Speaker,* University of Washington School of Law |
| 1998 | *Commencement Speaker,* Gonzaga University School of Law, Awarded *Doctor of Laws* Degree |
| 1997 | *Commencement Speaker,* The Ohio State University School of Law |
| 1987-97 | Founder and Director, Northwest Minority Job Fair |
| 1996-97 | American Bar Association, *Standing Committee on the Federal Judiciary,* Ninth Circuit Member |
| 1991-96 | American Bar Association House of Delegates |
| 1995 | *Pro Bono Lawyer of the Year,* Washington State Bar Association |
| 1991-94 | American Bar Association Board of Governors |

**PUBLICATION:** *Federally Funded Legal Services: A New Vision of Equal Justice Under Law*, 68 Tenn. L. Rev. 101 (2000)

**ADMITTED:** Washington State Bar
U.S. District Court, Western District of Washington
Ninth Circuit Court of Appeals
United States Supreme Court

**EDUCATION:** Creighton University *J.D., 1982*
University of Washington *B.A., 1978*

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Monday, March 05, 2007 6:45 PM
**To:** 'Oprison, Christopher G.'
**Subject:** FW: Letter For Tomorrow's Hearing from HJC

**Attachments:** LettertoWEMfromHJCreUSA3.5.07.pdf

fyi

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**From:** Cabral, Catalina
**Sent:** Monday, March 05, 2007 6:26 PM
**To:** Moschella, William; Elston, Michael (ODAG); Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Roehrkasse, Brian; Scolinos, Tasia; Hertling, Richard; Burton, Faith; Battle, Michael (USAEO); Margolis, David
**Subject:** Letter For Tomorrow's Hearing from HJC

LettertoWEMfromH JCreUSA3.5.07....

Catalina Cabral
U.S. DEPARTMENT OF JUSTICE
Office of Legislative Affairs
Catalina.Cabral@USDOJ.gov
(202) 514-4828



OAG000000344

JOHN CONYERS, JR., Michigan
CHAIRMAN

LAMAR S. SMITH, Texas
RANKING MINORITY MEMBER

# U.S. House of Representatives

## Committee on the Judiciary

Washington, DC 20515–6216
One Hundred Tenth Congress

## FAX COVER SHEET

DATE: 3/5/07

TO: Mr. William Moschella c/o OLA

FAX NO.: 514-4482

FROM: _____ Fax No.: (202) 225-4423

NUMBER OF PAGES IN THIS TRANSMISSION: 3 (including cover)

COMMENTS: _____

PLEASE CALL IF THERE ARE ANY PROBLEMS WITH THIS TRANSMISSION
(202) 225-3951

JOHN CONYERS, JR., Michigan
CHAIRMAN

LAMAR S. SMITH, Texas
RANKING MINORITY MEMBER

# U.S. House of Representatives
## Committee on the Judiciary
Washington, DC 20515–6216
One Hundred Tenth Congress

March 5, 2007

Mr. William Moschella
Principal Associate Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Moschella:

In anticipation of tomorrow's hearing regarding the forced resignations of the eight United States Attorneys, we are submitting requests in advance so that you will be able to provide us with the necessary information at the hearing. We hope that the advance notice will help you as your prepare for the hearing. The requests are as follows:

1) We have today learned that Michael Battle, head of the Executive Office of United States Attorneys, submitted his resignation some time ago. Please provide a copy of the resignation letter or communication and a record of all communications pertaining thereto.

2) Please detail the nature and extent of any communications the Department received on or behalf of Members of Congress concerning any of the terminated US Attorneys in advance of their terminations.

3) Please let us know which Members of Congress were given advance notification of the termination of the U.S Attorneys, the dates of such notification of the terminations, and the substance and nature of the notifications.

4) Please identify all individuals at the White House and Department of Justice who were involved in the creation of the lists of US Attorneys to terminate. Provide any supporting materials concerning these matters.

5) Please detail any communications the Department may have had with the terminated US Attorneys or any other US Attorneys concerning their specific failures to comply with particular Administration law enforcement priorities. Please provide any record or memorandum concerning these matters.

Mr. William Moschella
Page Two
March 5, 2007

We appreciate your cooperation in this matter, and we look forward to receiving answers to these and other questions tomorrow.

Sincerely,

The Honorable John Conyers, Jr.
Chairman, Committee on the Judiciary

The Honorable Linda T. Sánchez
Chairwoman, Subcommittee on
Commercial and Administrative Law

cc: The Honorable Lamar S. Smith
The Honorable Christopher B. Cannon

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Monday, March 05, 2007 7:24 PM
**To:** Hertling, Richard
**Cc:** 'Oprison, Christopher G.'
**Subject:** RE: Letter For Tomorrow's Hearing from HJC
**Importance:** High

**Tracking:**

| Recipient | Read |
|---|---|
| Hertling, Richard | Read: 3/5/2007 7:24 PM |
| 'Oprison, Christopher G.' | |

Richard, I think you're the man to answer Chris' questions, set forth below. What say you?

---

**From:** Oprison, Christopher G. [mailto:Christopher_G._Oprison@who.eop.gov]
**Sent:** Monday, March 05, 2007 7:15 PM
**To:** Sampson, Kyle
**Subject:** RE: Letter For Tomorrow's Hearing from HJC

not trying to pressure this, by the way. just curious if it would come tonight so that I could let our front office know, and they could pass along to OMB

---

**From:** Oprison, Christopher G.
**Sent:** Monday, March 05, 2007 7:12 PM
**To:** 'Sampson, Kyle'
**Subject:** RE: Letter For Tomorrow's Hearing from HJC

Kyle - do you know when we should be receiving the revised Moschella testimony for tomorrow's hearing? Also, has someone notified OMB that the prior testimony should not be cleared?

---

**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
**Sent:** Monday, March 05, 2007 6:45 PM
**To:** Oprison, Christopher G.
**Subject:** FW: Letter For Tomorrow's Hearing from HJC

fyi

---

**From:** Cabral, Catalina
**Sent:** Monday, March 05, 2007 6:26 PM
**To:** Moschella, William; Elston, Michael (ODAG); Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Roehrkasse, Brian; Scolinos, Tasia; Hertling, Richard; Burton, Faith; Battle, Michael (USAEO); Margolis, David

**Subject:** Letter For Tomorrow's Hearing from HJC

<<LettertoWEMfromHJCreUSA3.5.07.pdf>>

Catalina Cabral
U.S. DEPARTMENT OF JUSTICE
Office of Legislative Affairs
Catalina.Cabral@USDOJ.gov
(202) 514-4828

William E. Moschella
Opening Statement

Madam Chairman, Mr. Cannon, and Members of the Subcommittee, I appreciate the opportunity to testify today.

Let me begin by stating clearly that the Department of Justice appreciates the public service that was rendered by the eight U.S. Attorneys who were asked to resign. Each is a talented lawyer, and we have no doubt they will achieve success in their future endeavors, just like the 40 or so other U.S. Attorneys who have resigned for various reasons over the last six years.

But one of the Attorney General's most important responsibilities is to manage the Department of Justice. Part of managing an organization like the Department is ensuring that the President's and the Attorney General's priorities are followed consistently and seeing that Department policies are carried out uniformly. And those individuals who have the high privilege of serving as presidential appointees are especially obligated to carry out the Administration's priorities and policies.

Assistant Attorneys General at Main Justice and U.S. Attorneys in the field are tasked with making prosecutorial decisions – but that responsibility does not change or alter in any way the fact that they serve at the pleasure of the President. Nor does it change or alter the fact that if they are not executing their responsibilities in a manner that furthers the management and policy goals of departmental leadership, then it is appropriate that they be asked to resign so that they can be replaced by other individuals.

To be clear, it was for reasons related to policy, priorities and management – what unfortunately was referred to broadly in a short-hand manner as "performance-related" reasons – that these U.S. Attorneys were asked to resign. To be sure, the Department – out of respect for the U.S. Attorneys at issue – would have preferred not to talk at all about those reasons, but disclosures in the press and requests for information from Congress altered those best laid plans. The Department's failure to provide reasons that these U.S. Attorneys were asked to resign has led to wild speculation about our motives, and that is unfortunate because faith and confidence in our justice system is more important than any one individual.

That said, the Department stands by its decision. It is clear that after closed door briefings with House and Senate members and staff, some agree with our decisions and some disagree – such is the nature of subjective judgments. Just because you might disagree with a decision, does not mean it was made for improper political reasons – there were reasons for each decision.

Let me say a word about the EARS evaluations. Several have made the point that these evaluations indicate good ratings for the US Attorneys. That is not necessarily so as they are not evaluations of the U.S. Attorneys themselves. The EARS evaluations are evaluations of the office. The US Attorneys supervisors are the AG and Deputy AG, and neither are asked about the U.S. Attorneys as part of these evaluations. [I would consider dropping this paragraph.]

**Deleted:** on H.R. 580. Although this hearing is styled as a legislative hearing, I am sure that most of the questions will focus on the circumstances surrounding the Department's request that eight U.S. Attorneys resign. It is to these issues that I will address my opening comments

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¶
In hindsight, the Department agrees with The Washington Post's editorial over the weekend that this situation was handled poorly. The US Attorneys who were asked to resign were not provided specific reasons for the request in an effort to avoid protracted debate about the decision and not prejudice negatively their future employment prospects. The

**Deleted:** A decision was made to let them down easy; in fact, it seems, just the opposite happened.

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One troubling allegation is that certain of the U.S. Attorneys were asked to resign because actions they took or didn't take relating to public corruptions cases. These charges are dangerous, baseless and irresponsible. This Administration has never removed a U.S. Attorney to retaliate against them or interfere with or inappropriately influence a public integrity investigation. Not once.

The Attorney General and the FBI Director both have made public corruption a high priority. Integrity in government and trust in our public officials and institutions is paramount. Without question, the Department of Justice's record is one of great accomplishment and unmatched in recent memory. The Department has not pulled any punches or shown any political favoritism. Public corruption investigations neither are rushed, nor are they delayed, for improper purposes.

The Department knows that public corruption cases are sensitive, and that this is an area that will be scrutinized. We can take the scrutiny. There has been no retaliation for the San Diego U.S. Attorney's Office's prosecution of former Congressman Randy "Duke" Cunningham. To the contrary, we applaud it; Main Justice has assisted with it; and the investigation continues. And there has been no retaliation for the Albequerque U.S. Attorney's Office's efforts a public corruption case in New Mexico. According to Mr. Iglesias's comments reported in the press, that matter also continues.

Some, particularly in the other body, claim that the Department's reasons for asking these U.S. Attorneys to resign was to make way for preselected Republican lawyers to be appointed or to circumvent Senate confirmation. The facts, however, prove otherwise. Let me repeat what has been said repeatedly and what the record reflects: the Administration is committed to having a Senate-confirmed U.S. Attorney in every single federal district.

In conclusion, let me make three points: First, although the Department stands by the decision to ask these U.S. Attorneys to resign, it would have been much better to have addressed the relevant issues up front with each of the U.S. Attorneys. Second, the Department has not taken any action to influence any public corruption case – and would never do so. Third, at no time did the Administration intend to circumvent the confirmation process.

I would be happy to take you questions.

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**Deleted:** The record of this Justice Department is w
**Deleted:** We have
**Deleted:** should not be
**Deleted:** or
**Deleted:** In public corruption cases, the professionals at t
**Deleted:** it
**Deleted:** , and we can take the criticism. For example, we have recently been criticized for the plea agreement entered into with President Clinton's former National Security Advisor and or executing search warrants related to a Republican congressman close to an election. No Democrats criticized us for either. Now, however, there is a chorus of partisan criticism for events that have not occurred.
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**Deleted:** not proceeding fast enough in
**Deleted:** our
**Deleted:** excusing
**Deleted:** Setting aside the situation in Eastern Arkansas, which we have said was different from the rest, we did ... [2]
**Deleted:** we have
**Deleted:** ,
**Deleted:** in every single case it i ... [3]
**Deleted:** to have a
**Deleted:** that is confirmed by th ... [4]
**Deleted:** .
**Deleted:** continues to believe our
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Page 1: [1] Deleted ksampson 3/5/2007 2:06:00 PM

It is important to recognize that one of the most important responsibilities the Attorney General has is to manage effectively the Department of Justice and that requires being willing to make tough decisions. Furthermore, it is the Attorney General's responsibility to ensure that the priorities he sets and those of the President are carried out. The Attorney General has announced specific priorities and has every expectation that they will be followed. U.S. Attorneys and other political appointees in the Department, like all other departments under all other presidents understand that they are charged with carrying out those policies and that they serve at the pleasure of the President.

Page 2: [2] Deleted ksampson 3/5/2007 2:13:00 PM

Setting aside the situation in Eastern Arkansas, which we have said was different from the rest, we did not have any lawyers preselected for these positions. We worked with home state Senators only after we asked the seven to move on. The facts are that since March 9, 2006, the date the new appointment authority went into effect, the Administration has nominated 16 individuals to serve as U.S. Attorney and 12 have been confirmed. Furthermore, 18 vacancies have been created since March 9, 2006. Of those 18 vacancies, the Administration has nominated candidates to fill six of these position (3 have been confirmed); we have interviewed candidates for 8 more, and are waiting to receive names for the remaining four positions – all in consultation with home-state Senators.

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in every single case it is the goal of the Bush

Page 2: [4] Deleted ksampson 3/5/2007 2:14:00 PM

that is confirmed by the Senate.

Page 2: [5] Deleted ksampson 3/5/2007 2:15:00 PM

remove these individuals was the correct one,

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Monday, March 05, 2007 7:25 PM
**To:** 'Kelley, William K.'
**Cc:** 'Oprison, Christopher G.'
**Subject:** Moschella Oral Testimony

**Importance:** High

**Attachments:** Moschella Oral Statement.doc

Bill, can you forward this on to Dana and Cathie (and whomever else in the White House you deem appropriate) for review and approval? Thanks!

Moschella Oral Statement.doc (...

Kyle Sampson
Chief of Staff
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2001 wk.
(202) 305-5289 cell
kyle.sampson@usdoj.gov



OAG000000353

William E. Moschella
Opening Statement

Madam Chairman, Mr. Cannon, and Members of the Subcommittee, I appreciate the opportunity to testify today.

Let me begin by stating clearly that the Department of Justice appreciates the public service that was rendered by the seven U.S. Attorneys who were asked to resign last December. Each is a talented lawyer who served as U.S. Attorney for more than four years, and we have no doubt they will achieve success in their future endeavors–just like the 40 or so other U.S. Attorneys who have resigned for various reasons over the last six years.

But one of the Attorney General's most important responsibilities is to manage the Department of Justice. Part of managing the Department is ensuring that the President's and the Attorney General's priorities and the Department's policies are carried out consistently and uniformly. Individuals who have the high privilege of serving as presidential appointees have an obligation to carry out the Administration's priorities and policies.

U.S. Attorneys in the field (as well as Assistant Attorneys General here in Washington) are tasked with making prosecutorial decisions–but that responsibility does not change or alter in any way the fact that they serve at the pleasure of the President and report to the Attorney General in the discharge of their offices. Nor does it change or alter the fact that if they are not executing their responsibilities in a manner that furthers the management and policy goals of departmental leadership, then it is appropriate that they be asked to resign so that they can be replaced by other individuals who will.

To be clear, it was for reasons related to policy, priorities and management–what has been referred to broadly as 'performance-related' reasons–that these U.S. Attorneys were asked to resign. To be sure, the Department–out of respect for the U.S. Attorneys at issue–would have preferred not to talk at all about those reasons, but disclosures in the press and requests for information from Congress altered those best laid plans. In hindsight, this situation could have been handled better. These U.S. Attorneys could have been informed at the time they were asked to resign about the reasons for the decision. Unfortunately, our failure to provide reasons to these individual U.S. Attorneys has only served to fuel wild and inaccurate speculation about our motives, and that is unfortunate because faith and confidence in our justice system is more important than any one individual.

That said, the Department stands by the decisions. It is clear that after closed door briefings with House and Senate members and staff, some agree with the reasons that form the basis for our decisions and some disagree–such is the nature of subjective judgments. Just because you might disagree with a decision, does not mean it was made for improper political reasons–there were appropriate reasons for each decision.

One troubling allegation is that certain of these U.S. Attorneys were asked to resign because of actions they took or didn't take relating to public corruption cases. These charges are dangerous, baseless and irresponsible. This Administration has never removed a U.S. Attorney

to retaliate against them or interfere with or inappropriately influence a public corruption case. Not once.

The Attorney General and the Director of the FBI both have made public corruption a high priority. Integrity in government and trust in our public officials and institutions is paramount. Without question, the Department of Justice's record is one of great accomplishment that is unmatched in recent memory. The Department has not pulled any punches or shown any political favoritism. Public corruption investigations are neither rushed nor delayed for improper purposes.

Some, particularly in the other body, claim that the Department's reasons for asking these U.S. Attorneys to resign was to make way for preselected Republican lawyers to be appointed and circumvent Senate confirmation. The facts, however, prove otherwise. After the seven U.S. Attorneys were asked to resign last December, the Administration immediately began consulting with home-state Senators and other home-state political leaders about possible candidates for nomination. Indeed, the facts are that since March 9, 2006, the date the Attorney General's new appointment authority went into effect, the Administration has nominated 16 individuals to serve as U.S. Attorney and 12 have been confirmed. Furthermore, 18 vacancies have arisen since March 9, 2006. Of those 18 vacancies, the Administration (1) has nominated candidates for six of them (and of those six, the Senate has confirmed three of them); (2) has interviewed candidates for eight of them; and (3) is working to identify candidates for the remaining four of them. Let me repeat what has been said repeatedly and what the record reflects: the Administration is committed to having a Senate-confirmed U.S. Attorney in every single federal district.

In conclusion, let me make three points: First, although the Department stands by the decision to ask these U.S. Attorneys to resign, it would have been much better to have addressed the relevant issues up front with each of them. Second, the Department has not taken any action to influence any public corruption case–and would never do so. Third, the Administration did not intend to circumvent the confirmation process.

I would be happy to take you questions.

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Monday, March 05, 2007 7:27 PM
**To:** McNulty, Paul J; Moschella, William; Elston, Michael (ODAG); Goodling, Monica; Hertling, Richard; Scolinos, Tasia; Roehrkasse, Brian
**Subject:** FW: Moschella Oral Testimony

**Importance:** High

**Attachments:** Moschella Oral Statement.doc

Gang, I just sent the below draft Moschella Oral Statement to the White House. Let me know if you have any comments (though I wouldn't mind giving the pen up at this point; let me know).

---

**From:** Sampson, Kyle
**Sent:** Monday, March 05, 2007 7:25 PM
**To:** 'Kelley, William K.'
**Cc:** 'Oprison, Christopher G.'
**Subject:** Moschella Oral Testimony
**Importance:** High

Bill, can you forward this on to Dana and Cathie (and whomever else in the White House you deem appropriate) for review and approval? Thanks!

Moschella Oral Statement.doc (...

Kyle Sampson
Chief of Staff
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(202) 514-2001 wk.
(202) 305-5289 cell
kyle.sampson@usdoj.gov

**Tracking:**

| Recipient | Read |
|---|---|
| McNulty, Paul J | Read: 3/5/2007 7:51 PM |
| Moschella, William | Read: 3/5/2007 7:47 PM |
| Elston, Michael (ODAG) | Read: 3/5/2007 8:23 PM |
| Goodling, Monica | Read: 3/13/2007 10:10 AM |
| Hertling, Richard | Read: 3/5/2007 7:36 PM |
| Scolinos, Tasia | Read: 3/5/2007 7:32 PM |
| Roehrkasse, Brian | Read: 3/5/2007 7:27 PM |



OAG000000356

William E. Moschella
Opening Statement

Madam Chairman, Mr. Cannon, and Members of the Subcommittee, I appreciate the opportunity to testify today.

Let me begin by stating clearly that the Department of Justice appreciates the public service that was rendered by the seven U.S. Attorneys who were asked to resign last December. Each is a talented lawyer who served as U.S. Attorney for more than four years, and we have no doubt they will achieve success in their future endeavors – just like the 40 or so other U.S. Attorneys who have resigned for various reasons over the last six years.

But one of the Attorney General's most important responsibilities is to manage the Department of Justice. Part of managing the Department is ensuring that the President's and the Attorney General's priorities and the Department's policies are carried out consistently and uniformly. Individuals who have the high privilege of serving as presidential appointees have an obligation to carry out the Administration's priorities and policies.

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To be clear, it was for reasons related to policy, priorities and management – what has been referred to broadly as "performance-related" reasons – that these U.S. Attorneys were asked to resign. To be sure, the Department – out of respect for the U.S. Attorneys at issue – would have preferred not to talk at all about those reasons, but disclosures in the press and requests for information from Congress altered those best laid plans. In hindsight, this situation could have been handled better. These U.S. Attorneys could have been informed at the time they were asked to resign about the reasons for the decision. Unfortunately, our failure to provide reasons to these individual U.S. Attorneys has only served to fuel wild and inaccurate speculation about our motives, and that is unfortunate because faith and confidence in our justice system is more important than any one individual.

That said, the Department stands by the decisions. It is clear that after closed door briefings with House and Senate members and staff, some agree with the reasons that form the basis for our decisions and some disagree – such is the nature of subjective judgments. Just because you might disagree with a decision, does not mean it was made for improper political reasons – there were appropriate reasons for each decision.

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to retaliate against them or interfere with or inappropriately influence a public corruption case. Not once.

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I would be happy to take you questions.

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**From:** Sampson, Kyle
**Sent:** Monday, March 05, 2007 8:16 PM
**To:** Moschella, William
**Subject:** FW: Moschella Oral Testimony

**Importance:** High

**Attachments:** Moschella Oral Statement.doc

Will, I have made the changes below that you suggest, but now am handing the pen to you (I will be in late in the morning; need to accompany Noelle to a doctor's appointment). I will feed any additional comments that I get to you.

Moschella Oral Statement.doc (...

---

**From:** Moschella, William
**Sent:** Monday, March 05, 2007 7:58 PM
**To:** Sampson, Kyle; McNulty, Paul J; Elston, Michael (ODAG); Goodling, Monica; Hertling, Richard; Scolinos, Tasia; Roehrkasse, Brian
**Subject:** RE: Moschella Oral Testimony

In the second graph, replace "the President's and the Attorney General's priorities and the Department's policies" with "the Administration's policies and priorities".

In the last graph, I suggest replacing "taken any action" with "asked anyone to resign".

This is really good. Thanks everyone for the collaboration.

---

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**Importance:** High

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**Sent:** Monday, March 05, 2007 7:25 PM
**To:** 'Kelley, William K.'
**Cc:** 'Oprison, Christopher G.'
**Subject:** Moschella Oral Testimony
**Importance:** High

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<< File: Moschella Oral Statement.doc >>

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(202) 305-5289 cell
kyle.sampson@usdoj.gov

| Tracking: | Recipient | Read |
| --- | --- | --- |
| | Moschella, William | Read: 3/5/2007 8:21 PM |

William E. Moschella
Opening Statement

Madam Chairman, Mr. Cannon, and Members of the Subcommittee, I appreciate the opportunity to testify today.

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I would be happy to take you questions.

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Monday, March 05, 2007 8:22 PM
**To:** Moschella, William
**Subject:** RE: Moschella Oral Testimony

10-4.

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**From:** Moschella, William
**Sent:** Monday, March 05, 2007 8:21 PM
**To:** Sampson, Kyle
**Subject:** RE: Moschella Oral Testimony

Great. We should huddle when you get back about the Conyers questions.

---

**From:** Sampson, Kyle
**Sent:** Monday, March 05, 2007 8:16 PM
**To:** Moschella, William
**Subject:** FW: Moschella Oral Testimony
**Importance:** High

Will, I have made the changes below that you suggest, but now am handing the pen to you (I will be in late in the morning; need to accompany Noelle to a doctor's appointment). I will feed any additional comments that I get to you.

<< File: Moschella Oral Statement.doc >>

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**From:** Moschella, William
**Sent:** Monday, March 05, 2007 7:58 PM
**To:** Sampson, Kyle; McNulty, Paul J; Elston, Michael (ODAG); Goodling, Monica; Hertling, Richard; Scolinos, Tasia; Roehrkasse, Brian
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**From:** Sampson, Kyle
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**To:** 'Kelley, William K.'
**Cc:** 'Oprison, Christopher G.'
**Subject:** Moschella Oral Testimony
**Importance:** High

Bill, can you forward this on to Dana and Cathie (and whomever else in the White House you deem appropriate) for review and approval? Thanks!



OAG000000363

<< File: Moschella Oral Statement.doc >>

Kyle Sampson
Chief of Staff
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 514-2001 wk.
(202) 305-5289 cell
kyle.sampson@usdoj.gov

| **Tracking:** | **Recipient** | **Read** |
| --- | --- | --- |
| | Moschella, William | Read: 3/5/2007 8:23 PM |

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Monday, March 05, 2007 8:43 PM
**To:** 'Oprison, Christopher G.'
**Cc:** Moschella, William
**Subject:** RE: Moschella Oral Testimony

**Tracking:**

| Recipient | Read |
|---|---|
| 'Oprison, Christopher G.' | |
| Moschella, William | Read: 3/5/2007 8:45 PM |

Thx, Chris. Will now has the pen, so please send the comments to him directly (but cc me, if you would). Thx!

---

**From:** Oprison, Christopher G. [mailto:Christopher_G._Oprison@who.eop.gov]
**Sent:** Monday, March 05, 2007 8:40 PM
**To:** Sampson, Kyle
**Subject:** RE: Moschella Oral Testimony

we are gathering comments and should have this back to you shortly

---

**From:** Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
**Sent:** Monday, March 05, 2007 7:25 PM
**To:** Kelley, William K.
**Cc:** Oprison, Christopher G.
**Subject:** Moschella Oral Testimony
**Importance:** High

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## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Monday, March 05, 2007 10:24 PM
**To:** Moschella, William; Elston, Michael (ODAG); McNulty, Paul J
**Subject:** Re: Moschella Oral Testimony

No concerns here, though I would add your comments in.

-----Original Message-----
From: Moschella, William
To: Elston, Michael (ODAG); McNulty, Paul J
CC: Sampson, Kyle
Sent: Mon Mar 05 21:37:13 2007
Subject: FW: Moschella Oral Testimony

Thoughts. I have no problems with the changes.

---

From: Oprison, Christopher G. [mailto:Christopher_G._Oprison@who.eop.gov]
Sent: Monday, March 05, 2007 9:33 PM
To: Moschella, William
Cc: Sampson, Kyle; Kelley, William K.; Scudder, Michael Y.; Fielding, Fred F.; Gibbs, Landon M.
Subject: RE: Moschella Oral Testimony

Will - attached please find a redlined version with suggested edits. Thanks

Chris

---

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Monday, March 05, 2007 8:43 PM
To: Oprison, Christopher G.
Cc: Moschella, William
Subject: RE: Moschella Oral Testimony

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To: Sampson, Kyle
Subject: RE: Moschella Oral Testimony

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Sent: Monday, March 05, 2007 7:25 PM
To: Kelley, William K.
Cc: Oprison, Christopher G.
Subject: Moschella Oral Testimony
Importance: High



OAG000000366

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OAG000000367

# March 06, 2007

Tuesday

March 2007

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April 2007

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| 3 00 | |
| 4 00 | Updated: US Attorneys Discussion |
| 5 00 | |
| 6 00 | |

TaskPad

TaskPad

Notes



DOJ-OIG-0000036

## Sampson, Kyle

**From:** Sampson, Kyle
**Sent:** Tuesday, March 06, 2007 7:16 AM
**To:** 'christopher_g._oprison@who.eop.gov'; Moschella, William; Hertling, Richard
**Cc:** 'Michael_Y._Scudder@who.eop.gov'
**Subject:** Re: Letter For Tomorrow's Hearing from HJC

No. If asked, Will will note that the request came in late last night and that the Dep't will work as quickly as possible to respond to it. Will/Rich, correct me if I'm wrong.

-----Original Message-----
From: Oprison, Christopher G. <Christopher_G._Oprison@who.eop.gov>
To: Sampson, Kyle; Moschella, William; Hertling, Richard
CC: Scudder, Michael Y. <Michael_Y._Scudder@who.eop.gov>
Sent: Tue Mar 06 07:11:29 2007
Subject: RE: Letter For Tomorrow's Hearing from HJC

Hey gents - is the department going to be drafting responses to these questions prior to the hearing today? For number 4, can we discuss? Also, are there any other communications (other than Mike Elston's) that are potentially responsive to number 5?

---

From: Sampson, Kyle [mailto:Kyle.Sampson@usdoj.gov]
Sent: Monday, March 05, 2007 6:45 PM
To: Oprison, Christopher G.
Subject: FW: Letter For Tomorrow's Hearing from HJC

fyi

---

From: Cabral, Catalina
Sent: Monday, March 05, 2007 6:26 PM
To: Moschella, William; Elston, Michael (ODAG); Sampson, Kyle; Goodling, Monica; Nowacki, John (USAEO); Roehrkasse, Brian; Scolinos, Tasia; Hertling, Richard; Burton, Faith; Battle, Michael (USAEO); Margolis, David

Subject: Letter For Tomorrow's Hearing from HJC

<<LettertoWEMfromHJCreUSA3.5.07.pdf>>

Catalina Cabral
U.S. DEPARTMENT OF JUSTICE
Office of Legislative Affairs
Catalina.Cabral@USDOJ.gov
(202) 514-4828

## Sampson, Kyle

**From:** Roehrkasse, Brian
**Sent:** Tuesday, March 06, 2007 11:59 AM
**To:** Elston, Michael (ODAG); Scolinos, Tasia; McNulty, Paul J; Goodling, Monica; Moschella, William; Sampson, Kyle; Mercer, William W
**Subject:** FW: Please respond asap

**Attachments:** e-mail.pdf

e-mail.pdf (71 KB)

-----Original Message-----
From: Kellman, Laurie [mailto:lkellman@ap.org]
Sent: Tuesday, March 06, 2007 11:54 AM
To: Roehrkasse, Brian
Subject: RE: Please respond asap

Sri, I meant to attach Cummins' email...trying again. Let me know if you don't have it.

-----Original Message-----
From: Roehrkasse, Brian [mailto:Brian.Roehrkasse@usdoj.gov]
Sent: Tuesday, March 06, 2007 11:35 AM
To: Kellman, Laurie
Subject: RE: Please respond asap

Did he say he "didn't view it as a threat"? Or did I mishear?

-----Original Message-----
From: Kellman, Laurie [mailto:lkellman@ap.org]
Sent: Tuesday, March 06, 2007 11:21 AM
To: Roehrkasse, Brian
Subject: Please respond asap

Brian we have your previous comment, but I'd appreciate a fresh response to this email. Is cummins making it up? Did he misunderstand?



OAG000000370

**From:** H.E. Cummins [mailto: ]
**Sent:** Tue 2/20/2007 5:06 PM
**To:** Dan Bogden; Paul K. Charlton; David Iglesias; Carol Lam; McKay, John (Law Adjunct)
**Subject:** on another note

Mike Elston from the DAG's office called me today. The call was amiable enough, but clearly spurred by the Sunday Post article. The essence of his message was that they feel like they are taking unnecessary flak to avoid trashing each of us specifically or further, but if they feel like any of us intend to continue to offer quotes to the press, or organize behind the scenes congressional pressure, then they would feel forced to somehow pull their gloves off and offer public criticisms to defend their actions more fully. I can't offer any specific quotes, but that was clearly the message. I was tempted to challenge him and say something movie-like such as "are you threatening ME???", but instead I kind of shrugged it off and said I didn't sense that anyone was intending to perpetuate this. He mentioned my quote on Sunday and I didn't apologize for it, told him it was true and that everyone involved should agree with the truth of my statement, and pointed out to him that I stopped short of calling them liars and merely said that IF they were doing as alleged they should retract. I also made it a point to tell him that all of us have turned down multiple invitations to testify. He reacted quite a bit to the idea of anyone voluntarily testifying and it seemed clear that they would see that as a major escalation of the conflict meriting some kind of unspecified form of retaliation.

I don't personally see this as any big deal and it sounded like the threat of retaliation amounts to a threat that they would make their recent behind doors senate presentation public. I didn't tell him that I had heard about the details in that presentation and found it to be a pretty weak threat since everyone that heard it apparently thought it was weak.

I don't want to stir you up conflict or overstate the threatening undercurrent in the call, but the message was clearly there and you should be aware before you speak to the press again if you choose to do that. I don't feel like I am betraying him by reporting this to you because I think that is probably what he wanted me to do. Of course, I would appreciate maximum opsec regarding this email and ask that you not forward it or let others read it.

Bud

## Sampson, Kyle

**From:** Hertling, Richard
**Sent:** Tuesday, March 06, 2007 1:38 PM
**To:** Sampson, Kyle; Goodling, Monica; Roehrkasse, Brian; Scolinos, Tasia
**Subject:** FW: Cummins email for WEM review

**Attachments:** Cummins Email.pdf

-----Original Message-----
From: Wade, Jill C
Sent: Tuesday, March 06, 2007 12:32 PM
To: Hertling, Richard
Subject: Fw: Cummins email for WEM review

Sorry thought I cc'd you

Jill C. Wade
U.S. DEPARTMENT OF JUSTICE
Office of Legislative Affairs
(202) 514-3597

-----Original Message-----
From: Wade, Jill C
To: Moschella, William; Scott-Finan, Nancy
CC: Seidel, Rebecca
Sent: Tue Mar 06 11:50:08 2007
Subject: Cummins email for WEM review

I would not be surprised if this email is raised at WEM hearing today. See attached. (I faxed to catalina just now bc I am on Hill). I will have a summary from this SJC hearing on us atty resignations asap. Hearing is still going strong.

J

Jill C. Wade
U.S. DEPARTMENT OF JUSTICE
Office of Legislative Affairs
(202) 514-3597

Cummins Email.pdf
(57 KB)

-----Ori inal Message-----
From: Cabral, Catalina
To: Wade, Jill C; Scott-Finan, Nancy
Sent: Tue Mar 06 11:30:50 2007
Subject:

<<Cummins Email.pdf>>

Catalina Cabral
U.S. DEPARTMENT OF JUSTICE
Office of Legislative Affairs

Catalina.Cabral@USDOJ.gov
(202) 514-4828

# March 07, 2007

Wednesday

March 2007

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April 2007

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7 am

8 00

9 00

9:15am-10:15am USA Meeting (AG's Conference Room )

10 00

11 00

12 pm

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6 00

TaskPad

TaskPad

Notes

Sensitive/ Personnel: Not for distribution
PRIVACY ACT PROTECTED

## U.S. ATTORNEY ASSESSMENT

**Kevin Ryan (NDCA):** Appointed Aug. 2, 2002; term expired Aug. 2, 2006
*EOUSA General Counsel Scott Schools was appointed interim USA; 11 years as career federal prosecutor/First Assistant/manager w/ 9 months as interim USA in SC; plus 5 years in private practice*

- Significant management problems have manifested during his tenure.
- The district has become one of the most fractured offices in the Nation.
- Morale has fallen to the point that it is harming our prosecutorial efforts.
- The USA has lost the confidence of many of his career prosecutors.
- The problems here have been so significant that it has required multiple on-site visits by management and personnel experts from EOUSA.
- Although our Evaluation and Review Staff (EARS) reports are not an evaluation of the performance of a United States Attorney by his or her supervisor – in this case, we had two office-wide evaluations that detailed the problems within the management of this office, which dictated the need for a change.

**Carol Lam (SDCA):** Appointed Nov. 18, 2002; term expired Nov. 18, 2006
*Executive AUSA Karen Hewitt is interim USA; 6 years as career federal prosecutor/manager; 8 years as government litigator; 3 years in private practice*

- This is one of our largest offices in the country. In addition to all of the complex legal issues that occur in these extra-large districts, San Diego also faces a tremendous responsibility to effectively manage a border.

- She continually failed to perform in relation to significant leadership priorities – these were priorities that were well-known within the Department. They were discussed at our annual mandatory USA conferences, in speeches by Department leaders, in memos, in conference calls, and in a host of other ways.

- First, the President and Attorney General have made clear that border enforcement is a top priority. It's important to our national security and to our domestic security. Regardless of what was done by the office in this area, she failed to tackle this responsibility as aggressively and as vigorously as we expected and needed her to do. At the end of the day, we expected more.

- Ex: The President has made clear that he expects strong immigration enforcement efforts, but SDCA has only brought a fraction of the cases that other significant border districts are doing. While some good numbers on alien smuggling:
  - Only 422 illegal re-entry cases in 2005 where AZ did 1,491 and NM did 1,607;
  - Only 470 illegal entry cases in 2005 where AZ did 3,409 and NM did 1,194;
  - In June 2006, Sen. Feinstein wrote a letter to the AG complaining about the high prosecution guidelines which kept these numbers low.

- Writing about her concern for Ms. Lam's "restrictive prosecutorial guidelines," Sen. Feinstein stressed "the importance of vigorously prosecuting these type of cases so that California isn't viewed as an easy entry point for alien smugglers because there is no fear of prosecution if caught."

- More than 18 other members of Congress complained about her "catch and release" policies and her failure to let alien smugglers back out onto the street by raising prosecution guidelines too high.

- Second, the President and both Attorneys General in this Administration made clear that, after terrorism, gun crime is the top priority and an important tactic to fighting violent crime.

- SDCA has only brought a fraction of the cases of other extra-large districts. Despite its size and population, it ranks 91 out of 93 districts in terms of average numbers of firearms cases since FY 2000 (doing only an average of 18 cases).

- Third, rather than focusing on the management of her office, this USA spent a significant amount of her time trying cases – this is discouraged in extra-large districts, because these are offices that require full-time managers.

**John McKay (WDWA):** Appointed Oct. 30, 2001; term expired Oct. 30, 2005
*Criminal Chief Jeff Sullivan was appointed interim USA – 5 years as a career federal prosecutor after 27 years as the county prosecutor and 3 years in private practice.*

- Demonstrated a pattern of poor judgment in relation to the tactics he used to push for policy changes that were not in the best interest of the Department and without regard to the Department's appropriate channels and methods of evaluating policy.

- Placed extensive focus, and engaged in a significant amount of travel outside of the district to advocate policy changes, rather than focusing on running the office.

- The Department was aware that his district had a bad record with downward departures, failure to appeal downward departures, and that his policy focus was distracting him from the work of the office.

**Paul Charlton (AZ):** Appointed Nov. 14, 2001; term expired Nov. 14, 2005
*Chief AUSA Daniel Knauss was appointed interim USA; 32 ½ years as a career federal prosecutor, including 2 months as interim USA in that office in the past*

- Repeatedly took actions contrary to DOJ policy and procedure.

- Failed to implement the AG's instruction on a death penalty case, when federal law places the decision with the AG.

- Like McKay, Charlton demonstrated a pattern of poor judgment in relation to the tactics he used to push for policy changes without regard to the Department's appropriate channels and methods of evaluating policy.. He tried to mandate the FBI to institute a new policy to videotape all interviews with suspects without regard to the national policy taken by the FBI or all of the many reasons why this raises significant concerns that require substantial discussion.

- Despite the national focus the Attorney General requested for offices to focus on the federal crime of obscenity, which coarsens society, McKay failed to support the Department's prosecution of a case that was developed within his district.

- Worked outside of proper channels in seeking resources, without regard to the process or the impact his action would have on our other USAOs.

- [Contrary to guidance from Main Justice that it was poor judgment, he put an employee on "leave without pay" status so she could become a paid press secretary for a Republican running in the 2002 gubernatorial campaign against Governor Napolitano, the former U.S. Attorney. (Shortly thereafter, the employee left the USAO permanently.)]

**David Iglesias (NM):** Appointed Oct. 17, 2001; term expired Oct. 17, 2005
*First AUSA Larry Gomez is Acting USA; 27 years as career federal prosecutor/manager plus 2 years as local prosecutor*

- One of our large offices, New Mexico is a critically-important border district.

- Again, the President and Attorney General have made clear that border enforcement is a top priority. It's important to our national security and to our domestic security. Regardless of what was done by the office in this area, he failed to tackle this responsibility as aggressively and as vigorously as we expected and needed her to do.

- There was a perception that he traveled a lot, but that even when he was in the office he still delegated a vast majority of the management to his First Assistant. We expect our U.S. Attorneys, particularly those in critical districts, to be hands-on managers working hard to advance the work of the Department.

- Quite simply, now that Mr. Iglesias finished his four-year term (and then some) this was an area where we thought we could make a change to bring more dynamic leadership to the office.

**Dan Bogden (Nevada):** Appointed Nov. 2, 2001; term expired Nov. 2, 2005
*First AUSA Steve Myhre is Acting USA; 9 years as federal prosecutor/manager plus 5 years of private sector litigation and 8 years in the Marine Corps Judge Advocate*

- Similarly, Nevada is what we consider to be a very important district that was underserved.

- Given the large tourist population that visits each year, it's well-known that Las Vegas could present a target for terrorism. It has also struggled with violent crime, drugs, and organized crime. This is an office where we have the right to expect excellence and aggressive prosecution in a number of priority areas.

- Despite the national focus the Attorney General requested for offices to place on the federal crime of obscenity, which coarsens society, the USA failed to support the Department's prosecution of a case that was developed within his district.

- This is another district where, now that Mr. Bodgen has finished his four-year term (and then some), we thought we could make a change to bring more dynamic leadership to the office.

**Margaret Chiara (WDMI):** Appointed Nov. 2, 2001; term expired Nov. 2005
*Decision pending on who will lead the office until a new Senate-confirmed USA is identified.*

TRY TO AVOID SINCE NO PUBLIC STATEMENTS FROM CHIARA:

- We have briefed privately the reasons for the change in this district; however, Ms. Chiara has not made any public statements at this time, and out of respect for her silence, we'd say only that this office presented some management issues.

IF PUSHED:

- Under the USA's tenure, the office has become fractured, morale has fallen, and the USA has lost the confidence of several members of the leadership team and some career prosecutors.

- The problems here have required an on-site visit by management experts from our EOUSA to visit and mediate with members of the leadership team, and in the end, it was decided that new leadership would be appropriate to unite the office.

To do:
- call Kellers re when the President was briefed

Schumer Briefing Prep:

Ask:

1. - names & reasons
   - Griffin → write-up
   - EAUSA →
   - DOJ dissent →
   - EARS reports →
   - President told? →
   - any outside calls →
     rec'd about Lam →

I. A. Background – various experiences
   - make list of performance issues USAs
   - WH said ok
   - process

B. Who/why
   - names/bullets

C. Conspiracy theory
   down the tube
   - interim/presidential

II. Kevin Ryan: all mgmt
Carol Lam: aggregate hearing; gun stats; immigration; CHIP; [illegible]
Paul Charlton: death penalty e.g.; interlocution; top in FBI interviews
David Iglesias: lackluster performance > important
Don Bogden: lackluster performance (obscenity) distinct: Hawaii + Vegas
John McKay: judgment lacking; letter w/ other USAs grading
Margaret Chiara: fails to share info. inside District

AG's hearing
1.18.2007

FEINSTEIN:

Thank you.

You and I talked on Tuesday about what's happening with U.S. attorneys. And it spurred me to do a little research. And let me begin. Title 28, Section 541 states: "Each United States attorney shall be appointed for a term of four years. On the expiration of his term, a United States attorney shall continue to perform the duties of his office until his successor is appointed and qualified."

Now, I understand that there is a pleasure aspect to it. But I also understand what practice has been in the past.

We have 13 vacancies. Yesterday, you sent up two nominees for the 13 existing vacancies.

GONZALES:

We've now nominated, I think -- there have been 11 vacancies created since the law was changed; 11 vacancies in U.S. Attorneys' Offices. The president has now nominated as to six of those. As to the remaining five, we're in discussions with home-state senators.

And so let me publicly sort of preempt perhaps a question you're going to ask me, and that is: I am fully committed, as the administration's fully committed, to ensure that, with respect to every United States attorney position in this country, we will have a presidentially appointed, Senate-confirmed United States attorney.

GONZALES:

I think a United States attorney who I view as the leader, law enforcement leader, my representative in the community -- I think he has greater imprimatur of authority, if in fact that person's been confirmed by the Senate.

FEINSTEIN:

Now, let me get at where I'm going. How many United States attorneys have been asked to resign in the past year?

GONZALES:

Senator, you know, you're asking me to get into a public discussion about personnel...

FEINSTEIN:

No, I'm just asking you to give me a number. That's all. I'm asking you to give me a number. I'm asking...

GONZALES:

You know, I don't know the answer to that question. But we have been very forthcoming...

FEINSTEIN:

You didn't know it on Tuesday when I spoke with you. said you would find out and tell me.

GONZALES:

I'm not sure I said that, but...

FEINSTEIN:

Yes, you did, Mr. Attorney General.

GONZALES:

Well, if that's what I said, then that's what I will do. But we did provide to you a letter where we gave you a lot of information about...

FEINSTEIN:

I read the letter.

GONZALES:

OK.

FEINSTEIN:

It doesn't answer the questions that I have.

I know of at least six that have been asked to resign. I know that we amended the law in the Patriot Act and we amended it because if there were a national security problem, the attorney general would have the ability to move into the gap.

We did not amend it to prevent the confirmation process from taking place. And I'm very concerned. I've had two of them asked to resign in my state from major jurisdictions with major cases ongoing, with substantially good records as prosecutors.

And I'm very concerned, because, technically, under the Patriot Act, you can appoint someone without confirmation for the remainder of the president's term. I don't believe you should do that. We are going to try to change the law back.

GONZALES:

Senator, may I just say that I don't think there was any evidence that is what I'm trying to do. In fact, to the contrary, the evidence is quite clear that what we're trying to do is ensure that for the people in each of these respective districts we have the very best possible representative for the Department of Justice and that we are working to nominate people and that we are working with home state senators to get U.S. attorneys nominated.

So the evidence is just quite contrary to what your possibly suggesting.

Let me just say...

FEINSTEIN:

Do you deny that you have asked -- your office has asked United States attorneys to resign in the past year?

GONZALES:

Senator, that...

FEINSTEIN:

Yes or no?

GONZALES:

Yes.

No, I don't deny that. What I'm saying is -- but that happens during every administration during different periods for different reasons.

And so the fact that that's happened, quite frankly, some people should view that as a sign of good management. What we do is we make an evaluation about the performance of individuals, and I have a responsibility to the people in your district that we have the best possible people in these positions.

And that's the reason why changes sometimes have to be made, although there are a number of reasons why changes get made and why people leave on their own.

I think I would never, ever make a change in a United States attorney for political reasons or if it would in any way jeopardize an ongoing serious investigation. I just would not do it.

FEINSTEIN:

Well, let me just say one thing. I believe very strongly that these positions should come to this committee for confirmation.

GONZALES:

They are, Senator.

FEINSTEIN:

I believe very strongly we should have the opportunity...

GONZALES:

I agree with you.

FEINSTEIN:

... to answer (sic) questions about...

GONZALES:

I agree with you.

FEINSTEIN:

And I have been asked by another senator to ask this question, and I will: Was there any other reason for asking Bud Cummings of Arkansas to resign other than the desire to put in Tim Griffin?

GONZALES:

Senator, again, I'm not going to get into a public discussion about the merits or not with respect to personnel decisions.

I will say that I've had two conversations -- one as recanvassed, I think, yesterday -- with a senator from Arkansas about this issue. He and I are in a dialogue. We are -- I am consulting with the home state senator so he understands what's going on and the reasons why, and working with him to try to get this thing resolved; to make sure for his benefit, for the benefit of the Department of Justice that we have the best possible person manning that position.

FEINSTEIN:

If I could move on quickly. In 2000, the last year that the Bureau of Alcohol, Tobacco, Fire arms and Explosives issued a report with an analysis. It was revealed that 57 percent of all guns used in crimes in he United States had come from 1.2 percent of licensed gun dealers.

In other words, the majority of crimes were not coming from guns from the black market, but from a few licensed dealers.

Now, this information was really quite useful, but starting in 2004, the Congress added amendments on the CJS approps bill restricting BATFE's ability to share gun trace data with local jurisdictions.

In the 109th Congress, there was no CJS bill, so therefore, the gun trace data effort died in the Senate.

FEINSTEIN:

FEINSTEIN:

All right. I think that's fair. And I think we need to check it out. But I know places where it has not gone for law enforcement purposes. So I'd be happy to talk with you about that further.

My time is up. Thank you.

LEAHY:

I'm just wondering, during the -- when we take our break for lunch, would it be possible to get the numbers that Senator Feinstein has asked for?

GONZALES:

I think it's possible. I will certainly...

FEINSTEIN:

U.S. attorneys asked to resign.

GONZALES:

Senator, that's a number that I would like to share with you. I don't want to have a public discussion about personnel decisions. It's not fair, quite frankly, to the people.

LEAHY:

I'm just curious as to the numbers. I don't care who they are. I want to know the numbers.

Thank you.

Senator Kyl?

KYL:

Thank you, Mr. Chairman.

DAG's Hearing
2.6.2007

SEN. SCHUMER: Right. But I think you would agree that that would not be a good idea.

MR. MCNULTY: I would agree.

SEN. SCHUMER: Okay. Now let me ask you this. You do agree that a United States attorney can't be removed for a discriminatory reason -- because that person is a woman or black or -- do you agree with that?

MR. MCNULTY: Sure. I --

SEN. SCHUMER: So there are some limits here?

MR. MCNULTY: Well, of course, and there would certainly be moral limits and -- I don't know the law in the area of removal and relates to those special categories, but I certainly know that as a -- an appropriate thing to do -- would be completely inappropriate.

SEN. SCHUMER: Okay. And you do believe, of course, that a U.S. attorney could be removed for a corrupt reason --

MR. MCNULTY: Right.

SEN. SCHUMER: -- in return for a bribe or a favor? Okay. Now let me ask you this. Do you think it is good for public confidence and respect of the Justice Department for the president to exercise his power to remove a U.S. attorney simply to give somebody else a chance at the job? Let's just assume for the sake of argument that that's the reason. Mr. X, you're doing a very, very fine job but we'd prefer -- and you're in the middle of your term -- no one objects to what you've done -- but we prefer that Mr. Y take over. Would that be a good idea? Would that practice be wise?

MR. MCNULTY: I think that if it was done on a large scale, it could raise substantial issues and concerns. But I don't have the same perhaps alarm that you might have about whether or not that is a bad practice. If at the end of the first four-year term -- and of course all of our confirmation certificates say that we serve for a four-year term -- at the end of that four-year term, if there was an effort to identify and nominate new individuals to step in -- to take on a second term, for example, I'm not so sure that would be contrary to the best interest of the Department of Justice. It's not something that's been done -- it's not something that's being contemplated to do. But the turnover has already been essentially like that. We've already switched out more than half of the U.S. attorneys that served in the first term, so change is not something that slows down or debilitates the work of the Department of Justice.

SEN. SCHUMER: Right. But -- and all of these, these seven that we are talking about, they had completed their four-year terms, every one of them, but then had been in some length of holdover period.

MR. MCNULTY: Right.

SEN. SCHUMER: They weren't all told immediately at the end, or right before the end of their four-year term, to leave. Is that right?

MR. MCNULTY: That's correct.

SEN. SCHUMER: Okay. I still have a few minutes left, but I now have a whole new round of questioning and I don't want to break it in the middle, so I'm going to call on Senator Specter for his five minutes.

SEN. SPECTER: (Audio break) -- Chairman.

Mr. McNulty, were you ever an assistant U.S. attorney?

MR. MCNULTY: No, I wasn't.

SEN. SPECTER: Well, I was interested in your comment that the best job you had was U.S. attorney, and that's probably because you were never an assistant U.S. attorney -- (laughter) -- because I was an assistant district attorney, and that's a much better job than district attorney.

MR. MCNULTY: I've heard that from a lot of assistants. That's true.

SEN. SPECTER: The assistants just get to go into court and try cases and cross-examine witnesses and talk to juries and have a much higher level of sport than administrators who are U.S. attorneys or district attorneys.

Mr. McNulty, what about Carol Lam? I think we ought to get specific with the accusations that are made. Why was she terminated?

MR. MCNULTY: Senator, I came here today to be as forthcoming as I possibly can, and I will continue to work with the committee to provide information. But one thing that I do not want to do is, in a public setting, as the attorney general declined to do, to discuss specific issues regarding people. I think that it's -- it is unfair to individuals to have a discussion like that in this setting, in a public way, and I just have to respectfully decline going into specific reasons about any individual.

SEN. SCHUMER: Especially those of us who've been assistant district attorneys.

SEN. SPECTER: That's the standard, Mr. McNulty. So your qualifications are being challenged here. You haven't been an assistant U.S. attorney. (Laughter.)

SEN. SCHUMER: The senator from Rhode Island.

SEN. SHELDON WHITEHOUSE (D-RI): Thank you, Mr. Chairman.

Mr. McNulty, welcome. You're clearly a very wonderful and impressive man. But it strikes me that your suggestion that there is a clear factual record about what happened and that this was just turnover are both just plain wrong.

I start on the clear factual record part with the suggestion that has been made to The Washington Post, that the attorney general also made to us, and I'm quoting from the Post article on Sunday: "Each of the recently dismissed prosecutors had performance problems," which does not jibe with the statement of Mr. Cummins from Arkansas that he was told there was nothing wrong with his performance, but that officials in Washington wanted to give the job to another GOP loyalist. So right from the very get-go we start with something that is clearly not a clear factual record of what took place; in fact, there's -- on the very basic question of what the motivation was for these, we're getting two very distinct and irreconcilable stories.

MR. MCNULTY: Senator --

SEN. WHITEHOUSE: And I don't think that, if it's true, that as The Washington Post reported, six of the prosecutors received calls notifying them of their firings on a single day. The suggestion that this is just ordinary turnover doesn't seem to pass the last test, really. Could you respond to those two observations?

MR. MCNULTY: Yes, sir. Thank you.

Senator, first of all, with regard to Arkansas and what happened there and any other efforts to seek the resignation of U.S. attorneys, these have been lumped together, but they really ought not to be. And we'll talk about the Arkansas situation, as Senator Pryor has laid it out.

And the fact is that there was a change made there that was not connected to, as was said, the performance of the incumbent, but more related to the opportunity to provide a fresh start with a new person in that position.

With regard to the other positions, however --

SEN. WHITEHOUSE: But why would you need a fresh start if the first person was doing a perfectly good job?

MR. MCNULTY: Well, again, in the discretion of the department, individuals in the position of U.S. attorneys serve at the pleasure of the president. And because turnover -- and that's the only way of going to your second question I was referring to turnover -- because turnover is a common thing is U.S. attorneys offices --

SEN. WHITEHOUSE: I know. I turned over myself as a U.S. attorney.

MR. MCNULTY: -- bringing in someone does not create a disruption that is going to be hazardous to the office. And it does, again, provide some benefits.

In the case of Arkansas, which this is really what we're talking about, the individual who was brought in had a significant prosecution experience -- he actually had more experience than Mr. Cummins did when he started the job -- and so there was every reason to believe that he could be a good interim until his nomination or someone else's nomination for that position went forward and there was a confirmed person in the job.

SEN. WHITEHOUSE: Mr. McNulty, what value does it bring to the U.S. attorneys office in Arkansas to have the incoming U.S. attorney have served as an aide to Karl Rove and to have served on the Republican National Committee?

MR. MCNULTY: With all --

SEN. WHITEHOUSE: Do you find anything useful there to be an U.S. attorney?

MR. MCNULTY: Well, I don't know. All I know is that a lot of U.S. attorneys have political backgrounds. Mr. Cummins ran for Congress as a Republican candidate. Mr. Cummins served in the Bush- Cheney campaign. I don't know if those experiences were useful for him to be a successful U.S. attorney, because he was.

I think a lot of U.S. attorneys bring political experience to the job. It might help them in some intangible way. But in the case of Mr. Griffin, he actually was in that district for a period of time serving as an assistant United States attorney, started their gun enforcement program, did many cases as a JAG prosecutor, went to Iraq, served his country there and came back. So there are a lot of things about him that make him a credible and well-qualified person to be a U.S. attorney.

SEN. WHITEHOUSE: Having run public corruption cases, and having firsthand experience of how difficult it is to get people to be willing to testify and come forward, it is not an easy thing to do. You put your career,

SEN. HATCH: Thank you, Mr. Chairman.

SEN. SCHUMER: Senator Feinstein.

SEN. DIANNE FEINSTEIN (D-CA): Thank you very much, Mr. Chairman, and thank you for holding these hearings.

Mr. McNulty, I believe it was in the 2006 reauthorization of the Patriot Act when this amendment was slipped into the law, too. And it was slipped into the law in a way that I do not believe anyone on this committee knew that it was in the law. At least to my knowledge, no one has come forward and said, "Yes, we discussed this. I knew it was in the law." No Republican, no Democrat. I'd like to ask this question. Did you or any Justice staff make a series of phone calls in December to at least six United States attorneys telling them they were to resign in January?

MR. MCNULTY: I think I can say yes to that because I don't want to be -- talk about specific numbers. But phone calls were made in December asking U.S. attorneys to resign. That's correct.

SEN. FEINSTEIN: And how many U.S. attorneys were asked to resign?

MR. MCNULTY: Because of the privacy of individuals, I'll say less than 10.

SEN. FEINSTEIN: Okay, less than 10. And who were they?

MR. MCNULTY: Senator, I would, following the Attorney General's response to this question at his committee, in a public setting, I don't want to mention the names of individuals -- not all names have necessarily been stated, or if they have, they've not been confirmed by the department of Justice. And information like that can be provided to the committee in a private setting. But in the public setting, I wish to not mention specific names.

SEN. FEINSTEIN: And in a private session, you would be willing to give us the names of the people that were called in December?

MR. MCNULTY: Yes.

SEN. FEINSTEIN: Thank you very much.

Mr. Chairman, I think just by way of -- my own view is that the Patriot Act should not have been amended to change, and I know Senator Specter felt -- I know Senator Specter feels that we should simply return the language to the way it was prior to the reauthorization in 2006. And I am agreeable to this. So I think we have found a solution that, in essence, would give the United States attorney an opportunity to make a truly temporary appointment for a limited period of time, after which point if there -- no nominee has come up for confirmation or been confirmed, it would go to a judge. And I believe that -- we'll mark that up tomorrow and hopefully that would settle the matter.

In my heart of hearts, Mr. McNulty, I do believe -- I could not prove in a court of law -- but I do believe, based on what I was -- heard, is there was an effort made to essentially put in interim U.S. attorneys to give, as one person has said, bright young people of our party to put them in a position where they might be able to shine. That, in itself, I don't have an objection

Diego stated that it is forced to limit prosecution to only the worst coyote offenders, leaving countless bad actors to go free," closed quote. Isn't that a letter you received that said that?

MR. MCNULTY: I'm familiar with the letter.

SEN. SESSIONS: On October 13th of 2005, Congressman Darryl Issa wrote to U.S. Attorney Lamb complaining about her, saying this: "Your office has established an appalling record of refusal to prosecute even the worst criminal alien offenders," closed quote. And then on October 20th, '05, 19 House members wrote, quote -- to the Attorney General Gonzalez, to express their frustration, saying, quote, "The U.S. attorney in San Diego has stated that the office will not prosecute a criminal alien unless they have previously been convicted of two felonies in the District -- two felonies in the District," closed quote, before they would even prosecute, and do you see a concern there? Is that something that the attorney general and the president has to consider when they decide who their U.S. attorneys are?

MR. MCNULTY: Well, anytime the members of Congress, senators, House members, write letters to us we take them seriously and would give them the consideration that's appropriate.

SEN. SCHUMER: Thank you, Mr. McNulty. We'll have a second round if you want to pursue with Senator Sessions. Okay. I'm going to go into my second round, and I want to go back to Bud Cummins. First, Bud Cummings has said that he was told he had done nothing wrong and he was simply being asked to resign to let someone else have the job. Does he have it right?

MR. MCNULTY: I accept that as being accurate as best I know the facts.

SEN. SCHUMER: Okay. So in other words, Bud Cummins was fired for no reason. There was no cause --

MR. MCNULTY: No cause provided in his case as I'm aware of.

SEN. SCHUMER: None at all. And was there anything materially negative in his evaluations? In his EARs reports or anything like that? From the reports that everyone has received, he had done an outstanding job -- had gotten good evaluations. Do you believe that to be true?

MR. MCNULTY: I don't know of anything that's negative, and I haven't seen his reports or one that -- probably only one that was done during his tenure but I haven't seen it. But I'm not aware of anything that --

SEN. SCHUMER: Would you be willing to submit those reports to us even if we wouldn't make them public?

MR. MCNULTY: Right. Well, other than -- I just want to fall short of making a firm promise right now, but we know that you're interested in them and we want to work with you to see how we can accommodate your needs.

SEN. SCHUMER: So your inclination is to do it but you don't want to give a commitment right here?

MR. MCNULTY: Correct.

SEN. SCHUMER: Okay. I will -- as I said in my opening statement, if we can't get them I will certainly discuss with the chairman my view that we should subpoena them if we can't get them. This is serious matter. I don't think they should be subpoenaed. I think we should get them -- certainly a report like this which is a positive evaluation. Your reasoning there, at least as far as Cummings is concerned -- obviously you can make imputations if others are not released -- wouldn't hurt his reputation in any way.

MR. MCNULTY: I'd just say, Mr. Chairman, if you get a report, see a report, and it doesn't show something that you believe is cause, to me that's not an a-ha moment, because as I say right up front, those reports are written by peers --

SEN. SCHUMER: Understood. MR. MCNULTY: -- and they may or may not contain (cross talk) --

SEN. SCHUMER: But you did say earlier -- and this is the first we've heard of this -- that he was not fired for a particular reason -- that when he said he was being fired simply to let someone else have a shot at the job, that's accurate as best you can tell.

MR. MCNULTY: I'm not disputing that characterization.

SEN. SCHUMER: Okay. That's important to know. Now -- so then we go on to the replacement for Mr. Cummins. And again, as Senator Feinstein and others have said, there are all kinds of reasons people are chosen to be U.S. attorneys. But I first want to ask about this. Senator Pryor talked about allegations -- I think they were in the press he mentioned -- about his successor, Mr. Griffin, quote, "Being involved in caging black votes," unquote.

First, if there were such an involvement, if he did do that at some point in his job -- in one of his previous jobs -- do you think that could be -- that should be a disqualifier for him being U.S. attorney in a state like Arkansas, where there are obviously civil rights suits?

MR. MCNULTY: I think any allegation or issue that's raised against somebody has to be carefully examined, and it goes into the thinking as to whether or not that person is the best candidate for the job.

SEN. SCHUMER: Was Mr. Griffin given a thorough, thorough review before he was asked to do this job? And are you aware of anything that said he was involved in, quote, "caging black votes"?

MR. MCNULTY: First of all, in terms of the kind of review, there are different levels of review, depending upon what a person's going to be doing. If you're an interim, you're already, by definition, in the Department of Justice in one way or another, either in the office or in the criminal division or some other place. You already have a background check; you're already serving the American people at the Department of Justice. And so you may -- at that point, that has been sufficient, historically, to serve as an interim.

MR. MCNULTY: Right, but -- SEN. SCHUMER: -- and she's saying she was told she was passed over because of maternity leave. I'd have to check with my legal eagles, but that might actually be prohibited under federal law.

MR. MCNULTY: I don't know, but --

SEN. SCHUMER: I think that's probably true.

MR. MCNULTY: It should not be a factor in consideration of whether or not she would serve as the interim. And so I don't -- but I don't know if that is accurate.

SEN. SCHUMER: Can you, again, if you choose to -- I don't see any reason to do this in private, because this doesn't -- the reason you gave of not wanting to mention the EARs reports or others is you don't want to do any harm to the people who were removed. But would you be willing to come back to us and give us an evaluation as to whether that remark was, that that comment was true and whether she was fired because of -- passed over because of maternity leave? Could you come back to the committee and report to that?

MR. MCNULTY: Yes, I mean -- at this point I can say, to the best of my knowledge, that is not the case. In fact, Mr. Griffin was identified as the person who would become the interim and possibly become the nominee before the knowledge of her circumstances was even known.

SEN. SCHUMER: Okay. Again, I would ask that you come back and give us a report in writing as to why what she is saying is not true or is a misinterpretation, okay?

MR. MCNULTY: Okay.

SEN. SCHUMER: All right, now let me ask you this. You admitted, and I'm glad you did, that Bud Cummins was fired for no reason. Were any of the other six U.S. attorneys who were asked to step down fired for no reason as well?

MR. MCNULTY: As the attorney general said at the — his oversight hearing last month, the phone calls that were made back in December were performance related.

SEN. SCHUMER: Mm-hm. All the others?

MR. MCNULTY: Yes.

SEN. SCHUMER: But Bud Cummins was not one of those calls, because he had been notified earlier.

MR. MCNULTY: Right. He was notified in June of -

SEN. SCHUMER: Okay, so there was a reason to remove all the other six? MR. MCNULTY: Correct.

SEN. SCHUMER: Okay. Let me ask you this. I want to go back to Bud Cummins here. So here we have the attorney general adamant; here's his quote, "We would never, ever make a change in the U.S. attorney position for political reasons." Then we have now -- for the first time, we learn that Bud Cummins was asked to leave for no reason and we're putting in someone who has all kinds of political connections -- not disqualifiers, obviously, certainly not legally -- and I'm sure it's been done by other administrations as well. But do you believe that firing a well-performing U.S. attorney to make way for a political operative is not a political reason?

MR. MCNULTY: Yes, I believe that's it's not a political reason.

SEN. SCHUMER: Okay, could you try to explain yourself there?

MR. MCNULTY: I'll do my best. I think that the fact that he had political activities in his background does not speak to the question of his qualifications for being the United States attorney in that district. I think an honest look at his resume shows that while it may not be the thickest when it comes to prosecution experience, it's not insignificant either. He had been assistant United States attorney in that district to set up their Project Safe Neighborhoods program --

SEN. SCHUMER: For how long had he been there?

MR. MCNULTY: I think that was about a year or so.

SEN. SCHUMER: Yeah, I think it was less than that, a little less than that.

MR. MCNULTY: And he -- but he did a number of gun cases in that period of time. He's also done a lot of trials as a JAG attorney. He'd gone and served his country over in Iraq. He came back from Iraq and he was looking for a new opportunity. Again, he had qualifications that exceed what Mr. Cummins had when he started, what Ms. Casey had, who was the Clinton U.S. attorney in that district before she became U.S. attorney. So he started off with a strong enough resume, and the fact that he was given an opportunity to step in -- and there's one more piece of this that's a little tricky, because you don't want to get into this business of what did Mr. Cummins say here or there, because I think we should talk to him. But he may have already been thinking about leaving at some point anyway.

There are some press reports where he says that. Now, I don't know, and I don't want to put words in his mouth; I don't know what the facts are there completely. What I've been told, that there was some indication that he was thinking about this as a time for his leaving the office or in some window of time. And all those things came together to say in this case, this unique situation, we can make a change and this would still be good for the office.

SEN. SCHUMER: So you can say to me that you -- you put in your testimony you want somebody who's the best person possible.

MR. MCNULTY: Well, I didn't --

SEN. SCHUMER: Do you think Mr. Griffin is the best person possible? I can't even see how Mr. Griffin would be better qualified in any way than -- than Bud Cummins, who had done a good job, who was well respected, who had now had years of experience. There's somebody who served a limited number of months on a particular kind of case and had all kinds of other connections. It sure doesn't pass the smell test. I don't know what happened, and I can't -- you know, we'll try to get to the bottom of that. And I have more questions, but --

MR. MCNULTY: I didn't say "best person possible." If I used that as a standard, I would not become U.S. attorney.

We can't always account for that. But as far as the -- a reasonable perception and the factual, that would be a very significant consideration. I mean, we wouldn't do it if we thought it would, in fact, interfere with a case.

SEN. SCHUMER: So you thought it would -- so there were discussions about this specific case, and people dismissed any --

MR. MCNULTY: Any time we ask for someone to resign --

SEN. SCHUMER: Chilling effect, or even as Senator Whitehouse mentioned, the break in the continuity of important ongoing prosecutions. Was that considered in this specific instance?

MR. MCNULTY: Any time we do this, we would consider that. And may I say one more thing about it? What happened in the prosecution of Congressman Cunningham was a very good thing for the American people, and for the department of Justice to accomplish. We are proud of that accomplishment, and any investigation that follows from that has to run its full course. Public corruption is a top priority for this department, and we would only want to encourage all public corruption investigations, and in no way want to discourage them. And our record, I think, speaks for itself on that.

SEN. SCHUMER: Were you involved in the dismissal -- in the decision to dismiss Carol Lamb?

MR. MCNULTY: I was involved in all of this, not just any one person. But I was consulted in the whole decision process.

SEN. SCHUMER: Okay. And did you satisfy yourself that -- I mean, it would be hard to satisfy yourself without an appearance problem --

MR. MCNULTY: Right.

SEN. SCHUMER: -- because there obviously was going to be an appearance problem. On the other hand, certain factors, at least in the Justice Department, must have outweighed that. It would be hard to believe that Carol Lamb was dismissed without cause in your mind. You must have had some cause.

MR. MCNULTY: All of the changes that we made were performance-related.

SEN. SCHUMER: Mm-hmm. Okay. And we'll discuss that privately towards the end of the week. So I'm not going to try to put you on the spot here.

But I do want to ask you this. Did anyone outside the Justice Department, aside from the letters we have seen that Senator Sessions mentioned, urge that Carol Lamb be dismissed?

MR. MCNULTY: I don't -- I don't know.

SEN. SCHUMER: Could you get an answer to that?

MR. MCNULTY: You mean anyone said -- because those letters --

SEN. SCHUMER: Those are public letters.

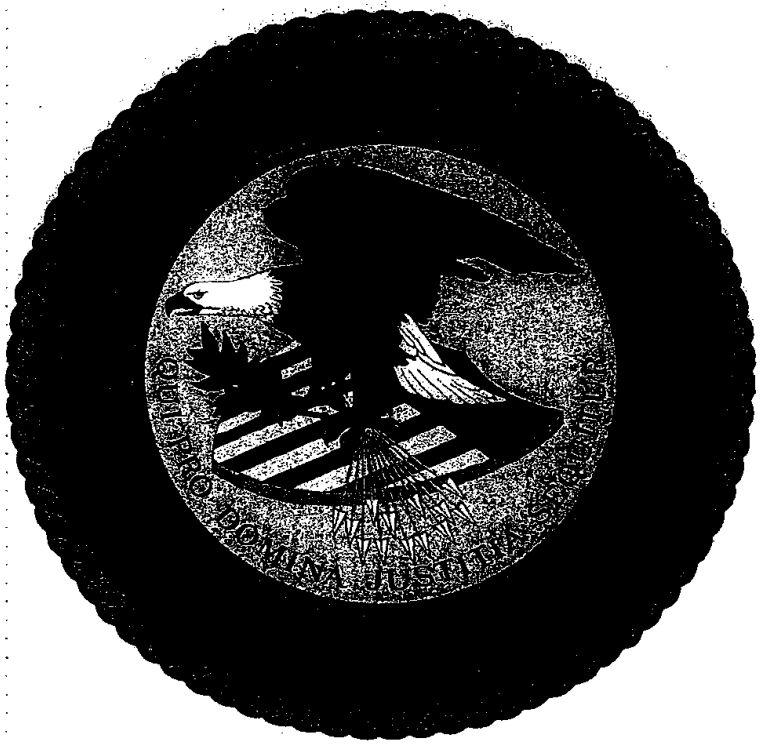
**From:** H.E. Cummins [mailto:[ ]
**Sent:** Tue 2/20/2007 5:06 PM
**To:** Dan Bogden; Paul K. Charlton; David Iglesias; Carol Lam; McKay, John (Law Adjunct)
**Subject:** on another note

Mike Elston from the DAG's office called me today. The call was amiable enough, but clearly spurred by the Sunday Post article. The essence of his message was that they feel like they are taking unnecessary flak to avoid trashing each of us specifically or further, but if they feel like any of us intend to continue to offer quotes to the press, or organize behind the scenes congressional pressure, then they would feel forced to somehow pull their gloves off and offer public criticisms to defend their actions more fully. I can't offer any specific quotes, but that was clearly the message. I was tempted to challenge him and say something movie-like such as "are you threatening ME???", but instead I kind of shrugged it off and said I didn't sense that anyone was intending to perpetuate this. He mentioned my quote on Sunday and I didn't apologize for it, told him it was true and that everyone involved should agree with the truth of my statement, and pointed out to him that I stopped short of calling them liars and merely said that IF they were doing as alleged they should retract. I also made it a point to tell him that all of us have turned down multiple invitations to testify. He reacted quite a bit to the idea of anyone voluntarily testifying and it seemed clear that they would see that as a major escalation of the conflict meriting some kind of unspecified form of retaliation.

I don't personally see this as any big deal and it sounded like the threat of retaliation amounts to a threat that they would make their recent behind doors senate presentation public. I didn't tell him that I had heard about the details in that presentation and found it to be a pretty weak threat since everyone that heard it apparently thought it was weak

I don't want to stir you up conflict or overstate the threatening undercurrent in the call, but the message was clearly there and you should be aware before you speak to the press again if you choose to do that. I don't feel like I am betraying him by reporting this to you because I think that is probably what he wanted me to do. Of course, I would appreciate maximum opsec regarding this email and ask that you not forward it or let others read it.

Bud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