

CRIMINAL CASES HANDLED PER CRIMINAL ATTORNEY WORKYEAR
FISCAL YEARS 1997-2006

	FY97	FY98	FY99	FY00	FY01	FY02	FY03	FY04	FY05	FY06
National Average	26	27.6	28.6	28.9	29.8	30	29	29.2	30.6	31.0
Average for Five Southwest Border Districts	54.5	64.4	72.5	79.2	82.4	85.9	85	85.8	89.5	91.2
Western District Of Tennessee	33.4	35.4	35.0	31.3	30.5	36.6	37.3	42.8	45.5	44.8

Caseload data extracted from the United States Attorneys' Case Management System. Cases handled is the sum of cases pending at the end of the fiscal year, added to cases filed during the current fiscal year.

National Average does not include the five Southwest Border Districts.

Cases pending is actual data as of the end of the prior fiscal year. FY 2006 numbers are actual data through the end of September 2006. Data may reflect a slight decrease in pending counts due to August 2006 LIONS centralization

AUSA workyears extracted from USA-5 Resource Summary Reports.

Workyears for the District of Columbia United States Attorney's Office have been adjusted to subtract out workyears devoted to the District of Columbia Superior Court.

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Average for Five Southwest Border Districts	54.5	64.4	72.5	79.2	82.4	85.9	85	85.8	89.5	91.2
Northern District Of Mississippi	25.8	22.3	21.1	25.4	27.7	25.5	21	24.6	24.2	22.7

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AUSA workyears extracted from USA-5 Resource Summary Reports.

Workyears for the District of Columbia United States Attorney's Office have been adjusted to subtract out workyears devoted to the District of Columbia Superior Court.

Long, Linda E

From: Mercer, William W
Sent: Wednesday, February 28, 2007 10:07 AM
To: Long, Linda E
Subject: Fw: Farewell, Adios, Good bye, Auf Weidersehen

Will you print this?

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

From: Mercer, Bill (USAMT) <Bill.Mercer@usdoj.gov>
To: Mercer, William W
Sent: Tue Feb 27 22:49:47 2007
Subject: FW: Farewell, Adios, Good bye, Auf Weidersehen

Sent from my GoodLink synchronized handheld (www.good.com)

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

From: Iglesias, David C. (USANM)
Sent: Tuesday, February 27, 2007 08:00 PM Eastern Standard Time
To: USAEO-USAttorneys
Subject: Farewell, Adios, Good bye, Auf Weidersehen

Dear friends and colleagues:

As King Solomon wrote more than 2,500 years ago, "there is a time for everything." It's time to say goodbye from this wonderful job. Tomorrow will be my last day as U.S. Attorney. It's been the most responsible job I've ever had and the second most exciting job I've ever had (nothing beats being launched off and landing on a Navy aircraft carrier). The years have been an unprecedented mixture of experiences, memories and accomplishments. Beyond the record number of criminal cases my AUSAs brought, I'm proud of my hard-working office and its 95% conviction rate. I'm proud to have successfully prosecuted the biggest political corruption case in New Mexico history. I'm proud of having nationally recognized Weed and Seed and PSN programs. But, it's more than just metrics, it's about forming friendships with many of you. I'll never forget going to Colombia and Mexico with Johnny Sutton, Paul Charlton and the late great Mike Shelby. I'll never forget visiting drug cartel lord Pablo Escobar's home in Medellin and realizing America saved Colombia from becoming the world's first "narcocracy." I'll never forget running in L.A.'s seedy MacArthur Park with Matt Whitaker in the early morning hours. I'll never forget speaking at Main Justice's Great Hall for Hispanic Heritage Month, or testifying before Congress, debating a member of Congress and Village Voice journalist on the Patriot Act, backseating an F-16, or getting an op-ed published on immigration reform in the Washington Times. I'll never forget former A.G. and Mrs. John Ashcroft giving us a walking tour of the Washington monuments at night. Heady stuff for a guy originally from Panama whose family is just one generation removed from subsistence living in the jungle.

As one of just several US Attorneys born outside the United States, I know the America dream lives. I'd like to thank President Bush for nominating me to be the United States Attorney almost 6 years ago. I am grateful to have been allowed the honor of making a difference in my community. We need US Attorneys who "maintain justice and do what is right" (Isaiah 56:1) and are willing to pay the price for doing so.

After taking off the month of March to decompress and performing Navy duty overseas in April, I will begin my new job. I haven't decided which of my options to pursue, but in the interim you can reach me at dciglesias@earthlink.net or 505.220.6150. I wish you all success in the next 22 months in keeping America safe against all enemies, foreign and domestic.

Respectfully,

David

Brinkley, Winnie

From: Mercer, Bill (USAMT) [Bill.Mercer@usdoj.gov]
Sent: Thursday, March 01, 2007 12:02 PM
To: Brinkley, Winnie
Subject: FW: Thank You

Please print

Sent from my GoodLink synchronized handheld (www.good.com)

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

From: Bogden, Daniel (USANV)
Sent: Thursday, March 01, 2007 11:48 AM Eastern Standard Time
To: USAEO-USAttorneysOnly
Subject: Thank You

Today is my last day as United States Attorney for the District of Nevada. I will always remember and think back fondly on the 16 1/2 years I have spent with the Department of Justice – all in Nevada. It has been a dream job and dream career and one that always made me enjoy each and every day on the job. Not only was it a challenging and interesting job but a fulfilling one in which you really could and did make a difference. When I was asked to serve as United States Attorney, I knew at that time that in accepting the position, I would be foregoing my career as an Assistant United States Attorney. It was a difficult decision at the time because I was giving up the best job in the world, that of being an Assistant United States Attorney – prosecuting criminals and keeping our nation, state and communities safe. I knew some day I would come to this juncture in my DOJ career. Well that day is upon me — I know my decision to choose a career in the Department of Justice was the right one and I would do it again without any hesitation. Because being an AUSA is now the 2nd best job in my world, surpassed only by being the United States Attorney for the District of Nevada — the best job in the world. So as I step down as United States Attorney, I have no regrets. I realize how much our office has accomplished and how much we have achieved. We have accomplished what we set out to do — to “make a difference”. We have done so in all aspects of our work – criminal, civil, appellate, asset forfeiture and FLU – in an outstanding manner. I want to thank each of you for your collegiality and comraderie. It has been an honor and privilege serving with each of you. So I say goodbye to each of you and all my colleagues in the Department of Justice and wish you all well.

The very best to each of you,

Dan

Contact information:

Long, Linda E

From: Elston, Michael (ODAG)
Sent: Wednesday, November 29, 2006 1:05 PM
To: Long, Linda E
Subject: Fw: Significant Observations for NDCA Special Review

Attachments: tmp.htm; NDCA SIGOBS.wpd

Could you print these for me and for Paul?

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

From: Margolis, David
To: Moschella, William; Elston, Michael (ODAG)
Sent: Mon Oct 30 10:03:53 2006
Subject: FW: Significant Observations for NDCA Special Review



NDCA SIGOBS.wpd
(96 KB)

This s not good

**United States Attorneys
Southern District of California (SDCA) – History of Contractor Support**

- In FY 1995, SDCA received approval to hire contractors to address border issues. Initially, the district was able to absorb these costs through surplus payroll. As part of this agreement, for every new full-time permanent support staff position allocated, the district agreed to reduce the contract staff by the same amount. Over the years, this agreement was not upheld and significant amounts of funding were provided to SDCA by EOUSA to pay for contractors because the payroll surplus had dried up. Below is a chart that shows the one times provided to SDCA over the past 4 years:

	Contractor Costs	Funds Provided by EOUSA
FY 2002	\$2,604,035	\$2,220,808
FY 2003	2,817,614	2,343,700
FY 2004	2,762,381	2,385,000
FY 2005	2,331,348	2,000,000

- In April 2004, a letter from the Acting Chief Financial Officer, Theresa C. Bertucci was sent to the USA outlining a plan to reduce SDCA's contractor support. The district was supposed to take any and all actions necessary to reduce contractor costs by \$450,000 in FY 2005. As reflected in the chart, the district reduced their one-time requests in FY 2005, but their number of support employees has not been reduced proportionately. EOUSA continues to give the district one-times in support of these contractors.
- Attached is a comparison of support staff to attorneys in all of the extra large districts. With their current 41 contractors, SDCA has the highest support to attorney ratio of any of the extra large districts. The average ratio is .96 support staff for every attorney. SDCA's ratio is 1.24 support staff for every attorney (see attached).
- In order for SDCA to achieve a ratio more in line with the other extra large Southwest Border districts of 1.00 support staff for every attorney, they would need to go from 41 contractors to 13.
- SDCA could begin this process by reducing two contractors per pay period beginning in pay period 3/February 5 and continue this process until pay period 13/July 8. For the remaining 6 pay periods in FY 2006, SDCA would have to reduce one contractor per pay period to get to the desired level of 13 contractors at the beginning of FY 2007.
- Already in FY 2006, SDCA has obligated approximately \$500,000 out of their litigation budget for contractor support. Based on the plan outlined above, an additional \$820,000 would need to be provided. Therefore, in total a one time in FY 2006 of \$1.32 million is required for SDCA to adhere to the above plan.

**AUSA to Support Staff Comparison
 Extra Large USAOs – FY 2006
 Southern California - includes 41 contractors**

Extra Large Districts	Attorney	Support*	Comparison Supt:Atty	Exceeds Average
Arizona	119	117	0.98	-0.02
California CD	259	212	0.82	
California ND	103	115	1.12	-0.16
California SD**	114	141	1.24	-0.28
DC	333	310	0.93	
Florida MD	101	101	1.00	-0.04
Florida SD	213	187	0.88	
Illinois ND	145	139	0.96	0.00
Massachusetts	104	89	0.86	
Michigan ED	98	113	1.15	-0.19
New Jersey	127	118	0.93	
New York ED	164	143	0.87	
New York SD	204	224	1.10	-0.14
Pennsylvania ED	122	112	0.92	
Texas SD	141	129	0.91	
Texas WD	110	110	1.00	-0.04
Virginia ED	110	100	0.91	
=====	=====	=====		
	2567	2460	0.96 Average	Extra Large

**AUSA to Support Staff Comparison
 Extra Large USAOs – FY 2006**

All SW Border Districts including SD CA at or below a ratio of 1.00
 In order to achieve lower ratio SD CA must reduce contractor support from 41 to 13

Extra Large Districts	Attorney	Support*	Comparison Supt:Atty	Exceeds Average
Arizona	119	117	0.98	-0.02
California CD	259	212	0.82	
California ND	103	115	1.12	-0.16
California SD	114	114	1.00	-0.04
DC	333	310	0.93	
Florida MD	101	101	1.00	-0.04
Florida SD	213	187	0.88	
Illinois ND	145	139	0.96	0.00
Massachusetts	104	89	0.86	
Michigan ED	98	113	1.15	-0.19
New Jersey	127	118	0.93	
New York ED	164	143	0.87	
New York SD	204	224	1.10	-0.14
Pennsylvania ED	122	112	0.92	
Texas SD	141	129	0.91	
Texas WD	110	110	1.00	-0.04
Virginia ED	110	100	0.91	
=====	=====	=====		
	2567	2433	0.95 Average	Extra Large

BULLETS

1. Immigration cases (criminal)

From EOUSA data - - FY 2006

Immigration Cases charged - - 1,514 (numbers charged for this category in each 2005 and 2006 are the lowest recorded since 1996)

From EOUSA data - - FY 2005

Immigration Cases charged - - 1,441

More than 2,000 charged in 200, 2003, and 2004

2. Firearms cases

Sentencing Commission data - - FY 2006

only 10 defendants sentenced for a firearms offense where it was the lead charge

compare with Western District of Texas

Sentencing Commission data for FY 06 show sentencings for 2,699 immigration offense defendants and 214 defendants guilty of firearms crimes.

Fiscal Year 2006 Guideline Sentences

CALIFORNIA, Southern



Gender, Race, and Ethnicity¹

	TOTAL		Male		Female	
TOTAL	2,535	100.0%	2,247	88.6%	288	11.4%
White	810	32.0%	686	84.7%	124	15.3%
Black	48	1.9%	41	85.4%	7	14.6%
Hispanic	1,664	65.6%	1,511	90.8%	153	9.2%
Other	13	0.5%	9	69.2%	4	30.8%

Departure Status²

TOTAL	2,491	100.0%
Sentenced Within Guideline Range	1,002	40.2%
Upward Departure from Guideline Range	4	0.2%
Upward Departure with <i>Booker</i> /18 U.S.C. § 3553	4	0.2%
Above Guideline Range with <i>Booker</i> /18 U.S.C. § 3553	5	0.2%
All Remaining Cases Above Guideline Range	2	0.1%
§5K1.1 Substantial Assistance Departure	152	6.1%
§5K3.1 Early Disposition Program Departure	1,003	40.3%
Other Government-Sponsored Below Guideline Range	75	3.0%
Downward Departure from Guideline Range	106	4.3%
Downward Departure with <i>Booker</i> /18 U.S.C. § 3553	12	0.5%
Below Guideline Range with <i>Booker</i> /18 U.S.C. § 3553	71	2.9%
All Remaining Cases Below Guideline Range	55	2.2%

Average Age ³	Mean	Median
TOTAL	33.3	31.0
Male	33.4	32.0
Female	31.9	29.0

Mode of Conviction ⁴		
TOTAL	2,637	100.0%
Plea	2,559	97.0%
Trial	78	3.0%

SENTENCING INFORMATION BY PRIMARY OFFENSE⁵

	TOTAL	Robbery	Larceny	Embezzlmt	Fraud	Drug Trafck	Counterftng	Firearms	Immigratn	All Other
	2,639	10	4	1	102	981	2	10	1,411	118

CASES INVOLVING PRISON⁶

Total Receiving Prison	2,506	10	1	1	79	942	1	9	1,369	94
Prison	2,344	6	1	1	74	881	1	9	1,291	80
Prison/Community Split	162	4	0	0	5	61	0	0	78	14
Prison Term Ordered										
Up to 12 Months	669	0	1	0	32	340	0	3	257	36
13-24 Months	936	0	0	0	27	186	0	0	700	23
25-36 Months	213	0	0	0	8	100	0	0	101	4
37-60 Months	466	4	0	1	7	179	0	1	259	15
Over 60 Months	198	6	0	0	2	126	0	4	46	14
Mean Sentence	28.0	87.8	10.0	48.0	18.7	32.0	-	48.9	24.9	31.5
Median Sentence	18.0	77.5	10.0	48.0	15.0	21.0	-	54.5	21.0	15.0

CASES INVOLVING PROBATION

Total Receiving Probation	109	0	3	0	22	35	1	1	23	24
Probation Only	77	0	2	0	15	28	1	1	15	15
Probation and Confinement	32	0	1	0	7	7	0	0	8	9

CASES INVOLVING FINES AND RESTITUTION⁷

Total Receiving Fines and Restitution	139	7	3	1	36	26	0	2	27	37
Median Dollar Amount	\$4,000	\$6,780	\$3,000	\$2,064.745	\$100,773	\$1,500	-	\$3,605	\$500	\$9,000

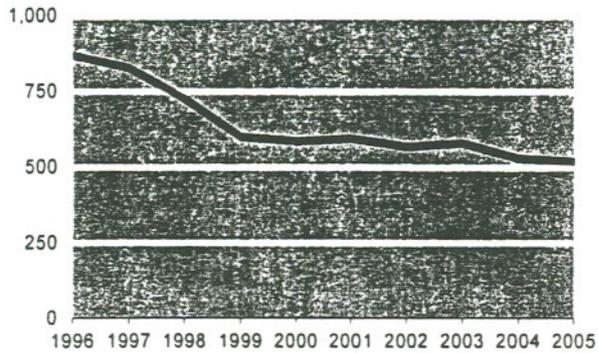
Footnotes and a complete description of all variables in this table are provided in Appendix A. SOURCE: U.S. Sentencing Commission, 2006 Datafile, USSCFY06.

San Diego, California

2005 Population: 1,272,148

Violent crime

Rate per 100,000 population



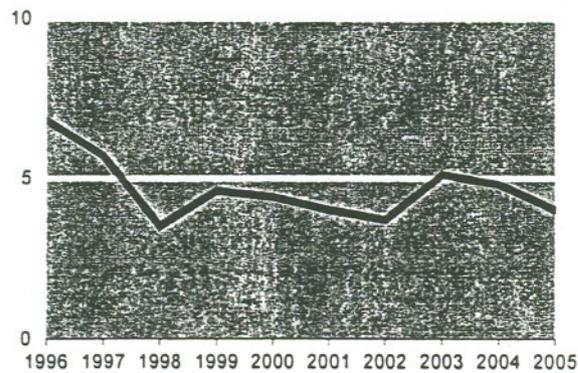
	Rate change
2004-2005	-2%
2001-2005	-13%
1996-2005	-40%

Number of violent crimes

2001	7,405
2002	7,193
2003	7,366
2004	6,774
2005	6,603

Murder

Rate per 100,000 population



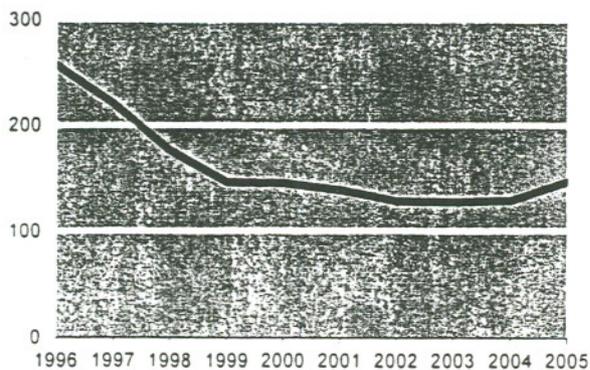
	Rate change
2004-2005	-17%
2001-2005	0%
1996-2005	-41%

Number of murders

2001	50
2002	47
2003	65
2004	62
2005	51

Robbery

Rate per 100,000 population



	Rate change
2004-2005	12%
2001-2005	6%
1996-2005	-43%

Number of robberies

2001	1,729
2002	1,627
2003	1,626
2004	1,650
2005	1,862

San Diego, California

Uniform Crime Reports Detail

Rate per 100,000 population

Year	Violent crime rate	Murder and nonnegligent manslaughter rate	Forcible rape rate	Robbery rate	Aggravated assault rate	Property crime rate	Burglary rate	Larceny- theft rate	Motor vehicle theft rate
1996	868.6	6.8	31.5	256.6	573.7	4401.5	736.8	2712.2	952.5
1997	827.7	5.7	32.5	220.2	569.4	4157.9	689.9	2553.9	914.0
1998	725.2	3.5	30.8	175.9	515.0	3788.3	609.5	2354.4	824.4
1999	598.4	4.6	28.7	146.3	418.8	3405.3	530.3	2108.7	766.3
2000	585.3	4.4	28.5	145.3	407.1	3204.1	549.0	1881.2	773.8
2001	594.2	4.0	27.4	138.7	424.0	3453.8	579.3	2010.2	864.3
2002	567.1	3.7	26.0	128.3	409.1	3384.8	602.3	1937.7	844.8
2003	578.7	5.1	31.9	127.8	414.0	3644.2	634.5	2022.3	987.4
2004	528.7	4.8	29.1	128.8	365.9	3546.4	570.1	1964.2	1012.2
2005	519.0	4.0	29.6	146.4	339.1	3632.7	586.6	1934.8	1111.3

Number of offenses

Year	Violent crime total	Murder and nonnegligent Manslaughter	Forcible rape	Robbery	Aggravated assault	Property crime total	Burglary	Larceny- theft	Motor vehicle theft
1996	10,148	79	368	2,998	6,703	51,425	8,608	31,688	11,129
1997	9,789	67	384	2,604	6,734	49,173	8,159	30,204	10,810
1998	8,744	42	371	2,121	6,210	45,677	7,349	28,388	9,940
1999	7,411	57	355	1,812	5,187	42,176	6,568	26,117	9,491
2000	7,160	54	349	1,777	4,980	39,199	6,717	23,015	9,467
2001	7,405	50	342	1,729	5,284	43,039	7,219	25,050	10,770
2002	7,193	47	330	1,627	5,189	42,931	7,639	24,577	10,715
2003	7,366	65	406	1,626	5,269	46,382	8,076	25,739	12,567
2004	6,774	62	373	1,650	4,689	45,443	7,305	25,168	12,970
2005	6,603	51	376	1,862	4,314	46,213	7,462	24,613	14,138

Sources: FBI Uniform Crime Reports prepared by the National Archive of Criminal Justice Data

Police employment

Year	Sworn	Civilian	Total
2000	2112	756	2868
2001	2154	760	2914
2002	2123	790	2913
2003	2062	761	2823
2004	2031	734	2765
2005	2070	753	2823

Source: FBI Uniform Crime Reports

City and State statistical profile

	San Diego	California
Population		
2003 estimate	1,266,753	35,484,453
Percent change, April 1, 2000 to July 1, 2003	3.5%	4.8%
Net change, April 1, 2000 to July 1, 2003	43,324	1,612,800
2000 census	1,223,400	33,871,648
Net change, 1990 to 2000	112,369	4,060,221
Percent change, 1990 to 2000	10.1%	13.6%
Demographic characteristics		
Age		
Persons under 5 years old, percent, 2000	6.7%	7.3%
Persons under 18 years old, percent, 2000	24.0%	27.3%
Persons 65 years old and over, percent, 2000	10.5%	10.6%
Gender		
Female persons, percent, 2000	49.6%	50.2%
Race and ethnicity		
White persons, percent, 2000 *	60.2%	59.5%
Black or African American persons, percent, 2000 *	7.9%	6.7%
American Indian and Alaska Native persons, percent, 2000 *	0.6%	1.0%
Asian persons, percent, 2000 *	13.6%	10.9%
Native Hawaiian and Other Pacific Islander, percent, 2000 *	0.5%	0.3%
Persons reporting some other race, percent, 2000 *	12.4%	16.8%
Persons reporting two or more races, percent, 2000	4.8%	4.7%
Persons of Hispanic or Latino origin, percent, 2000 **	25.4%	32.4%
Foreign born and language		
Foreign born persons, percent, 2000	25.7%	26.2%
Language other than English spoken at home, pct age 5+, 2000	37.4%	39.5%
Households		
Number and size of households		
Households, 2000	450,691	11,502,870
Persons per household, 2000	2.61	2.87
Homeownership rate, 2000	49.5%	56.9%
Income and poverty		
Median household income, 1999	\$45,733	\$47,493
Per capita money income, 1999	\$23,609	\$22,711
Persons below poverty, percent, 1999	14.6%	14.2%
Geography		
Land area, 2000 (square miles)	324	155,959
Persons per square mile, 2000	3,771.90	217.2

* includes persons reporting only one race

** Hispanics may be of any race, so also are included in applicable race categories.

San Diego

Questions for cities with decreases in violent crime:

Please be prepared to discuss the following questions with us during our visit, providing, when available, supporting evidence:

Decreased violence

1. To what do you attribute the decrease in homicides and/or robberies between 2004 and 2005? Robberies were up 2.3% in 2005 when compared to 2004.

2. Are you experiencing a decrease in 2006?
Slight decrease in homicides to date. We experienced about a 7% decrease so far in 2006.

Impact of changes in the population

3. Have there been any demographic or societal changes within your jurisdictions within the past few years that you believe have had an impact on the rates of violent crime? For example, large changes in population or the composition of the population, etc.
In some of our jurisdictions, there has been an increase in low income housing. In some of the Hispanic communities, many families are living under one roof. This increases our population density. Dense population causes increases in crimes related to violence.

4. What role has race/ethnicity or (illegal) immigrant status of victims or offenders played in the homicides/robberies in your jurisdiction in 2004 and 2005? Did this change in any way during the two years?

2004 Homicides: 60% of offenders were minorities

2004 Robberies: 60% of offenders were minorities

2005 Homicides: 70% were minorities

2005 Robberies: 60% of offenders were non Caucasian.

5. What proportion of the homicides and/or robberies in your jurisdiction was committed by juveniles in 2004-2005? By young adults? If there was a difference in that proportion during the past two years, to what do you attribute the change?

2004 Homicides: 12% were juvies

2004 Robberies: 18% were juvies

2005 Homicides: 1% were juvies

2005 Robberies: 20% were juvies

Role of gangs and drugs

6. What is the nature of the gang problem in your community? For example, does it involve local gangs or "crews" or national or regional gangs? What role have changes in gang violence played in the decreased violence in your community?

In our jurisdiction we have approximately 48 different gang affiliations. The total number of documented gang members is 3,164.

7. Did your community experience changes in drug markets or drug availability in 2005?

The availability is always high due to our close proximity to Mexico.

Firearms

8. What role have changes in the use or availability of guns played in the decrease? Have you seen changes in illegal gun trafficking either in volume and/or type from out of your jurisdiction or out of your state? Have you seen a change in the number of incidents involving shootings? Our gang investigators and task forces have noticed an increase in weapons seizures.

Changes in the characteristics of violence

9. (For homicide cities) Has there been a change in the percentage of murders committed in your jurisdiction by strangers or persons unknown to the victim?

No significant change. 20% of the suspects are unknown to the victim.

10. (For homicide cities) What proportion of the murders committed in your jurisdiction was domestic in nature or involved intimate partners? What programs are in place to assist victims of domestic/intimate partner violence? Have there been any changes during the past few years in these programs that have moderated or enhanced their impact?

2004 was 20%

2005 was less than 1%

2006 16%

11. (For robbery cities) Please provide the distribution of robberies in your jurisdiction by type (i.e., bank, street, convenience store, home invasion, etc.) for 2004 and 2005? Was there a change in the nature of robberies between 2004 and 2005?

In 2005, a noticeable increase in strong arm robberies from 2004.

Criminal Justice Resources

12. How many sworn officers did you have in your jurisdiction in 2004 and 2005? Were there any changes made in their deployment? If yes, what impact do you think that changes in available manpower played in the decrease in homicides and/or robberies?

In 2004 we had: 939 sworn

In 2005 we had: 859 sworn (80 positions down)

In 2005 we added the East County Gang Task Force. (SDSO, DA, Probation, La Mesa, ECPD, ICE, State Parole, ATF.

LGS Gang Suppression Team.
Regular gang and warrant sweeps.

13. Is there adequate prison and jail space in your state and community or are violent offenders being released early or not being held pre-trial?

No. Average daily population is over 5,200.

There is not adequate space in state prisons. They are pending a crisis and have threatened to stop accepting new admissions. The state prison overcrowding situation presents a very real threat to local governments. Our current county jail population is high, but within court-ordered limits by a narrow margin.

We do take advantage of all lawful early release mechanisms, including a 10% across-the-board reduction of sentences authorized by the court in our population monitoring lawsuit. We do not distinguish between violent and non-violent offenders in applying that sentence credit. With respect to pre-trial, we are fairly restrictive on acceptance of misdemeanors, and make significant use of book-and-release for DUI and other similar offenses.

14. Were there any significant changes in available financial and other resources to prevent or respond to crime between 2004 and 2005? If so, what was the nature of these changes? What impact do you believe that they had on the decrease in homicides/robberies?

Lots of grants, state and federal.

Programs

15. What new law enforcement programs or modifications to existing programs have been introduced in your jurisdiction to respond to homicides and/or robberies? What role did these programs play in the reduction in homicides and/or robberies in your jurisdiction? Please be as specific as possible in identifying new programs or changes in existing programs.

Gang Suppression Team (LGS)
US Marshals Fugitive Task Force

16. Are programs in place in your community to deal with reentry of offenders from prison? How effective are they in preventing recidivism?

For years, we have offered educational and vocational training programs aimed at improving offender outcomes. The State of California is currently trying to expand its prisoner reentry programming. Among their strategies is SB618, in which a partnership has been formed between state and local government. Instead of wasting valuable time while offenders sit in prison reception centers awaiting exams and assessment, those assessments will now be done in

jails prior to the prison transfer, in order that selected prisoners can get integrated into programming sooner. Inmates are selected from those with relatively short terms who will be paroled into the participating county.

We are also working with the State in trying to help them site a 500-bed reentry facility in the county. The concept involves a program-intensive secure facility operated by the State where persons pending parole to our county would receive services and get connected with parole officials, medical and mental health resources, employment assistance, etc.

It is too soon to evaluate any program effectiveness, but considering that parolees currently just step off a bus into our communities with no preparation suggests that the effectiveness of these efforts can only be positive.

17. What programs/resources are needed for your jurisdiction to continue to be successful in reducing the rate of homicide and/or robbery in the future?

Additional information

18. Please provide any additional information that you believe is pertinent to the discussion of the decrease in homicides and/or robberies in your jurisdiction between 2004 and 2005.

PSN - San Diego, CA

Context:

The United States Attorney's Office (USAO) for the Southern District of California (SDCA) is headquartered in San Diego with a branch office in El Centro, located in Imperial Valley. San Diego is a major urban center that is the second largest city in California and the seventh largest in the United States. As such, it experiences the array of criminal activities—violent, drug-related, and white collar—present in any metropolitan area. SDCA is affected substantially by its proximity to Mexico. Both San Diego County and Imperial County have large Mexican cities immediately to their south. Tijuana, directly adjacent to San Diego, has a population estimated at two million people and is Mexico's third largest and fastest growing city. San Diego and Tijuana taken together constitute the largest binational metropolis in the world. Similarly, Mexicali, bordering Imperial County on the south, is the state capital of Baja California and has a population estimated at over one million people.

SDCA is home to the largest concentration of navy and Marine Corps installations in the world. In addition to military bases, there are "pockets" of federal territorial jurisdiction on federal facilities throughout San Diego. For example, SDCA has exclusive jurisdiction over the old Customs House at the San Ysidro Port of Entry and concurrent jurisdiction with respect to the San Diego Metropolitan Correctional Center, which houses as many as 1,000 federal prisoners. Because of its location, SDCA continues to be a major corridor for both illegal immigration and illicit drug trafficking activities. Two of the three busiest land ports of entry on the Southwest Border are located in SDCA. The San Ysidro Port of Entry, 15 miles south of downtown San Diego, is the busiest land border crossing in the world—inspecting more than 46 million persons and 14 million vehicles annually. Three other ports of entry (Otay Mesa, Calexico/Mexicali, and Imperial Valley) as well as two additional inspection points (Tecate and Andrade) are within the jurisdiction.

Task Force:

According to information obtained recently from the USAO, the following are members of the PSN Task Force: United States Attorney's Office, San Diego County District Attorney's Office, San Diego City Attorney's Office, U.S. Probation Department, San Diego County Sheriff's Department; San Diego, Escondido, Chula Vista, El Cajon, National City, and La Mesa Police Departments; ATF; FBI; U.S. Marshals Service; North County Gang Task Force; Violent Crime Task Force; Fugitive Task Force; Children's Initiative, and San Diego Association of Governments; and San Diego Gang Commission. The task force meets the fourth Thursday of every month at the USAO. The USAO reports that these meetings have resulted in a re-energized Task Force to develop and implement PSN strategies. There is a new Grants Committee consisting of a former United States Attorney, former Police Chief, former U.S. Marshal, and an educator. The task force also established a Law Enforcement Subcommittee with San Diego Police Captain as chair.

Problem Analysis:

District reporting indicates that an assessment of the nature and scope of gun violence was undertaken based on other police data, crime mapping, crime incident reviews, community-level

data, and offender surveys/interviews/or focus groups. The sources of gun violence identified were gangs, drugs, domestic violence, felons in possession, corrupt FFLs, straw purchasers, Brady false statements and aliens in possession, with gangs noted as the most important. Also, the Task Force recently sent a survey to local law enforcement to ascertain gang information, such as, number of gangs, rate of growth, types of crimes occurring in their specific area, and any gaps in services.

Strategies:

In October 2005, the USAO reported using joint federal-local prosecution screening of firearms, increased federal prosecution of firearms cases, investigations of criminal organized gang violence, and use of education programs and school-based prevention initiatives. More recently, the USAO reports an improved case review process in firearm cases. The Task Force has also set the following goals for 2006-2007, some of which have already been met: aggressively investigate illegal possession and sale of firearms cases; increase the number of gun crime cases prosecuted by the USAO by 500%; distribute prosecution protocols and a DVD on PSN to every local, state, and federal law enforcement agency; conduct regional one-day firearms training session focused on federal firearms laws, firearms identification, and hidden compartments; produce and distribute to local media outlets three PSN radio and TV public service announcements regarding gun crime prosecution and prevention; conduct five PSN community educational forums regarding gun crime prevention (participants will include a police officer, prosecutor/judge, medical care provider - i.e., ER physician, victim, and ex-offender); introduce ATF's G.R.E.A.T. Program into four to five additional middle/high schools; distribute 6,000 PSN posters and 10,000 PSN book covers to area schools, recreation centers, businesses, etc.; secure billboard space for PSN ads in five areas of district; and conduct four "in-person" school visits by juvenile judge, prosecutor, police officer, probation officer, ex-offender, and victim.

In the outreach area, the PSN task force began negotiations to produce three DOJ-approved PSAs and for additional billboard space for the PSN message; secured additional funding for G.R.E.A.T. programs in high-risk schools; produced and distributed Gun Safety Posters, brochures, and book covers; conducted eight youth forums; conducted five community forums with parents and community representatives; and negotiated for five billboards and nine bus transit stops to post the PSN message.

Outcomes:

National Firearm Statistics

CASES FILED 2004	11,067
CASES FILED 2005	10,841
CASES FILED 2006	10,425
PERCENTAGE CHANGE 2004-2005	-2%
PERCENTAGE CHANGE 2005-2006	-3.8%
PERCENTAGE CHANGE 2000-2006	66%

DEFENDANTS 2004	12,962
DEFENDANTS 2005	13,062
DEFENDANTS 2006	12,479
PERCENTAGE CHANGE 2004-2005	0.8%
PERCENTAGE CHANGE 2005-2006	-4.5%
PERCENTAGE CHANGE 2000-2006	54.9%

Southern District of California Firearms Statistics

CASES FILED 1993	57
CASES FILED 2000	16
CASES FILED 2004	18
CASES FILED 2005	12
CASES FILED 2006	17
PERCENTAGE CHANGE 2004-2005	-33.3%
PERCENTAGE CHANGE 2005-2006	41.7%
PERCENTAGE CHANGE 2000-2006	6.3%

DEFENDANTS 1993	77
DEFENDANTS 2000	29
DEFENDANTS 2004	18
DEFENDANTS 2005	14
DEFENDANTS 2006	20
PERCENTAGE CHANGE 2004-2005	-22.2%
PERCENTAGE CHANGE 2005-2006	-42.9%
PERCENTAGE CHANGE 2000-2006	-31.0



DRAFT

U.S. ATTORNEY RESIGNATIONS

DISTRICT:	LEADERSHIP ASSESSMENT:	EARS:
<p>Dan Bodgen (NV) Term expired: Nov. 2, 2005 Called: Dec. 7, 2006 Resignation: Feb. 28, 2007</p>	<ul style="list-style-type: none"> • Very important district being underserved (Las Vegas target for terrorism, violent crime, drugs/organized crime). • Resistant to at least one leadership priority (obscenity task force). • <i>Lack of energy and leadership for highly visible district with serious crime issues.</i> • Resistant to security procedures 	<ul style="list-style-type: none"> • March 3-7, 2003 • USA Bogden is highly regarded by the federal judiciary, the law enforcement and civil client agencies, and the staff of the USAO. • AUSAs failed to consistently follow DOJ policies with regard to firearms prosecutions (924(c)), reporting adverse decisions and appellate practice.
<p>Paul Charlton (AZ) Term expired: Nov. 14, 2005 Called: Dec. 7, 2006 Resignation: Jan. 30, 2007</p>	<ul style="list-style-type: none"> • Repeated instances of defiance, insubordination, actions taken contrary to instructions, and actions taken that were clearly unauthorized. • Worked outside of proper channels without regard to the approved process or impact on others (i.e. budget resources). • Ex: multiple failures to follow AG's instruction on death penalty. <i>Sought contempt after "seek"</i> • Ex: required FBI to videotape interviews despite FBI policy. • Ex: refusal(?) to comply with a leadership priority (obscenity). • Ex: contrary to guidance from Main Justice that it was poor judgment, put an employee on "leave without pay" status so she could become a paid press secretary for the 2002 gubernatorial campaign (supporting the candidate who was challenging Napolitano). • <i>Border district</i> 	<ul style="list-style-type: none"> • December 8-12, 2003 • USA Charlton is well respected by the USAO staff, investigative and civil client agencies, local law enforcement community, Native American Nations, and judiciary regarding his integrity, professionalism, and competence. • The USA's and FAUSAs adherence to the chain of command in the Organizational Chart has led to a perception by some that he is inaccessible. • Perception among AUSAs that management is not open to suggestions of criticism. • Judges complain about inadequate AUSA of complaints prior to

general assessment:
 - Good job on gun cases

- judgment
 - management

management

personable

review

		<p>submission.</p> <ul style="list-style-type: none"> • AUSAs fail to follow DOJ policies regarding charging and pleas; lack knowledge of DOJ prior approval requirements for media and attorney subpoenas. • Corporate fraud not being addressed in Phoenix or Tucson. • Line civil AUSAs compromise bankruptcy claims without authority to do so. • Case management system not used/contains inaccurate information. • On one occasion, office erroneously appointed SAUSA an AUSA and did so without required security papers or drug test. 	<p>* * * * *</p>
<p>(NOT PUBLIC) Term expired: Nov. 2005 Called: Dec. 7, 2006 Resignation: anticipated Mar. 9, 2007 (NOT PUBLIC)</p> <p><i>skip to last</i></p>	<ul style="list-style-type: none"> • During USA's tenure, the office has become <u>fractured</u>, <u>morale has fallen</u>, and the <u>USA has lost the confidence of the leadership team</u> and some career prosecutors. • The problems here have required an <u>on-site visit by management experts</u> from our EOUSA to visit and mediate with members of the leadership team. <p><i>Border</i></p>	<ul style="list-style-type: none"> • July 12-16, 2004 • USA is a well regarded, hard-working, and capable leader who has the respect and confidence of the judiciary, the agencies, and USAO personnel. <u>Made significant improvements over prior, dysfunctional leadership.</u> • CRM division (3 managers rather than 1 CRM chief) hampers supervision/management of the division, • Structure prevents management from effectively managing resources in most areas of prosecution; <u>no</u> 	<p><i>Started of well b/c of prior problems</i></p> <p><i>Misc. Management issues</i></p>

		<p>assurance that DOJ priorities/policies being carried out.</p> <ul style="list-style-type: none"> • AUSAs with 5 yrs experience exempt from most review (e.g., intake decisions, plea agreements) and thus no idea whether those line AUSAs follow DOJ policies. • Noticeable differences in workload/productivity contribute to discontent in CRM division. *
<p>David Iglesias (NM) Term expired: Oct. 17, 2005 Called: Dec. 7, 2006 Resignation: Feb. 28, 2007</p>	<ul style="list-style-type: none"> • Critically-important border district being underserved. • Perceived to be an “<u>absentee landlord</u>” who relies on the FAUSA to run the office. • <i>Under performing generally</i> • <i>lack-luster manager</i> 	<ul style="list-style-type: none"> • November 14-18, 2006 • USA Iglesias is experienced in legal, management, and community relations work and is respected by the judiciary, agencies, and staff. • (Report does note heavy reliance on FAUSA to manage operations.) • Poor morale exists in Las Cruces due to appointment of inexperienced supervisor (and growing immigration caseload). • Insufficient resources assigned to growing criminal caseload. *
<p>Carol Lam (SDCA) Term expired: Nov. 18, 2006 Called: Dec. 7, 2006 Resignation: Feb. 15, 2007</p> <p><i>use of time management</i></p>	<ul style="list-style-type: none"> • Despite the significant management challenges and needs of an extra-large border district with complex litigation, she has focused too much attention and time on personally trying cases than managing the USAO. • Failure to perform in relation to significant leadership priorities (i.e. immigration and gun 	<ul style="list-style-type: none"> • February 7-11, 2005 • USA Lam is an effective manager of the USAO and a respected leader for the District. She is active in Department activities and is respected by the judiciary, law enforcement agencies, and the USAO staff.

	<p>crime).</p> <ul style="list-style-type: none"> • Ex: The President has made clear that he expects strong <u>immigration enforcement efforts</u>, but SDCA has only brought a fraction of the cases that other significant border districts are doing. While some good numbers on alien smuggling: <ul style="list-style-type: none"> - 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. • Ex: The President has made clear he expects <u>gun crime prosecution</u> to be a significant effort, but SDCA has only brought a fraction of the cases of other extra-large districts. Despite its size and population, it <u>ranks 91 out of 93 districts in terms of average numbers of firearms cases since FY 2000</u> (doing only an average of 18 cases). 	<ul style="list-style-type: none"> • While quality of cases is high, the number of immigration cases per AUSA work year statistically lower than other border USAOs; <u>quantity of some proactive investigative matters/cases is modest and not consistent with Department priorities (e.g., crimes against children)</u>. • <u>Morale issues noted in general crimes section.</u> • Problems with intake of firearms referrals – <u>ATF complains that it takes too long to get a prosecution decision.</u> • Indictment review too time consuming, esp. in routine cases. • AUSAs unfamiliar with DOJ policy requiring presentation of exculpatory evidence to grand juries. • Information security issues (improper transportation and disposal of computer media).
<p>John McKay (WDWA) Term expired: Oct. 30, 2005 Called: Dec. 7, 2006 Resignation: Jan. 31, 2007</p>	<ul style="list-style-type: none"> • Pattern of insubordination, <u>poor judgment</u>, and demonstration of <u>temperament issues</u> in seeking policy changes without regard to appropriate methods or tactics. • <u>Extensive focus and travel outside of district to advocate policy changes</u>, rather than proper focus on running the office. 	<ul style="list-style-type: none"> • March 13-17, 2006 • USA McKay is an effective, well-regarded, and capable leader of the USAO and the District's law enforcement community. • Some personnel not handling grand jury material appropriately; other information security issues.



	<p><i>large downward departures</i> ←</p>	<ul style="list-style-type: none"> • Noncompliance with Ashcroft memo noted. • Downward departures for substantial assistance not documented as required by DOJ policy.
<p>Kevin Ryan (NDCA) Term expired: Aug. 2, 2006 Called: Dec. 7, 2006 Resignation: Feb. 16, 2007</p>	<ul style="list-style-type: none"> • During his tenure, the office has become the <u>most fractured office in the Nation</u>, <u>morale has fallen</u> to the point that it is <u>harming our prosecutorial efforts</u>, and the USA has lost the confidence of many of the career prosecutors who are leaving the office. • The problems here have <u>required multiple on-site visits by management and personnel experts from EOUSA.</u> <p><i>Special Review</i></p>	<ul style="list-style-type: none"> • Special: March 27-31, 2006 • Overall, USA Ryan effectively manages relations with the outside agencies, the local community, and the judiciary, although some judges expressed concern that he does not adequately communicate with them. • Although, under USA Ryan's leadership, the USAO effectively manages its substantive work, <u>his management style and practices have contributed, at least in part, to low morale among a number of the line AUSAs in the Criminal Division in the San Francisco office.</u>
<p>Bud Cummins (EDAR) Term expired: Jan. 9, 2006 <i>(In April 2006, Cummins repeated previous statements that he would not stay for the whole second term and that he was leaving for private sector later that year)</i> Called: June 2006 Resigned: December 2006</p>	<ul style="list-style-type: none"> • He had completed his four-year term and indicated he would not stay for the entire second term, so we worked on developing a replacement plan. 	<p>[Requested]</p>



U.S. ATTORNEY RESIGNATIONS & REPLACEMENTS

DISTRICT:	ACTING/INTERIM SELECTION:	STATUS OF POTENTIAL NOMINEE:
Dan Bodgen (NV) Term expired: Nov. 2, 2005 Called: Dec. 7, 2006 Resignation: Feb. 28, 2007	(FAUSA has declined to be acting USA due to his pending casework; identifying and interviewing other candidates)	Sen. Ensign will recommend potential candidates.
Paul Charlton (AZ) Term expired: Nov. 14, 2005 Called: Dec. 7, 2006 Resignation: Jan. 30, 2007	Chief AUSA Daniel Knauss was appointed interim USA: <ul style="list-style-type: none"> • 34 ½ years as a federal prosecutor. • 2 years as an adjunct law professor. 	Senators McCain and Kyl recommended one candidate; candidate was interviewed 1/16/07.
(NOT PUBLIC) Term expired: Nov. 2, 2005 Called: Dec. 7, 2006 Resignation: Mar. 9, 2007 (NOT PUBLIC)	(Not yet interviewing, because vacancy is not public)	When USA announces resignation, the Administration will seek recommendations of potential candidates from the WH-designated Republican lead.
David Iglesias (NM) Term expired: Oct. 17, 2005 Called: Dec. 7, 2006 Resignation: Feb. 28, 2007	(Interviewed two career prosecutors to date; decision pending)	Sen. Domenici has recommended potential candidates; interviews were held 1/17/07.
Carol Lam (SDCA) Term expired: Nov. 18, 2006 Called: Dec. 7, 2006 Resignation: Feb. 15, 2007	(Interviewed four career prosecutors to date; decision pending)	Parsky Commission will recommend potential candidates.
John McKay (WDWA) Term expired: Oct. 30, 2005 Called: Dec. 7, 2006 Resignation: Jan. 31, 2007	Criminal Chief Jeffrey Sullivan was appointed interim USA: <ul style="list-style-type: none"> • 27 years as a state/local prosecutor; • 5 years as a federal prosecutor; • 3 years in private practice. 	Rep. Reichert has recommended potential candidates; interviews were held 2/9/07.
Kevin Ryan (NDCA) Term expired: Aug. 2, 2006 Called: Dec. 7, 2006 Resignation: Feb. 16, 2007	(Identifying and interviewing qualified career prosecutors; decision pending)	Parsky Commission will recommend potential candidates.

<p>Bud Cummins (EDAR) Term expired: Jan. 9, 2006</p> <p><i>(In April 2006, Cummins repeated previous statements that he would not stay for the entire second term and that he would be leaving for the private sector soon.)</i></p> <p>Called: June 2006 Resigned: December 2006</p>	<p>Tim Griffin:</p> <ul style="list-style-type: none"> • 2 years as a federal prosecutor (one year at DOJ plus one year full-time in the military); • 10 years in the JAG Corps, U.S. Army Reserve (now a Major); • 6 months as special assistant to the Assistant Attorney General for the Criminal Division; • 1 year as associate independent counsel, <i>In re: Henry Cisneros</i>; • 2 years as senior investigative counsel, House Gov't Reform Committee; • 1 year private practice; • Additional experience as special assistant to the President and RNC research director. 	<p>Administration is consulting with Senators Lincoln and Pryor.</p>
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- Originally recommended by Rep. for WDAR

FAUSA issue: Griffin was always our choice

**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)
 - ✓ Lisa Godbey Wood, SDGA, 2/07 (to become federal district court judge)
- **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).**

Full list of resignations since last March in reverse date order (14 total):

- Lisa Godbey Wood, SDGA (confirmed to be federal district court judge, but not yet appointed)
- *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 (4):

- 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, EDMO (to become federal court of appeals judge)

CURRENT & UPCOMING VACANCIES

Current vacancies (16):

- **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
- **Southern District of Georgia** (since 2/7/07) – waiting on additional names from senators

Publicly-announced or known upcoming resignations (8):

- **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

- **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)

Sending a Message

1) Important question

2) Fair analysis: no basis for concern.

3) At least 4 reasons:

1. If AG or I thought it was true, we wouldn't do it.

2. Public corruption is one of our top priorities, and the message out of Washington (and example) is strong pro-prosecution.

3. USAs have too much integrity.

4. Many agents and prosecutors are involved; can't slow them down even if we wanted to.

- Our intent was for this to send no message.
personal phone calls

Who Are They

- 1) AG declined to name them out of respect for their privacy and to avoid any unnecessary embarrassment.
- 2) Long practice on Capitol Hill to avoid harming individual reputations in public hearings.
- 3) Support appropriate briefings
- 4) Everyone had served their full 4 year term.
- 5) Less than 10

Why

- 1) AG has acknowledged that they were performance related.
- 2) Various degrees of dissatisfaction. Not for cause, but good reason.
- 3) Decided not to discuss with USA because it unavoidably leads to objections and comparisons.
- 4) *Further comment* May offer some information to Senators, but AG believes it's important to avoid getting into personnel decisions.
- 5) We do not need cause, so there is not necessarily an objective record.
- 6) Rule out: - Intent to interfere
- misconduct
- 7) Members concerns will always be given appropriate consideration.
- 8) Margolis involved and supportive.

EARs reports will not be of much help

stipulate

Arkansas

- 1) Griffin is well qualified. More prosecution experience than Cummins or Casey.
- 2) Griffin came back from Iraq and wanted an opportunity to serve.
- 3) Cummins was given 6 months notice — smooth transition.
- 4) Cummins served full 4 year term.
- 5) Not performance related.
- 6) Opportunity for new energy with a strong candidate.
- 7) Always intended to nominate after consultation with home-state senators Pryor and Lincoln.
objection will be given "substantial weight."
- 8) Cummins was politically active. ~~Congress~~

Stats

Since March 9, 2006

- 15 nominations (12 confirmed)
- 13 vacancies (5 nominations)

making good progress in most of the others.

- 23 opportunities to nominate and 15 nominations made.

private
notice

- 2 career interims named so far in 7 districts.

Balance of Power

- 1) Congressional oversight and DOJ accountability
- 2) Best to have Senate confirmed USAs
- 3) No evidence of abuse

AUSA Morale

- 1) Used to turnover
- 2) NAAUSA quote
- 3) Always my concern

Section Process

- 1) Same interview team for everyone.
- 2) Lead by long-time career DOJ lawyer
Dave Margolis.

WH personnel & counsel consulted -- POTUS appointments

§ 543. Special attorneys

(a) The Attorney General may appoint attorneys to assist United States attorneys when the public interest so requires.

(b) Each attorney appointed under this section is subject to removal by the Attorney General.

(Added Pub.L. 89-554, § 4(c), Sept. 6, 1966, 80 Stat. 618.)

HISTORICAL AND STATUTORY NOTES**Prior Provisions**

A prior section 543, Act June 25, 1948, c. 646, 62 Stat. 911, which related to oath of office for United States Marshals, was repealed by Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted in section 563 of this title by section 4(c) of Pub.L. 89-554.

§ 544. Oath of office

Each United States attorney, assistant United States attorney, and attorney appointed under section 543 of this title, before taking office, shall take an oath to execute faithfully his duties.

(Added Pub.L. 89-554, § 4(c), Sept. 6, 1966, 80 Stat. 618.)

HISTORICAL AND STATUTORY NOTES**Prior Provisions**

A prior section 544, Acts June 25, 1948, c. 646, 62 Stat. 911; Sept. 2, 1958, Pub.L. 85-856, 72 Stat. 1104, which related to bonds of United States marshals, was repealed by Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted in section 564 of this title by section 4(c) of Pub.L. 89-554.

545. Residence

(a) Each United States attorney shall reside in the district for which he is appointed, except that these officers of the District of Columbia, the Southern District of New York, and the Eastern District of New York may reside within 20 miles thereof. Each assistant United States attorney shall reside in the district for which he or she is appointed or within 25 miles thereof. The provisions of this subsection shall not apply to any United States attorney or assistant United States attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district. Pursuant to an order from the Attorney General or his designee, a United States attorney or an assistant United States attorney may be assigned dual or additional responsibilities that exempt such officer from the residency requirement in this subsection for a specific period as established by the order and subject to renewal.

(b) The Attorney General may determine the official stations of United States attorneys and assistant United States attorneys within the districts for which they are appointed.

(Added Pub.L. 89-554, § 4(c), Sept. 6, 1966, 80 Stat. 618, and

Title XXXII, § 320932, Sept. 13, 1994, 108 Stat. 2135; Pub.L. 109-177, Title V, § 501(a), Mar. 9, 2006, 120 Stat. 246.)

HISTORICAL AND STATUTORY NOTES**Effective and Applicability Provisions**

2006 Acts. Pub.L. 109-177, Title V, § 501(b), Mar. 9, 2006, 120 Stat. 246, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as of February 1, 2005."

Prior Provisions

A prior section 545, Act June 25, 1948, c. 646, 62 Stat. 911, which related to vacancies in the office of the United States Marshal, was repealed by Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted in section 565 of this title by section 4(c) of Pub.L. 89-554.

§ 546. Vacancies

(a) Except as provided in subsection (b), the Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant.

(b) The Attorney General shall not appoint as United States attorney a person to whose appointment by the President to that office the Senate refused to give advice and consent.

(c) A person appointed as United States attorney under this section may serve until the qualification of a United States Attorney for such district appointed by the President under section 541 of this title.

[(d) Repealed. Pub.L. 109-177, Title V, § 502, Mar. 9, 2006, 120 Stat. 246]

(Added Pub.L. 89-554, § 4(c), Sept. 6, 1966, 80 Stat. 618, and amended Pub.L. 99-646, § 69, Nov. 10, 1986, 100 Stat. 3616; Pub.L. 109-177, Title V, § 502, Mar. 9, 2006, 120 Stat. 246.)

HISTORICAL AND STATUTORY NOTES**Prior Provisions**

A prior section 546, Act June 25, 1948, c. 646, 62 Stat. 911, which related to the death of a marshal, was repealed by Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted in section 566 of this title by section 4(c) of Pub.L. 89-554.

§ 547. Duties

Except as otherwise provided by law, each United States attorney, within his district, shall—

(1) prosecute for all offenses against the United States;

(2) prosecute or defend, for the Government, all civil actions, suits or proceedings in which the United States is concerned;

(3) appear in behalf of the defendants in all civil actions, suits or proceedings pending in his district against collectors, or other officers of the revenue or customs for any act done by them or for the

§ 545. Residence

(a) Each United States attorney shall reside in the district for which he is appointed, except that these officers of the District of Columbia, the Southern District of New York, and the Eastern District of New York may reside within 20 miles thereof. Each assistant United States attorney shall reside in the district for which he or she is appointed or within 25 miles thereof. The provisions of this subsection shall not apply to any United States attorney or assistant United States attorney appointed for the Northern Mariana Islands who at the same time is serving in the same capacity in another district.

(b) The Attorney General may determine the official stations of United States attorneys and assistant United States attorneys within the districts for which they are appointed.

(Added Pub.L. 89-554, § 4(c), Sept. 6, 1966, 80 Stat. 618, and amended Pub.L. 95-530, § 1, Oct. 27, 1978, 92 Stat. 2028; Pub.L. 96-91, Oct. 25, 1979, 93 Stat. 700; Pub.L. 103-322, Title XXXII, § 320932, Sept. 13, 1994, 108 Stat. 2135.)

HISTORICAL AND STATUTORY NOTES**Prior Provisions**

A prior section 545, Act June 25, 1948, c. 646, 62 Stat. 911, which related to vacancies in the office of the United States Marshal, was repealed by Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted in section 565 of this title by section 4(c) of Pub.L. 89-554.

§ 546. Vacancies

(a) Except as provided in subsection (b), the Attorney General may appoint a United States attorney for the district in which the office of United States attorney is vacant.

(b) The Attorney General shall not appoint as United States attorney a person to whose appointment by the President to that office the Senate refused to give advice and consent.

(c) A person appointed as United States attorney under this section may serve until the earlier of—

(1) the qualification of a United States attorney for such district appointed by the President under section 541 of this title; or

(2) the expiration of 120 days after appointment by the Attorney General under this section.

(d) If an appointment expires under subsection (c)(2), the district court for such district may appoint a United States attorney to serve until the vacancy is filled. The order of appointment by the court shall be filed with the clerk of the court.

(Added Pub.L. 89-554, § 4(c), Sept. 6, 1966, 80 Stat. 618, and amended Pub.L. 99-646, § 69, Nov. 10, 1986, 100 Stat. 3616.)

HISTORICAL AND STATUTORY NOTES**Prior Provisions**

A prior section 546, Act June 25, 1948, c. 646, 62 Stat. 911, which related to the death of a marshal, was repealed by Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted in section 566 of this title by section 4(c) of Pub.L. 89-554.

§ 547. Duties

Except as otherwise provided by law, each United States attorney, within his district, shall—

(1) prosecute for all offenses against the United States;

(2) prosecute or defend, for the Government, all civil actions, suits or proceedings in which the United States is concerned;

(3) appear in behalf of the defendants in all civil actions, suits or proceedings pending in his district against collectors, or other officers of the revenue or customs for any act done by them or for the recovery of any money exacted by or paid to these officers, and by them paid into the Treasury;

(4) institute and prosecute proceedings for the collection of fines, penalties, and forfeitures incurred for violation of any revenue law, unless satisfied on investigation that justice does not require the proceedings; and

(5) make such reports as the Attorney General may direct.

(Added Pub.L. 89-554, § 4(c), Sept. 6, 1966, 80 Stat. 618.)

HISTORICAL AND STATUTORY NOTES**Prior Provisions**

A prior section 547, Acts June 25, 1948, c. 646, 62 Stat. 912; Oct. 18, 1962, Pub.L. 87-845, § 8, 76A Stat. 699, which related to powers and duties of marshals, was repealed by Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632, and reenacted in section 569 of this title, by section 4(c) of Pub.L. 89-554.

§ 548. Salaries

Subject to sections 5315 through 5317 of title 5, the Attorney General shall fix the annual salaries of United States attorneys, assistant United States attorneys, and attorneys appointed under section 543 of this title at rates of compensation not in excess of the rate of basic compensation provided for Executive Level IV of the Executive Schedule set forth in section 5315 of title 5, United States Code.

(Added Pub.L. 89-554, § 4(c), Sept. 6, 1966, 80 Stat. 618, and amended Pub.L. 98-473, Title II, § 1701(a), Oct. 12, 1984, 98 Stat. 2184.)

HISTORICAL AND STATUTORY NOTES**Prior Provisions**

A prior section 548, Act June 25, 1948, c. 646, 62 Stat. 912, which related to administration of oaths by marshals, was repealed by Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 632.

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).**

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, EDMT (to become federal court of appeals judge)*

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)

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

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)

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)

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.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 31, 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, Mr. Griffin has served for more than a decade in the U.S. Army Reserve, Judge Advocate General's Corps, for whom he has prosecuted more than 40 criminal cases, including cases of national significance. Mr. Griffin's military experience includes recent service in Iraq, for which he was awarded the Combat Action Badge and the Army Commendation Medal. Importantly, Mr. Griffin is a "real Arkansan" with genuine ties to the community. Based on these qualifications, Mr. 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.

DAG000000254

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.

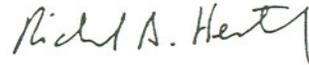
Enclosed is information regarding the exercise of the Attorney General's authority to appoint interim United States Attorneys. As you will see, the enclosed information establishes conclusively that the Administration is committed to having a Senate-confirmed United States Attorney in all 94 federal districts. Indeed, every single time

Letter to the Honorable Mark Pryor

Page 3

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

Enclosure

DAG000000256

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.

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MARK PRYOR
ARKANSAS

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HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS

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SMALL BUSINESS AND
ENTREPRENEURSHIP

United States Senate

WASHINGTON, DC 20510

January 11, 2007

The Honorable Alberto Gonzales
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Dear Attorney General Gonzales:

I am writing this letter to express my displeasure regarding your appointment of Tim Griffin as Interim U.S. Attorney for the Eastern District of Arkansas. As you will recall, we discussed this matter in two telephone calls (Wednesday December 13, 2006, and December 15, 2006) in which I informed you of my reservations.

First, it is clear (from events that occurred in July and August 2006), that there was an attempt to force then U.S. Attorney Cummins to resign. At that time, my office expressed my concern to the White House Counsel regarding this matter, and Mr. Cummins was able to remain in his position until the end of December. While I am pleased that his service was extended, I am left with the conclusion that the purpose for the dismissal of Mr. Cummins was to appoint Mr. Griffin.

Second, I am astonished that the reason given by your office for the interim appointment is that the First Assistant U.S. Attorney is on maternity leave and therefore would not be able to perform the responsibilities of the appointment. This reason was given to my Chief of Staff, to the news media, and to me by your liaison in a meeting this week. This concerns me on several levels, but most importantly it uses pregnancy and motherhood as conditions that deny an appointment. While this may not be actionable in a public employment setting, it clearly would be in a private employment setting. The U.S. Department of Justice should never discriminate against women in this manner.

Finally, and most importantly, the appointment undermines the Senate confirmation process. The authority granted to the Attorney General to make an interim appointment for an indefinite time was given pursuant to the Patriot Act. I believe that in using this provision, the Attorney General should articulate a national security or law-enforcement need that necessitates such an appointment. You have failed to do so in this case. In fact, as cited above, the reason articulated is at worst grossly deficient, and at best, a poor pretense.

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For me personally this last point is most troublesome. When the Patriot Act was up for reauthorization, you called me and discussed the importance of its passage. I told you that while there were items in the Act that concerned me, I trusted that the spirit of the law would be upheld. It has also come to my attention that there may have been other similar appointments made under this provision of the Patriot Act. Therefore, I believe that the spirit of the law regarding this interim appointment (and perhaps others) has been violated. As such, I am pushing for a legislative change. I have signed on to a Bill that would strike the previous amended language and restore appointment authority to the original 120 days.

I am quite sure that you may not agree with some or all of my conclusions, therefore, I await your response and I appreciate your cooperation in this matter.

Sincerely,



Mark Pryor

Sent via facsimile

Published 12/30/2004

The Insider Dec. 30

Holiday schedules Among the Arkansas congressional delegation, constituent service during the holiday season is something that senators can't be bothered with. Then again, they only have to run for re-election every six years, so who cares? Calls to the Little Rock and Washington, D.C., offices of U.S. Sens. Blanche Lincoln and Mark Pryor yielded recorded messages informing us that no one would be available from Dec. 23-Jan. 3. The House members had varying policies. U.S. Reps. Vic Snyder and John Boozman kept their Arkansas offices open through the holidays except for Christmas Eve and New Year's Eve. U.S. Rep. Marion Berry operated his Jonesboro office from 10 a.m.-2 p.m. most days, but closed it on Dec. 23-24 and 30-31. Perhaps the loftier ambitions of U.S. Rep. Mike Ross are evident in his senatorial decision to shutter his offices from Dec. 23-Jan. 3.

Gen. Clark, the TV series A New York Post gossip column recently reported that retired Gen. Wesley Clark, the former presidential candidate from Arkansas, is "working on a sitcom." Clark's office told us that the Post exaggerated his role in the project, especially by saying that Clark was "writing" the TV show and would "pitch" it to networks next year. In reality, Clark's associates insist that he is merely serving as a consultant in the development of the idea. "General Clark is contributing to a show concept of an officer returning to his hometown after a career in the military," Clark's office said. "Gen. Clark is primarily focused on his business but continues to be involved in numerous other projects." That would include plotting a future political career, of course.

Legal action It's a low-priority public issue, but tens of millions of dollars are at stake in plans to establish tax increment finance districts in, among others, Fayetteville, Rogers, Bentonville, Lowell, Johnson, North Little Rock, Sherwood and Jonesboro. They will divert local property taxes to subsidize private developments in already prosperous areas. Schools, but not other local tax units, will be made whole by the Arkansas legislature, meaning Arkansas taxpayers. Columnist Max Brantley has been griping about this at some length recently. We hear he may soon have a valuable ally. There's solid indication a lawsuit could be filed shortly against the whole TIF scheme in Arkansas. TIF projects already underway have no guarantee they'd be grandfathered.

Four more years? We were talking to U.S. Attorney Bud Cummins a while back on another subject and happened to ask about his plans, now that George W. Bush is set to serve another four years as president. Cummins (we forgot to mention earlier) said he went into the election with no contingency plans, so was relieved by Bush's victory not to have to make any sudden decisions. Now completing his third year in the office, 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.

<http://www.arktimes.com/articles/articleviewer.aspx?ArticleID=1d6008ff-5b23-4871-b95d-4825be0256d6>

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NewsRoom

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August 24, 2006

Volume 32; Issue 51

THE INSIDER

Anonymous

The final days

US. Attorney **Bud Cummins** of Little Rock says he'll likely be leaving his job in the next few "weeks or months," but almost certainly by the end of the year. He'd earlier told us he didn't intend to serve out the entirety of the Bush administration's second term and that he'd be looking for private sector work.

More newsy, perhaps, is who Cummins' successor might be. Informed sources say one possibility for a White House nomination is Tim Griffin, an Arkansas native who has worked in top jobs at both the Republican National Committee and the White House on hardcharging political opposition research.

Though Griffin, currently finishing a military obligation, spent one year in Little Rock as an assistant U.S. attorney, his political work would likely get more attention - and Democratic opposition - in the Senate confirmation process. He'd likely have to endure some questioning about his role in massive Republican projects in Florida and elsewhere by which Republicans challenged tens of thousands of absentee votes. Coincidentally, many of those challenged votes were concentrated in black precincts.

If not Griffin, state Rep. Marvin Childers is another Arkansas lawyer whose name has been mentioned by prominent Republicans to serve out Cummins' term.

No carrying charge

Word comes from Little Rock City Hall that Simon Property Group, more than five years late, has finally paid the \$25,000 it promised to contribute to a University Avenue development study by the Urban Land Institute. Simon, which manages the decrepit and failing University Mall, stiffed the city on the debt after it lost its bid to build the new Summit Mall, on account of citizen opposition. City officials reminded Simon of the May 2001 bill at a recent meeting in Indianapolis

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over the sorry state of University Mall.

No, Simon paid no interest on the 63month-late payment. You can bet one of their mall tenants would have added interest - \$5,000 or so at 4 percent per annum - on a past-due account.

Tipping point

Subscribers to the Arkansas Democrat-Gazette have been seeing a little something extra on their subscription invoices lately: a typed notation stating that because of the increase in gas prices, their paper carrier would appreciate tips.

D-G general manager Paul Smith said that the note was added recently as a way of helping out carriers, who are independent contractors. Carriers buy the paper at a wholesale rate, and then sell the paper to subscribers on their route. Smith said the wholesale rate varies from carrier to carrier based on the concentration of subscribers on their route, with carriers in rural areas paying less per paper than those in the city. Because they are independent contractors, Smith said the only way to raise the amount carriers make is to either raise the price of the paper, or ask for tips. Why not cut the wholesale rate? Said Smith: "After the carrier gets his cut, there is usually not enough left. . . to pay for the paper. We make all of our money on advertising," he said. "If we reduce our wholesale rate, we're going to go in the hole more on the cost of the newspaper. It's just a matter of economics."

---- INDEX REFERENCES ----

COMPANY: SIMON SA

REGION: (USA (1US73); Americas (1AM92); Arkansas (1AR83); North America (1NO39))

Language: EN

OTHER INDEXING: (INSIDER; PROPERTY GROUP; REPUBLICAN; REPUBLICAN NATIONAL COMMITTEE; REPUBLICANS; ROCK; SENATE; SIMON; UNIVERSITY AVENUE; UNIVERSITY MALL; URBAN LAND INSTITUTE; WHITE HOUSE) (Bud Cummins; Bush; Coincidentally; Cummins; Griffin; Informed; Marvin Childers; Paul Smith; Smith; Tim Griffin; Word)

Word Count: 631

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Elston, Michael (ODAG)

From: Tim Griffin [griffinjag@comcast.net]
Sent: Monday, February 05, 2007 8:09 PM
To: Goodling, Monica
Subject: I have one more or so.
Importance: High

That guy is a British reporter who accepted some false allegations and made a story up. That's why no other national press picked it up in 2004. Now Palast (who wrote about it the first time in 2004) has written about it again. It is all about an election year.

The RNC was in no way trying to keep anyone from voting.

During the closing weeks of the 2004 presidential campaign when Mighty Mouse, Donald Duck, etc. were registering to vote. Voter registration fraud was rampant. That was the context.

The real story is this:

There were thousands of reported illegal/fake voter registrations around the country, so some of the Republican State Parties mailed letters welcoming new voters to the newly registered voters. Many, thousands, of the letters came back marked "return to sender," etc. because the address given in the registration did not exist. The RNC was asked to assist the State Parties with reviewing the thousands of letters that were kicked back. The RNC tried to identify if the addresses were real addresses because in some cases telephone poles, vacant buildings, and strip malls were found when the addresses were determined in person by folks on the ground. The results of that analysis is what was ultimately given to Greg Palast—nothing but an excel file full of addresses—some phoney, some not. (One of the emails sent by Tim Griffin an email on it that a campaign staffer had spelled wrong so it went to the mailbox—a dead letter office of email if you will—that a Democrat had set up. That's how they discovered the email with "caging" on it and tried to make a story out of it.)

In the world of direct mail, with which I am not intimately familiar, "caging" is the process of taking returned mail and organizing it in a spreadsheet--basically separating the "real" addresses from the bad ones. If you type caging in on the internet with Direct Mail, you will see that caging is a term of art. Hence, the use of the word caging for the file.

The Republican State Parties ultimately wanted to show that thousands of fraudulent voter registrations had been completed. They ultimately did..

That is all there is to it. Some bloggers, etc. tried to spin it in the last week of the election as the Republicans trying to keep minorities from voting, but that was a lie.

Elston, Michael (ODAG)

From: Tim Griffin [griffinjag@comcast.net]
Sent: Monday, February 05, 2007 8:07 PM
To: Goodling, Monica
Subject: HERE IS THE GREG PALAST ARTICLE
Importance: High

HERE IS THE ARTICLE THAT GREG PLAST WROTE THIS SUMMER: he has written several variations on the same theme. google bbc caging and greg palast and you will see all sorts of ridiculous charges against me and the RNC.

HERE IS THE LINK:

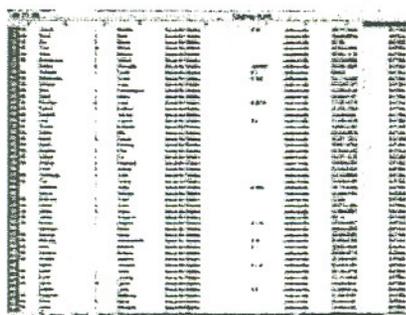
<http://www.gregpalast.com/massacre-of-the-buffalo-soldiers>

Armed Madhouse: Part I
My Father's Victory in the Pacific »

African-American Soldiers Scrubbed by Secret GOP Hit List

Published by [Greg Palast](#) June 16th, 2006 in [Articles](#)

Massacre of the Buffalo Soldiers
 by Greg Palast
As reported for Democracy Now!



Palast, who first reported this story for BBC Television Newsnight (UK) and Democracy Now! (USA), is author of the New York Times bestseller, Armed Madhouse.

The Republican National Committee has a special offer for African-American soldiers: Go to Baghdad, lose your vote.

A confidential campaign directed by GOP party chiefs in October 2004 sought to challenge the ballots of tens of thousands of voters in the last presidential election, virtually all of them cast by residents of Black-majority precincts. Files from the secret vote-blocking campaign were obtained by BBC Television Newsnight, London. They were attached to emails accidentally sent by Republican operatives to a non-party website.

One group of voters wrongly identified by the Republicans as registering to vote from false addresses: servicemen and women sent overseas.

For Greg Palast's discussion with broadcaster Amy Goodman on the Black soldier purge of 2004, go to <http://gregpalast.com/armedmadhouse/palastDN6-14-06.mp3>

Here's how the scheme worked: The RNC mailed these voters letters in envelopes marked, "Do not forward", to be returned to the sender. These letters were mailed to servicemen and women, some stationed overseas, to their US home addresses. The letters then returned to the Bush-Cheney campaign as "undeliverable."

The lists of soldiers of "undeliverable" letters were transmitted from state headquarters, in this case Florida, to the RNC in Washington. The party could then challenge the voters' registration and thereby prevent their absentee ballots being counted.

One target list was comprised exclusively of voters registered at the Jacksonville, Florida, Naval Air Station. Jacksonville is third largest naval installation in the US, best known as home of the Blue Angels fighting squadron.

[See this scrub sheet at http://flickr.com/photo_zoom.gne?id=160156893&context=set-72157594155273706&size=o]

Our team contacted the homes of several on the caging list, such as Randall Prausa, a serviceman, whose wife said he had been ordered overseas.

A soldier returning home in time to vote in November 2004 could also be challenged on the basis of the returned envelope. Soldiers challenged would be required to vote by "provisional" ballot.

Over one million provisional ballots cast in the 2004 race were never counted; over half a million absentee ballots were also rejected. The extraordinary rise in the number of rejected ballots was the result of the widespread multi-state voter challenge campaign by the Republican Party. The operation, of which the purge of Black soldiers was a small part, was the first mass challenge to voting America had seen in two decades.

The BBC obtained several dozen confidential emails sent by the Republican's national Research Director and Deputy Communications chief, Tim Griffin to GOP Florida campaign chairman Brett Doster and other party leaders. Attached were spreadsheets marked, "Caging.xls." Each of these contained several hundred to a few thousand voters and their addresses.

A check of the demographics of the addresses on the "caging lists," as the GOP leaders called them indicated that most were in African-American majority zip codes.

Ion Sanco, the non-partisan elections supervisor of Leon County (Tallahassee) when shown the lists by this reporter said: "The only thing I can think of - African American voters listed like this - these might be individuals that will be challenged if they attempted to vote on Election Day."

These GOP caging lists were obtained by the same BBC team that first exposed the wrongful purge of African-American "felon" voters in 2000 by then-Secretary of State Katherine Harris. Eliminating the voting rights of those voters — 94,000 were targeted — likely caused Al Gore's defeat in that race.

The Republican National Committee in Washington refused our several requests to respond to the BBC discovery. However, in Tallahassee, the Florida Bush campaign's spokespeople offered several explanations for the list.

Joseph Agostini, speaking for the GOP, suggested the lists were of potential donors to the Bush campaign. Oddly, the supposed donor list included residents of the Sulzbacher Center a shelter for homeless families.

Another spokesperson for the Bush campaign, Mindy Tucker Fletcher, ultimately changed the official response, acknowledging that these were voters, "we mailed to, where the letter came back - bad addresses."

The party has refused to say why it would mark soldiers as having "bad addresses" subject to challenge when they had been assigned abroad.

The apparent challenge campaign was not inexpensive. The GOP mailed the letters first class, at a total cost likely exceeding millions of dollars, so that the addresses would be returned to "cage" workers.

"This is not a challenge list," insisted the Republican spokesmistress. However, she modified that assertion by adding, "That's not what it's set up to be."

Setting up such a challenge list would be a crime under federal law. The Voting Rights Act of 1965 outlaws mass challenges of voters where race is a factor in choosing the targeted group.

While the party insisted the lists were not created for the purpose to challenge Black voters, the GOP ultimately offered no other explanation for the mailings. However, Tucker Fletcher asserted Republicans could still employ the list to deny ballots to those they considered suspect voters. When asked if Republicans would use the list to block voters, Tucker Fletcher replied, "Where it's stated in the law, yeah."

It is not possible at this time to determine how many on the potential blacklist were ultimately challenged and lost their vote. Soldiers sending in their ballot from abroad would not know their vote was lost because of a challenge.

For the full story of caging lists and voter purges of 2004, plus the documents, read Greg Palast's New York Times bestseller, ARMED MADHOUSE: Who's Afraid of Osama Wolf?, Armed Madhouse: Who's Afraid of Osama Wolf?, China Floats Bush Sinks, the Scheme to Steal '08, No Child's Behind Left and other Dispatches from the Front Lines of the Class War.

HEARING STATEMENT

DAG000000270

Thank you, Mr. Chairman. I appreciate the opportunity to be here this morning and attempt to clear up the misunderstandings and misperceptions about the recent resignations of some USAs, and to testify in strong opposition to S.214, a bill which would strip the AG of the authority to make interim appointments to fill vacant USA positions.

As you know, I had the privilege of serving as a USA for 4 ½ years. It was the best job I ever had. || That's something you hear a lot from former USAs – “Best job I ever had.” (In my case, Mr. Chairman, it was even better than serving as counsel on the House Crime Sub. under your leadership.).

Why is being a USA such a great job? There are a variety

of reasons, but I think it boils down to this. The USAs are the President's chief legal representatives in the 94 federal judicial districts. In my former district of Eastern Virginia, Supreme Court Chief Justice John Marshal was the first USA.

Being the President's chief legal representative means you are the face of the Justice Department in your district. Every police chief you support, every victim you comfort, every citizen you inspire or encourage, and, yes, every criminal who is prosecuted in your name, communicates to all of these people something significant about the priorities and values of both the President and the AG. At his inauguration, the President raises his right hand and solemnly swears to faithfully execute the

office of the President of the United States. He fulfills this promise in no small measure through the men and women he appoints as USAs. If the President and the Attorney General want to crack down on gun criminals or go after child pornographers and pedophiles, as this President and AG have ordered federal prosecutors to do, it's the USAs who have the privilege of making such priorities a reality. That's why it's the best job a lawyer can ever have. It's an incredible honor.

And this is why, Mr. Chairman, judges should not appoint USAs, as S.214 proposes. What could be clearer Executive Branch responsibilities than the AG's authority to temporarily appoint and ~~for~~ the President ^{is opportunity} to nominate for Senate

confirmation those who will execute the President's duties of office? S.214 doesn't even allow the AG to make ANY interim appointments, contrary to the law prior to the most recent amendment.

The indisputable fact is that USAs serve at the pleasure of the President. They come and they go for lots of reasons. Of the USAs appointed in my class at the beginning of this Administration, more than half are now gone. Turnover is not unusual and it rarely causes a problem because even though the job of USA is extremely important, the greatest assets of any successful USA are the career men and women who serve as AUSAs, victim-witness coordinators, paralegals, legal

assistants, and administrative personnel. Their experience and professionalism ensures smooth continuity as the USA job transitions from one person to another.

Mr. Chairman, I conclude with these three promises to this Committee and the American people on behalf of the AG and myself:

- 1) We never have and never will seek to remove a USA to interfere with an ongoing investigation or prosecution^{or in retaliation for a prosecution.} Such an act is contrary to the most basic values of our system of justice, the proud legacy of the Department of Justice, and our integrity as public servants.

2) In every single case, where a USA position is vacant, the Administration is committed to filling that position with a USA who is confirmed by the Senate. The AG's appointment authority has not, and will not, be used to circumvent the confirmation process. All accusations in this regard are contrary to the clear factual record. The statistics are all laid out in my written statement.

We have
not done
.is in
Arkansas .

3) Through temporary appointments and nominations for Senate confirmation, the Administration will continue to fill USA vacancies with men and women who are well qualified to assume the important duties of this

office.

Mr. Chairman, I appreciate your friendship and courtesy,

and I am happy to respond to the Committee's questions.

~~I hope~~
~~I get to~~
~~it~~

If I thought the concerns you outlined in your opening statement were true, I would be disturbed. But these concerns are not based on facts.

Selection process will prove this.

I have a lot of respect for you, and when I hear you talk about politicizing DOJ, it's like a knife in my heart.

The AG + I love DOJ and honor its mission. Your perspective is completely contrary to my daily experience. I would love to dispel⁻⁷⁻ you of this opinion.



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

DAG000000278

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.

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

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

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) (including that court appointment of interim U.S. Attorneys is unconstitutional).

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.

VIEWS LETTER ON S.214

DAG000000286



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 2, 2007

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is to advise you of the Department of Justice's strong opposition to S. 214, the "Preserving United States Attorney Independence Act of 2007." S. 214 would significantly alter the manner in which U.S. Attorney vacancies are filled by completely removing the Attorney General's authority to appoint interim U.S. Attorneys and allocating that authority to an entirely different branch of government. Under S. 214, the Attorney General would have no authority whatsoever to fill a U.S. Attorney vacancy on an interim basis—even one of short duration. Instead, only the district court would have this authority.

United States Attorneys are at the forefront of the Department of Justice's law-enforcement efforts. They lead the charge to protect America from acts of terrorism; to reduce violent crime, including gun crime and gang crime; to fight illegal drug trafficking; to enforce immigration laws; to combat crimes that endanger children and families, including child pornography, obscenity, and human trafficking; and to ensure the integrity of government and of the marketplace by prosecuting corrupt government officials and perpetrators of corporate fraud. In pursuit of these objectives, U.S. Attorneys play a pivotal role coordinating with federal, State, and local law enforcement officials on many of these law enforcement issues. Additionally, they have significant administrative responsibilities, such as managing large offices of federal prosecutors and reporting directly to the Deputy Attorney General and the Attorney General. Importantly, U.S. Attorneys represent the Attorney General as the chief federal law enforcement officer in their respective communities. For these reasons, the Department is committed to having the best person possible discharging the responsibilities of the U.S. Attorney at all times and in every district.

DAG000000287

The Department's principal objection to S.214 is that it would be 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 under the circumstances described in the bill. Indeed, the Department is unaware of any other federal agency for which federal judges have such authority. As soon as a vacancy occurs, the federal court would be enabled to appoint a person of its choosing whose tenure would continue through the entire period needed for both a Presidential nomination and Senate confirmation. That 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. The U.S. Attorneys, unlike the court-appointed independent counsel whose appointment survived separation of powers challenge in *Morrison v. Olson*, 487 U.S. 654 (1988), have wide-ranging, extensive authority over any number of matters. Among other things, they have played, and continue to play, a crucial role in investigations and prosecutions in the ongoing war on terrorism, where close coordination is critical. S. 214 would tend to fragment the exercise of such authority, thereby undermining the effort to achieve a unified and consistent approach to prosecutions and federal law enforcement.

S. 214 would supersede last year's amendment to 28 U.S.C. § 546 that authorized the Attorney General to appoint an interim U.S. Attorney to serve until a person fills the position by being confirmed by the Senate and appointed by the President. Last year's amendment was intended to ensure continuity of operations in the event of a U.S. Attorney vacancy that lasts longer than expected. S. 214 would institute a new appointment regime without allowing the Attorney General's authority under current law to be tested in practice.

Before last year's amendment, the Attorney General could appoint an interim U.S. Attorney for only 120 days; thereafter, the district court was authorized to appoint an interim U.S. Attorney. In cases in which a Senate-confirmed U.S. Attorney could not be appointed within 120 days, the limitation on the Attorney General's appointment authority resulted in several 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 U.S. Attorney who would then have many matters before the court—refused to exercise the court's statutory appointment authority. Such refusals required the Attorney General to make multiple 120-day appointments. In contrast, other district courts—ignoring the oddity and inherent conflicts—sought to appoint as interim U.S. Attorney wholly unacceptable candidates who did not have the appropriate qualifications or the necessary clearances. S. 214 fails to ensure that such problems do not recur and, indeed, would exacerbate those problems by making appointment by the district court the exclusive means of filling U.S. Attorney vacancies.

S. 214 appears to be aimed at addressing a problem that has not arisen. The Administration has repeatedly demonstrated its commitment to having a Senate-confirmed U.S. Attorney in every federal district. To be sure, when a U.S. Attorney vacancy occurs, the Department must first determine who will serve temporarily as interim U.S. Attorney until a new Senate-confirmed U.S. Attorney is appointed. 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 a temporary, interim basis. When neither the First Assistant U.S. Attorney 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 the Senate and the one that the Administration follows.

Thank you for the opportunity to present the Department's views on S. 214. The Office of Management and Budget advises that it has no objection to the presentation of this response from the standpoint of the Administration's program and that enactment of S. 214 would not be in accord with the program of the President. If we may be of additional assistance, please do not hesitate to contact this office.

Sincerely,



Richard A. Hertling
Acting Assistant Attorney General

cc: The Honorable Arlen Specter
Ranking Minority Member

The Honorable John Cornyn

S.214

DAG000000290

110TH CONGRESS
1ST SESSION

S. 214

To amend chapter 35 of title 28, United States Code, to preserve the independence of United States attorneys.

IN THE SENATE OF THE UNITED STATES

JANUARY 9, 2007

Mrs. FEINSTEIN (for herself and Mr. LEAHY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend chapter 35 of title 28, United States Code, to preserve the independence of United States attorneys.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Preserving United
5 States Attorney Independence Act of 2007".

6 **SEC. 2. VACANCIES.**

7 Section 546 of title 28, United States Code, is
8 amended to read as follows:

1 **“§ 546. Vacancies**

2 “The United States district court for a district in
3 which the office of the United States attorney is vacant
4 may appoint a United States attorney to serve until that
5 vacancy is filled. The order of appointment by the court
6 shall be filed with the clerk of the court.”.

Q & A FROM DOJ 1/8/07
OVERSIGHT HEARING

DAG000000293

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 reconvened, 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.

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:

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I'm just curious as to the numbers. I don't care who they are. I want to know the numbers.

Thank you.

CORNYN:

Thank you, Mr. Chairman.

Welcome, Attorney General Gonzales.

I want to talk a minute about the questions that Senator Feinstein raised about the process by which interim United States attorney are appointed, so that we can understand this better and perhaps put it in context.

My understanding that was prior to the reauthorization of the Patriot Act the attorney general had the authority to appoint an interim United States attorney for a period up to 120 days, wafter which the courts before the U.S. attorney would appear would make a longer-term interim appointment until such time as the president nominated and the Senate confirmed a permanent United States attorney.

CORNYN:

Is that correct?

GONZALES:

That is correct. And as you might imagine, Senator, that created some issues that we were worried about. It would be like a federal judge deciding who was going to serve on your staff.

A U.S. attorney, of course, serves on my staff. And the other problems that we had is that there's an inherent conflict where you've got a U.S. attorney appearing before a court where he's been appointed by the judge.

And so that created a problem. We had, also, a problem, of judges, recognizing the oddity of the situation, who, kind of, would refuse to act.

And so we'd have to take action or give them a name or something. But it created some discomfort among some judges. Other judges were quite willing to make an appointment.