

## U.S. ATTORNEY 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. Specifically, since March 9, 2006 (when the AG's appointment authority was amended), the Administration has nominated 13 individuals to serve as U.S. Attorney (12 have been confirmed). Additionally, since the appointment authority was amended, 11 new U.S. Attorney vacancies have arisen -- of those 11 vacancies, the Administration (1) after consulting home-state Senators, has nominated candidates to fill four of these 11 vacancies and (2) after consulting with home-state Senators, has already interviewed candidates for nomination to fill the other seven vacancies (indeed, background investigations on two out of these seven have been completed and they will be nominated next week; the remainder either haven't been chosen or are still in the background investigation phase).

### Discussion:

- United States Attorneys serve at the pleasure of the President, and whenever a vacancy occurs, we act to fill it in compliance with our obligations under the Constitution, the laws of the United States, and in consultation with the home-state Senators. The Senators have raised concerns based on a misunderstanding of the facts surrounding the resignations of a handful of U.S. Attorneys, each of whom have been in office for their full four year term or more.
- When a United States Attorney has submitted his or her resignation, the Administration has -- in every single case -- consulted with home-state Senators regarding candidates for the Presidential nomination and Senate confirmation. The Administration is committed to nominating a candidate for Senate consideration everywhere a vacancy arises, as evidenced by the fact that there have been 125 confirmations of new U.S. Attorneys since January 20, 2001.
- With 93 U.S. Attorney positions across the country, the Department often averages between 8-15 vacancies at any given time. Because of the important

OAG000000133

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.

**Vacancies Since the Appointment Authority Has Changed:**

- Since March 9, 2006, when the appointment authority was amended, the Administration has nominated 13 individuals for Senate consideration (12 have been confirmed to date).
- Since March 9, 2006, when the appointment authority was amended, 11 vacancies have been created. Of the 11 vacancies, the Administration nominated candidates to fill four of these positions (three were confirmed to date), two additional nominations are imminent, and has interviewed candidates for the other five positions – all in consultation with home-state Senators.

**The 11 vacancies were filled on an interim basis as follows:**

- In 5 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 5 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:**

OAG000000134

- 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.
  - In early 2006, the statute that authorizes the appointment of interim United States Attorneys (28 U.S.C. § 546) was amended by section 502 of Public Law 109-177 to eliminate the provision of a 120-day appointment and to allow the Attorney General to appoint interim United States Attorneys to serve until the nomination and confirmation of a United States Attorney under 28 U.S.C. § 541.
  - The statute was amended for several reasons: 1) the previous provision was constitutionally-suspect; 2) some federal judges, recognizing the inherent problems, have refused to make court appointments, creating a situation where the Attorney General had to do multiple 120-day appointments (itself dubious under the statute, but something we had to do in some situations); 3) a small number of federal judges, disregarding the Constitutional issues, attempted to appoint individuals other than those proposed by the Department – in one case, someone who had never been a federal government official and hence had never been subject of the required national security clearance process, an unacceptable risk given the responsibilities and operations overseen by our U.S. Attorneys.
-

June 3, 2004

The Honorable J.D. Hayworth  
Member  
United States House of Representatives  
2434 Rayburn House Office Building  
Washington, D.C. 20575

Dear Congressman Hayworth:

Thank you for your recent letter concerning the Arizona Border Control (ABC) Initiative led by the Department of Homeland Security (DHS). The Department of Justice has taken, and continues to take, steps to ensure that the Arizona U.S. Attorney's Office (USAO) has sufficient resources to support the ABC Initiative.

From 2001 to 2003, the Arizona USAO was allocated 13 additional attorney positions based on the demonstrated needs of the district. During the past year, the Arizona USAO has received six additional attorney positions (including Assistant U.S. Attorney and Special Assistant U.S. Attorney positions) and four additional support staff positions (including paralegals). In recent days, I have directed that an additional [insert] Assistant U.S. Attorney positions allocated to U.S. Attorney's Offices around the country be reallocated to the Arizona USAO to provide immediate assistance. Additionally, we hope that DHS will continue to fund, as it has in the past, term Assistant U.S. Attorney positions. Such DHS-funded positions would be dedicated to supporting the ABC Initiative. Finally, in the coming months, we anticipate transferring some additional attorney positions from Main Justice litigating divisions to the Arizona U.S. Attorney's Office as part of a Departmentwide reallocation of resources to the front lines. This anticipated transfer is subject to Congressional approval of a forthcoming reprogramming request. In summary, the Department of Justice shares your concern about the situation on the Arizona border and is working diligently to ensure that the district has the resources necessary to continue vigorous enforcement of the laws.

Our efforts in this regard have met with considerable success. The Arizona USAO's sustained commitment to prosecuting immigration, terrorism, violent crime, and narcotics cases has resulted in the return of 3,635 indictments against 4,427 defendants in fiscal year 2003 alone. Immigration cases filed in federal district court in Arizona totaled 2,252, up 14 percent in 2003 as compared with 2002, and we anticipate that they will continue to rise at a significant rate in 2004. Importantly, Paul Charlton, the U.S. Attorney for the District of Arizona, informs me that the Special-Agents-in-Charge of DHS's Immigration

OAG000000136

and Customs Enforcement (ICE) offices in both Tucson and Phoenix, along with the Chief of the Tucson Border Patrol, believe that the Department of Justice is supporting DHS's efforts on the border.

Your letter also expressed concern that the Arizona USAO offered a plea agreement of one-year probation to an individual, who was caught attempting to smuggle two recently deported illegal aliens into the United States. You expressed concern that similar plea agreements could send the wrong message to potential smugglers, illegal aliens, and the public. Of necessity, the Arizona U.S. Attorney's Office has focused its resources on violent offenders, individuals who risk the lives of others, and smugglers of large numbers of aliens. This effort has reduced crime in the Phoenix area, including a decrease in homicides. By focusing on the most egregious violators of immigration law, we aim to deter a broad range of immigration violations.

Thank you again for your letter. Please do not hesitate to contact Paul Charlton or me if we might be of further assistance.

Sincerely,

John Ashcroft  
Attorney General

OAG000000137

**PLAN FOR REPLACING CERTAIN  
UNITED STATES ATTORNEYS**

**STEP 1**

Senator calls: On December 7, the following Republican home-state Senators or, where there is no Republican home-state Senator, the home-state "Bush political lead" are contacted:

- AG calls **Jon Kyl** (re Charlton)
- WHCO calls **John Ensign** (re Bogden)
- WHCO calls **Pete Domenici** (re Iglesias)
- WH OPA calls **California political lead** (re Lam and Ryan)
- WH OPA calls **Michigan political lead** (re Chiara)
- WH OPA calls **Washington political lead** (re McKay)

AG/WHCO/WH OPA inform the Senators/Bush political leads as follows:

- The Administration has determined to give someone else the opportunity to serve as U.S. Attorney in [relevant district] for the final two years of the Administration.
- [Relevant U.S. Attorney] has been informed of this determination and knows that we intend to have a new Acting or Interim U.S. Attorney in place by January 31, 2007.
- We will look to you, Senator/Bush political lead, to recommend candidates that we should consider for appointment as the new U.S. Attorney. As always, we ask that you recommend at least three candidates for the President's consideration. Importantly, we ask that you make recommendations as soon as possible.

**STEP 2**

U.S. Attorney calls: On December 7 (very important that Senator calls and U.S. Attorney calls happen simultaneously), Mike Battle contacts the following U.S. Attorneys:

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

OAG000000138

Battle informs the U.S. Attorneys as follows:

- What are your plans with regard to continued service as U.S. Attorney?
- The Administration is grateful for your service as U.S. Attorney, but has determined to give someone else the opportunity to serve as U.S. Attorney in your district for the final two years of the Administration.
- We will work with you to make sure that there is a smooth transition, but intend to have a new Acting or Interim U.S. Attorney in place by January 31, 2007.

### STEP 3

Prepare to Withstand Political Upheaval: U.S. Attorneys desiring to save their jobs (aided by their allies in the political arena as well as the Justice Department community), likely will make efforts to preserve themselves in office. We should expect these efforts to be strenuous. Direct and indirect appeals of the Administration's determination to seek these resignations likely will be directed at: various White House offices, including the Office of the Counsel to the President and the Office of Political Affairs; Attorney General Gonzales and DOJ Chief of Staff Sampson; Deputy Attorney General McNulty and ODAG staffers Moschella and Elston; Acting Associate AG Bill Mercer; EOUSA Director Mike Battle; and AGAC Chair Johnny Sutton. Recipients of such "appeals" must respond identically.

- What? U.S. Attorneys serve at the pleasure of the President (there is no right, nor should there be any expectation, that U.S. Attorneys would be entitled to serve beyond their four-year term).
- Who decided? The Administration made the determination to seek the resignations (not any specific person at the White House or the Department of Justice).
- Why me? The Administration is grateful for your service, but wants to give someone else the chance to serve in your district.
- I need more time! The decision is to have a new Acting or Interim U.S. Attorney in place by January 31, 2007 (granting "extensions" will hinder the process of getting a new U.S. Attorney in place and giving that person the opportunity to serve for a full two years).

### STEP 4

Evaluation and Selection of "Interim" Candidates: During December 2006-January 2007, the Department of Justice, in consultation with the Office of the Counsel to the President, evaluates and selects candidates for Attorney General-appointment (or candidates who may become Acting U.S. Attorney by operation of law) to serve upon the resignation of above-listed U.S. Attorneys.

**STEP 5**

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

## U.S. Attorney Appointment Process

### 1. Vacancy arises

There are three current vacancies for which there is no nominee; on current vacancy with a nominee pending; one future vacancy; and one future vacancy with a nominee pending. In addition, there are three districts with interim U.S. Attorneys that, for various reasons, will not have a Bush nominee at this time.

### 2. Seek candidates

When a vacancy arises, WHCO (the relevant Associate Counsel) contacts the "Bush lead" in the state and requests that at least three candidates be recommended for appointment. The Bush lead usually is the senior GOP Senator, but where there is no GOP Senator, then OPA (Schlapp) identifies the Bush lead.

### 3. Initiate interviews

After receiving recommendations from the Bush lead, WHCO provides the names to EOUSA (Theresa Bertucci, [theresa.bertucci@usdoj.gov](mailto:theresa.bertucci@usdoj.gov), 514-2121) and directs EOUSA to "get questionnaires to, and schedule interviews of, the candidates ASAP." Candidates fill out a questionnaire that we developed at the beginning of the Administration. EOUSA then prepares a binder (that includes a summary of the district for which the candidate is being considered, the candidate's resume, and the candidate's questionnaire) and distributes the binder to the interview panel prior to the interview.

### 4. Conduct interviews

EOUSA makes arrangements and pays for candidates to come to Washington for interviews. The interview panel consists of: WHCO, AG's office (Sampson), EOUSA (Guy Lewis), ODAG (David Margolis), and WH Liaison (David Higbee). After the interviews are completed, the panel discusses the candidates and selects a candidate to recommend to the President. The tentative selection is then informally approved by the AG, DAG, and WHC.

### 5. POTUS approval

EOUSA prepares the paperwork for the POTUS book, including a cover memo to the President from Gonzales and Ashcroft. WHCO obtains the President's approval of the candidate, pending the completion of a background investigation.

### 6. Consultation with Senators

Initiating a BI without first consulting with home-state Senators constitutes a "failure to consult." So, after getting POTUS approval, but prior to initiating the BI, home-state Senators must be contacted. This "consultation" consists of a call to the Senator's CoS wherein the Associate Counsel informs the CoS (1) that there is a vacancy "we're working to fill"; (2) that "we've interviewed candidates recommended" by the Bush lead; (3) that "we're at the point where we want to have the FBI do a background investigation on the candidate"; and (4) that "you should let us know if the Senator has any objection to us doing this."

Also before initiating the BI, the candidates not selected (the "disappointees") should be told that "things appear to be heading in a different direction." Once the FBI starts doing a BI, it becomes known in the home-state who likely will be nominated and it can be embarrassing or awkward for disappointees.

#### 7. Initiate BI

After obtaining POTUS approval, WHCO directs EOUSA (Bertucci) to initiate the BI. When the BI is completed, EOUSA reviews the file and summarizes the BI in a memo. WH Liaison reviews the memo and faxes to WHCO (Leitch) for review and clearance. (Leitch reviews entire BI if necessary.)

#### 8. Clearance for nomination

WHCO (either Leitch or relevant Associate Counsel) informs EOUSA (Bertucci), OLP (Sheila Joy), WH PPO (Katja Bullock or her deputy), and WH Clerk (Tim Saunders or deputies Dave Kalbaugh or Bill McCathran) that candidate is cleared for "announcement and nomination." Joy transmits paperwork to PPO (Bullock or deputy) that consists of nomination paper and candidate bio for press release. PPO tacks on memo for WH Clerk through WHCO (Gonzales) authorizing nomination to be made and gets Gonzales to initial. PPO delivers candidate bio to WH Press (Ashley Snee) and nominations paper with authorizing memo to WH Clerk.

#### 9. Pre-nomination heads up

WHCO (relevant Associate Counsel) sends e-mail to EOUSA (Bertucci) and DOJ Leg Affairs (Nancy Scott-Finan, [nancy.scottfinan@usdoj.gov](mailto:nancy.scottfinan@usdoj.gov)) along these lines:

Tomorrow, October 3, 2003, the White House will announce the President's intention to nominate the following:

John Q. Ganter of Pennsylvania, to be United States Attorney for the Middle District of Pennsylvania.

Per our agreed upon process, prior to the nomination, EOUSA will inform (1) the current USA in the district and (2) the candidate. Also per our agreed upon

process, prior to the nomination, DOJ Leg Affairs will (1) inform the home-state Senators and (2) inform Senators Hatch and Leahy.

This e-mail is cc'd to anyone and everyone in WH and at DOJ who should get a heads up about the nomination, including: [david.t.ayres@usdoj.gov](mailto:david.t.ayres@usdoj.gov), [david.israelite@usdoj.gov](mailto:david.israelite@usdoj.gov), [kyle.sampson@usdoj.gov](mailto:kyle.sampson@usdoj.gov), [david.higbee@usdoj.gov](mailto:david.higbee@usdoj.gov), [mark.corallo@usdoj.gov](mailto:mark.corallo@usdoj.gov), Judge, David, WH OPA (Schlapp and Flood), WH Press (Snee), WH Leg (Z and Wendy), etc., etc.

10. Nomination

WH Clerk sends nomination to Senate. WH Press prepares press release which is circulated to WHCO for review before release.

OAG000000143

November 21, 2003

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: KYLE SAMPSON

SUBJECT: AGAC APPOINTMENTS

BACKGROUND

Department regulations provide that the Attorney General's Advisory Committee of U.S. Attorneys (AGAC) "shall consist of fifteen United States Attorneys, designated by the Attorney General," 28 C.F.R. § 0.10(a) – though historically the size of the AGAC often has exceeded 15 members. Currently, the AGAC consists of 19 members. The regulations also provide that the "membership shall be selected to represent the various geographic areas of the Nation and both large and small offices." *Id.* In addition, as a matter of tradition and practice, both the U.S. Attorney for the District of Columbia and the past Chair of the AGAC have served as ex officio members (though, apparently, they have voting privileges and otherwise enjoy full membership on the Committee). Also, an Assistant U.S. Attorney traditionally has been appointed to serve as a member of the AGAC. Finally, the regulations provide that members "serve at the pleasure of the Attorney General, but such service normally shall not exceed three years." *Id.* The regulations also suggest an "annual rotation of approximately one-third of the Committee's membership," *id.* – a suggestion that has not been followed slavishly.

The terms of eight members of the AGAC expire on December 31, 2003. Of these eight members, three represent large U.S. Attorney's offices with significant experience in terrorism-related cases (E.D. Va., S.D.N.Y., and N.D. Ill.). Two additional expiring members would be leading candidates to serve as Chair (Mercer and Burgess). One is a woman; one is Hispanic. The nine expiring members are:

Paul McNulty, Vice Chair – E.D. Va.  
Susan Brooks – S.D. Ind.  
Timothy Burgess – D. Alaska  
James Comey – S.D.N.Y.  
Patrick Fitzgerald – N.D. Ill.  
Todd Graves – W.D. Mo.  
David Iglesias – D.N.M.  
William Mercer – D. Mont.

OAG000000144

The remaining 11 members of the Committee will be:

Mary Beth Buchanan, Chair – W.D. Pa.  
Jeffrey Collins – E.D. Mich.  
Marcos Jimenez – S.D. Fla.  
Charles Larsen, Sr. – N.D. Iowa  
Michael Shelby – S.D. Tex.  
Johnny Sutton – W.D. Tex.  
Gregory Van Tatenhove – E.D. Ky.  
Debra Yang – C.D. Cal.  
Roscoe Howard, Jr., ex officio – D.D.C.  
Paul Warner, ex officio – D. Utah  
Gretchen Witt, Assistant U.S. Attorney – D.N.H.

RECOMMENDATIONS

After consulting with you, Jim Comey, Guy Lewis, and Paul Warner, I recommend that the AGAC be expanded to [redacted] members that three of the expiring members be retained; and that [redacted] new members be appointed.

Retentions. I recommend that [redacted] be retained. Both represent [redacted] retaining them on the Committee would mitigate the fact that [redacted] will no longer be represented. In addition, [redacted] provides the Committee expertise in terrorism-related matters, and [redacted] provides the Committee expertise in Congressional relations and other D.C.-related matters. I also recommend that [redacted] be retained as the likely candidate to serve as the next Chair.

New Appointments. I recommend that [redacted] new U.S. Attorneys be appointed to serve on the AGAC. Of these, [redacted] represent large offices, [redacted] are women, and [redacted] African-American. They are:

If these recommendations were adopted, the Committee would be geographically diverse, with members from each of the 12 judicial circuits. In addition, both large and small offices would be fairly represented.

Chair. Based on my due diligence, :

At that time, \_\_\_\_\_ could be appointed Chair, either for a one-year term expiring on April 30 2005, or for a term expiring December 31, 2004 (since he has served on the AGAC since 2001, serving only an eight-month term as Chair would not seem inappropriate). \_\_\_\_\_ has contributed mightily to the work of the Committee: \_\_\_\_\_ is respected by his peers, is loyal to the Attorney General, and enjoys serving on the Committee.

November 21, 2003

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: KYLE SAMPSON

SUBJECT: AGAC APPOINTMENTS

BACKGROUND

As you know, eight of the 19 members of the AGAC are scheduled to rotate off the AGAC next month, providing the Attorney General with the opportunity to make new appointments:

Expiring Members (8)

Paul McNulty, Vice Chair – E.D. Va.  
Susan Brooks – S.D. Ind.  
Timothy Burgess – D. Alaska  
James Comey – S.D.N.Y.  
Patrick Fitzgerald – N.D. Ill.  
Todd Graves – W.D. Mo.  
David Iglesias – D.N.M.  
William Mercer – D. Mont.

Remaining Members (11)

Mary Beth Buchanan, Chair – W.D. Pa.  
Jeffrey Collins – E.D. Mich.  
Marcos Jimenez – S.D. Fla.  
Charles Larsen, Sr. – N.D. Iowa  
Michael Shelby – S.D. Tex.  
Johnny Sutton – W.D. Tex.  
Gregory Van Tatenhove – E.D. Ky.  
Debra Yang – C.D. Cal.  
Roscoe Howard, Jr., ex officio – D.D.C.  
Paul Warner, ex officio – D. Utah  
Gretchen Witt, AUSA, – D.N.H.

RECOMMENDATIONS

I recommend that the Attorney General (1) appoint six new members of the AGAC and (2) extend the appointments of three of the expiring members. Such action would expand the AGAC to 20 members. These recommendations are based on my consultations with you, Jim Comey, Guy Lewis, and Paul Warner.

Retentions. I recommend that the following three U.S. Attorneys be retained:

OAG000000147

is interested in continuing to serve on the Committee if he is going to be selected to serve as the next Chair (otherwise, he is happy to give others the chance to serve). He has contributed mightily to the work of the AGAC (especially as Chair of \_\_\_\_\_), is respected by his fellow U.S. Attorneys, and is loyal to the Attorney-General. For these reasons, the Attorney General may wish to consider selecting \_\_\_\_\_ be the next Chair.

If \_\_\_\_\_ is not selected as the next chair, then his term should be permitted to expire. (He can continue to serve as Chair of the \_\_\_\_\_, even if not a member of the AGAC.) In that event, other possible candidates for Chair include \_\_\_\_\_.

New Appointments. I recommend that the Attorney General make six new appointments to the AGAC. Listed below are the possibilities:

First Tier

Other Possibilities

If the Attorney General appoints the U.S. Attorneys in the first tier, then the AGAC would be geographically diverse (with members from each of the 12 judicial circuits), with both large and small offices being fairly represented. In addition, the AGAC would continue to exhibit racial and gender diversity.

December 3, 2003

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: KYLE SAMPSON  
THROUGH: THE CHIEF OF STAFF  
SUBJECT: AGAC APPOINTMENTS

BACKGROUND

Eight of the 19 members of the AGAC are scheduled to rotate off the Committee this month, providing you with the opportunity to make new appointments:

Expiring Members (8)

Paul McNulty, Vice Chair – E.D. Va.  
Susan Brooks – S.D. Ind.  
Timothy Burgess – D. Alaska  
James Comey – S.D.N.Y.  
Patrick Fitzgerald – N.D. Ill.  
Todd Graves – W.D. Mo.  
David Iglesias – D.N.M.  
William Mercer – D. Mont.

Remaining Members (11)

Mary Beth Buchanan, Chair – W.D. Pa.  
Jeffrey Collins – E.D. Mich.  
Marcos Jimenez – S.D. Fla.  
Charles Larsen, Sr. – N.D. Iowa  
Michael Shelby – S.D. Tex.  
Johnny Sutton – W.D. Tex.  
Gregory Van Tatenhove – E.D. Ky.  
Debra Yang – C.D. Cal.  
Roscoe Howard, Jr., ex officio – D.D.C.  
Paul Warner, ex officio – D. Utah  
Gretchen Witt, AUSA, – D.N.H.

RECOMMENDATIONS

We recommend that you (1) extend the appointments of three of the expiring members and (2) appoint six new members. Doing so would expand the AGAC to 20 members.

Retentions (3)

New Appointments (6)

OAG000000149

DISCUSSION

Retentions. represent large offices that handle significant terrorism-related matters. In addition, each brings special experience (in terrorism prosecutions and Congress-related matters, respectively) that is beneficial to the Committee. has contributed mightily to the work of the AGAC (especially as Chair of the ) and is a possible candidate for Chair, when term expires in April 2004. (Other possible candidates for Chair include )

New appointments. The six recommended candidates have distinguished themselves in various ways: among other things, have effectively handled large, important prosecutions:

If the recommended actions are taken, then the AGAC would be geographically diverse (with members from each of the 12 judicial circuits), with both large and small offices being fairly represented. In addition, the Committee would continue to exhibit racial and gender diversity.

March 10, 2004

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: KYLE SAMPSON

SUBJECT: PSN UNDERPERFORMING DISTRICTS

Attached is a draft memo from EOUSA that sets forth (and justifies) its list of USA offices with underperforming PSN programs. In summary, EOUSA believes that the following districts should be considered underperforming:

S.D. Cal. – Carol Lam

Other districts we identified that EOUSA believes should not be considered underperformers:

I propose that we come to closure on this soon, so that the underperformers can be notified of the categorization of their offices and informed that (1) starting now, they now have an opportunity to improve their performance; (2) allocation (and reallocation) of PSN resources, including dedicated prosecutors and support personnel, will be based on performance; and (3) we are considering implementing a ComStat-like process at the PSN conference in June.

Your thoughts?

OAG000000151

PADAG candidates

Tier one

Tier two

Tier three

David Iglesias

OAG00000152

March 18, 2004

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: KYLE SAMPSON

SUBJECT: PSN

Attached are the PSN-related documents prepared by EOUSA that set forth (1) districts that merit an AG visit and (2) underperforming districts.

First, EOUSA prepared a memo recommending that the AG visit 12 districts (see attachment 1):

Arizona

Arkansas

Upon my request, EOUSA now is preparing supporting materials for 10 additional AG visits to:

New Mexico

Second, EOUSA identified 16 districts as underperforming (see attachment 2):

Southern California

OAG000000153

Guy Lewis has committed to call the underperformers no later than Monday, March 22, 2004, to inform them that (1) starting now, they now have an opportunity to improve their performance; (2) allocation (and reallocation) of PSN resources, including dedicated prosecutors and support personnel, will be based on performance; and (3) a ComStat-like process will be held at the PSN conference in June at which they will have to account for their district's performance.

**Sampson, Kyle**

---

**From:** Sampson, Kyle  
**Sent:** Thursday, April 29, 2004 12:11 PM  
**To:** Richmond, Susan  
**Subject:** EOUSA

Here is my list of current USAs who might be enticed to leave their districts and come to Washington to run EOUSA:

**David Iglesias (D.N.M.)** -- diverse up-and-comer; solid

<b>Tracking:</b>	<b>Recipient</b>	<b>Read</b>
	Richmond, Susan	Read: 4/29/2004 12:17 PM



**Sampson, Kyle**

---

**From:** Sampson, Kyle  
**Sent:** Tuesday, May 18, 2004 2:23 PM  
**To:** 'Raul\_Yanes@who.eop.gov'  
**Subject:** FW: SDNY

See Comey's views on [redacted] below.  
Let's do [redacted] and be done with it. (FYI - I think [redacted] was the problem before; since he was the [redacted] guy who would  
have had to replace [redacted] maybe another run at [redacted] would be easier this time; I think it would require [redacted] talking to  
[redacted] and explaining to her why [redacted] overall, would be good for the President in SDNY; also, I bet I could come up with a  
decent list of [redacted] replacements at [redacted] David Iglesias (USA for DNM),  
and a handful of USAs from medium- to large-sized districts; maybe we should think more about possible  
replacements:

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

**From:** Comey, James (ODAG)  
**Sent:** Tuesday, May 18, 2004 1:45 PM  
**To:** Sampson, Kyle  
**Cc:** Rosenberg, Chuck  
**Subject:** RE: SDNY

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

**From:** Sampson, Kyle  
**Sent:** Tuesday, May 18, 2004 12:21 PM  
**To:** Comey, James (ODAG)  
**Cc:** Rosenberg, Chuck  
**Subject:** SDNY  
**Importance:** High

WHCO has asked that I get your views ASAP on the following candidates for U.S. Attorney for Southern District of New York:

Thanks.

**Sampson, Kyle**

---

**From:** Sampson, Kyle  
**Sent:** Monday, May 24, 2004 10:54 AM  
**To:** 'Jan\_E.\_Williams@who.eop.gov'  
**Subject:** Hispanic GOpPer DDC list

**HISPANIC CANDIDATE LIST**  
**U.S. ATTORNEY**  
**DISTRICT OF COLUMBIA**

*Specs: Hispanic. Republican. Some plausible ties to Washington, D.C. (i.e., has lived or worked in D.C. during some part of his/her career).*

David Iglesias (age ~xx). J.D.,

**Sampson, Kyle**

---

**From:** Sampson, Kyle  
**Sent:** Monday, May 24, 2004 6:08 PM  
**To:** 'David Leitch'  
**Cc:** 'Charles\_S.\_Duggan@who.eop.gov'  
**Subject:** Hispanic GOPers with D.C. ties

Here is what I have come up with. Again, I've attempted to be exhaustive within the specs. There are at least a couple of Hispanic GOPers with D.C. ties that I did not include. Let me know what you think.

**HISPANIC CANDIDATE LIST**  
**U.S. ATTORNEY**  
**DISTRICT OF COLUMBIA**

*Specs: Hispanic. Republican. Some plausible ties to Washington, D.C. (i.e., has lived or worked in D.C. during some part of his/her career).*

OAG000000159

David C. Iglesias (age ~46). J.D., University of New Mexico Law School, 1984. B.A., Wheaton College, 1980. U.S. Attorney, District of New Mexico, 2001-present. Associate, Waltz & Associates, 2001. General Counsel, New Mexico Taxation and Revenue Department, 1998-2001. Chief Counsel, New Mexico State Risk Management, 1995-98. White House Fellow, The White House, 1994-95. Director of Public Safety (Civil Rights Division), City of Albuquerque, 1991-94. Prosecutor, New Mexico Attorney General's Office, 1988-91.

OAG000000160

**Sampson, Kyle**

---

**From:** Sampson, Kyle  
**Sent:** Tuesday, May 25, 2004 11:37 AM  
**To:** 'Jan\_E\_Williams@who.eop.gov'  
**Subject:** FW: Hispanic GOPers with D.C. ties

here it is

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

**From:** Sampson, Kyle  
**Sent:** Monday, May 24, 2004 6:08 PM  
**To:** 'David Leitch'  
**Cc:** 'Charles\_S\_Duggan@who.eop.gov'  
**Subject:** Hispanic GOPers with D.C. ties

Here is what I have come up with. Again, I've attempted to be exhaustive within the specs. There are at least a couple of Hispanic GOPers with D.C. ties that I did not include: Let me know what you think.

**HISPANIC CANDIDATE LIST**  
**U.S. ATTORNEY**  
**DISTRICT OF COLUMBIA**

*Specs: Hispanic. Republican. Some plausible ties to Washington, D.C. (i.e., has lived or worked in D.C. during some part of his/her career).*

No D.C. ties:

David C. Iglesias (age ~46). J.D., University of New Mexico Law School, 1984. B.A., Wheaton College, 1980. U.S. Attorney, District of New Mexico, 2001-present. Associate, Waltz & Associates, 2001. General Counsel, New Mexico Taxation and Revenue Department, 1998-2001. Chief Counsel, New Mexico State Risk Management, 1995-98. White House Fellow, The White House, 1994-95. Director of Public Safety (Civil Rights Division), City of Albuquerque, 1991-94. Prosecutor, New Mexico Attorney General's Office, 1988-91.

OAG000000162

## Sampson, Kyle

---

**From:** Richmond, Susan  
**Sent:** Thursday, November 04, 2004 8:15 PM  
**To:** Alex Acosta; Ben Reyna; Carl Truscott; Chris Wray; Cranston Mitchell; Dan Bryant; Deborah Daniels; Deborah Spagnoli; Diane Stuart; Domingo Herraiz; Edward Reilly; Eileen O'Connor; Glenn Fine; Hew Pate; James Comey; John Gillis; Karen Tandy; Larry Greenfeld; Mauricio Tamargo; Michele Leonhart; Peter Keisler; Robert Flores; Robert McCallum; Sarah Hart; Sharee Freeman; Tom Sansonetti; William Moschella; Allyson Ho; Andrew Emrich; Brad Schlozman; Brian Boyle; Bruce McDonald; Carl Peed; Cheri Nolan; Chuck Rosenberg; Crystal Roberts; Dan Levin; Dan Meron; David Ayres; David Higbee; David Israelite; David Nahmias; David Sibley; Deborah Rhodes; Donald Gambatesa; Gregory Katsas; Howard Nielson; Jeffrey Bucholtz; Jeffrey Clark; Jeffrey Taylor; John Richter; John Wood; Jonathan Cohn; Joseph Bianco; Kelly Johnson; Kristi Remington; Kyle Sampson; Laura Parsky; Lawrence Friedman; Lizette Benedi; Makan Delrahim; Margaret Davis; Mark Corallo; Mark Epley; Matthew Zabel; Michael Carrington; Mike Wiggins; Noel Francisco; Pat O'Brien; Patrick Hofer; Patrick Philbin; Patrick Pürtil; Paul Clement; Rachel Brand; Rebecca Seidel; Renee Lerner; Richard Herfling; Richard Morrison; Rod Rosenstein; Sean McLaughlin; Sheldon Bradshaw; Steve Bradbury; Susan Richmond; Thomas Barnett; Thomas Lee; Tracy Henke; Wan Kim; Ajit Pai; Amy Grimsrud; Andrew Beach; Andrew Schauder; Angela Williamson; Blain Rethmeier; Blair Birkeland; Bruce Taylor; C. Kevin Marshall; Chad Boudreaux; Cynthia McDowell; Cynthia McKnight; Deborah Underhill; Denise Giltsham; Dimple Gupta; Ebony Lee; Ed McFadden; Elizabeth Apisson; Elizabeth Nodal; Eric Granion; Eric Holland; Gordon Todd; Greg Harris; Jaclyn Lesch; Janet Potter; Jeffrey Wadsworth; Jessica Gavora; Kimberly Smith; Lara Reynolds; Luis Reyes; Mary Neumayr; Matt Dummermuth; Matt Robinson; Matthew Miranda; Michael Costigan; Michael Tierney; Monica Goodling; Natalie Voris; Omar Vargas; Price Roe; Robert Hur; Stephanie McNeas; Sujean Lee; Theodore Cooperstein; Trent Luckinbill; Wanda Martinson; Will Adams; William Otis; William Woodruff; Wroe Jackson; Alice Martin; Anna Wagoner; Bill Mercer; Bud Cummins; Carol Lam; Charles Larson; Christopher Christie; Colm Connolly; Daniel Bogden; David Dugas; David Huber; David Iglesias; David O'Melia; David York; Debra Yang; Donald Washington; Drew Wrigley; Dunn Lampton; Ed Kubo; Eric Melgren; Frank Whitney; Glenn Suddaby; Greg White; Gregory Lockhart; Gregory Miller; Gregory Van Tatenhove; H Garcia; J. Thurmond Jr.; J.B. Van Hollen; James McMahon; Jan Paul Miller; Jim Greenlee; Jim McDevitt; Jim Vines; John Brownlee; John McKay; John Suthers; Johnny Sutton; Joseph Van Bokkelen; Karin Immergut; Kasey Warner; Kevin O'Connor; Kevin Ryan; Leonardo Rapadas; Leura Canary; Marcos Jimenez; MaryBeth Buchanan; Matt Orwig; Matt Whitaker; Matthew Mead; Maxwell Wood; McGregor Scott; Michael Battle; Michael Heavican; Michael Shelby; Michael Sullivan; MM Chiara; Patrick Fitzgerald; Patrick Meehan; Paul Charlton; Paul McNulty; Paul Perez; Paul Warner; Robert Corrente; Robert McCampbell; Ronald Tenpas; Roslynn Mausekopf; Sandy Mattice; Sheldon Sperling; Steven Biskupic; Susan Brooks; Terry Harris; Thomas Colantuono; Thomas DiBiagio; Thomas Johnston; Thomas Marino; Thomas Moss; Tim Burgess; Todd Graves; Tom Heffelfinger

**Subject:** Transition Guidance

Many of you have sought guidance regarding the Administration transition to the President's second term. This message serves to convey the entirety of the information we have at this point, and as more information becomes available it will be shared with you.

First, the President is tremendously grateful to you, and to every member his team, for your hard work over the past four years. He recognizes the sacrifices that you and your family have made to enable you to serve, and he is deeply appreciative. America has looked at the President's record -- continuing success in the war on terror, violent crime at a 30-year low, and declining drug use among America's youth, among other successes -- and asked him to stay on the job. He is honored and humbled by the privilege to serve, as I know each of you are.

Second, as we move into this transition period, the President has decided that he will not ask for letters of resignation. That said, as always, each of us serves at the pleasure of the President.

Third, some of you have expressed interest in serving in other capacities in the Administration, both within the Department and elsewhere. If you would like to be considered for other opportunities, please let me know what position(s) and agency or agencies you are interested in and I will work together with White House Presidential Personnel on those matters.

Additionally, if you are intending to leave the Administration within the next three months, please let me know that as well.

As we move forward, the Attorney General thanks you for your continued service and asks that you stay focused on the job at hand. While it is appropriate and good to celebrate successes, we cannot let it detract from the ongoing critical mission of the Department. Thank you again, and please feel free to contact me with any questions.

Susan  
WwwWwwWwwWwwWwwWwwW  
Susan M. Richmond  
Advisor to the Attorney General  
& White House Liaison  
Office of the Attorney General  
U.S. Department of Justice  
Tel: (202) 514-2927  
Fax: (202) 616-5117

*"We are fighting a continuing war on terror, and every American has a stake in the outcome of this war ... we will persevere until the enemy is defeated. We will stay strong and resolute. We have a duty, a solemn duty to protect the American people, and we will." — President George W. Bush, 11/4/04*

November 4, 2004

MEMORANDUM FOR THE CHIEF OF STAFF

FROM: KYLE SAMPSON

SUBJECT: ALIEN SMUGGLING PROSECUTIONS IN SAN DIEGO USAO

During the last several months, the Attorney General has received several letters of complaint from 14 Southern California Congressmen about the lack of alien smuggling prosecutions brought by the U.S. Attorney's Office in the Southern District of California ("San Diego USAO"). The Department has not yet responded to these letters. In addition, in response to requests from the Hill, the Office of Legislative Affairs soon will schedule a briefing for Chairmen Sensenbrenner and Hostettler on the same issue.

The Executive Office of U.S. Attorneys recently provided me with an analysis of the immigration-related caseloads of the San Diego USAO and the U.S. Attorney's Offices for the District of Arizona, the District of New Mexico, the Western District of Texas, and the Southern District of Texas (the "Southwest Border USAOs"). The analysis shows that the San Diego USAO, when compared to the other Southwest Border USAOs is (1) at the bottom end in the percentage increase of immigration prosecutions; (2) has increased only slightly its number of immigration prosecutions per attorney workyear (though some of the other Southwest Border USAOs have decreased); and (3) is in the middle of the pack in percentage increase of alien smuggling prosecutions. Here is a summary of the data:

- In the San Diego USAO during the last four years
  - The number **immigration cases filed** increased from 1,907 to 2,591 (36% increase).
  - The number of **immigration cases filed per attorney workyear** increased slightly, from 107.74 to 110.58 (3% increase).
  - The number of **alien smuggling cases filed** increased from 363 to 514 (42% increase).
- By comparison, in the other Southwest Border USAOs during the last four years
  - The number of **immigration cases filed**
    - In Arizona increased from 1,863 to 2,425 (30% increase)
    - In New Mexico increased from 732 to 1,519 (108% increase)
    - In the Western District of Texas increased from 1,481 to 1,997 (35% increase)
    - In the Southern District of Texas increased from 1,868 to 3,587 (92% increase)

OAG000000165

- The number of **immigration cases filed per attorney workyear**
  - In Arizona decreased from 136.99 to 120.17 (14 percent decrease)
  - In New Mexico decreased from 308.86 to 287.69 (7 percent decrease)
  - In the Western District of Texas decreased from 194.87 to 191.83 (2 percent decrease)
  - In the Southern District of Texas increased from 198.51 to 309.22 (56 percent increase)
- The number of **alien smuggling cases filed**
  - In Arizona increased from 267 to 510 (91 percent increase)
  - In New Mexico increased from 86 to 93 (8 percent increase)
  - In the Western District of Texas decreased from 256 to 228 (12 percent decrease)
  - In the Southern District of Texas increased from 395 to 698 (77 percent increase)

As we need to formulate our response to the Hill, I would like to visit with you about this at some point. Thanks.

**Sampson, Kyle**

---

**From:** Beeman, Judy  
**Sent:** Thursday, December 16, 2004 4:55 PM  
**To:** Sampson, Kyle  
**Subject:** Draft Resignation Guidance

**Attachments:** buchandanguidance.wpd; buchananconfcancellation.wpd

Kyle, Mary Beth has asked me to forward to you for review the draft guidance that we have prepared on USA resignations to be sent to all United States Attorneys. Also attached is the memorandum that was sent to all United States Attorneys on the cancellation of the January Conference. Please let Mary Beth know if you have any changes to the draft resignation guidance. Thanks. Judy



buchandanguidance.buchananconfcance  
wpd (54 KB)      lation.wpd (...)

Image Not Available

**U.S. Department of Justice**

*Executive Office for United States Attorneys  
Office of the Director*

*Main Justice Building, Room 2261  
950 Pennsylvania Avenue, NW  
Washington, DC 20530*

*(202) 514-2121*

**MEMORANDUM - Sent via Electronic Mail**

**DATE:**

**TO:** ALL UNITED STATES ATTORNEYS  
ALL FIRST ASSISTANT UNITED STATES ATTORNEYS  
ALL ADMINISTRATIVE OFFICERS

**FROM:** Mary Beth Buchanan  
Director

**SUBJECT:** Resignation Guidance for United States Attorneys

**ACTION REQUIRED:** Information Only.

**CONTACT PERSON:** Doug Sheorn  
Executive Resources Program Manager  
Telephone: (202) 353- 8714  
E-mail: Douglas.Sheorn@usdoj.gov

Within the last several months, we have had a few United States Attorneys make inquiries to the Executive Office for United States Attorneys (EOUSA) regarding the procedures for submitting their resignations. To assist you, I have attached answers to some of the most frequently asked questions regarding the resignation process, including guidance for resigning interim United States Attorneys who are returning to positions as Assistant United States Attorneys. If it is your intention to resign, please advise me at your earliest opportunity either by electronic mail or by calling (202) 514-2121. It is very important for us to provide the President and the Attorney General with as much advance notice as possible.

Letters of resignation addressed to the President and to the Attorney General should be sent to Doug Sheorn, EOUSA, by express mail. After a United States Attorney announces his or her resignation, please be aware that discretionary staff personal changes (e.g., appointments, promotions, and reassignments), at all grade levels, from all sources will be restricted. Please note that this affects actions which increase employment by adding a new employee to the

0AG000000168

district's rolls and internal actions which involve a change in position, such as promotion or reassignment.

Offers of employment extended verbally or in writing before the United States Attorney announced his or her resignation, including offers that were contingent on clearances such as drug testing or background investigation, will be honored.

No new offers of employment in the district may be made after the United States Attorney announces his or her resignation. If the office is in the final interview stage with any candidate, the selecting official must inform the applicant that no offer can be extended until the new United States Attorney is appointed.

If you have any questions, please contact Doug Sheorn at (202) 353-8714.

Attachments

cc: All United States Attorneys' Secretaries

**RESIGNATION OF A UNITED STATES ATTORNEY**

OAG000000169

## FREQUENTLY ASKED QUESTIONS

- **The district's United States Attorney has decided to resign his/her position. Who needs to be notified?**

- The United States Attorney should draft letters of resignation to the President and the Attorney General stating the date and time of the proposed resignation. Generally, the letter to the President is brief, while the letter to the Attorney General is usually longer and more personal (See examples attached). These letters should be overnighted to **Doug Sheorn**, Executive Resources Program Manager, in the Executive Office for United States Attorneys (EOUSA), who will handle their delivery.
- The United States Attorney should personally call the Attorney General to notify him/her of the resignation. The United States Attorney should also contact his/her United States Senators or other individuals involved with recommending a replacement, so that the process of selecting a successor can begin.
- The United States Attorney also should call the Director of the Executive Office for United States Attorneys (202-514-2121) at his/her earliest opportunity to notify him/her of their plans to resign.
- The United States Attorney should announce his/her resignation to the district. He/she may want to fax a memorandum announcing his/her departure to government agency heads and other interested parties.

- **Does a press release need to be prepared? And if so, what should it say?**

The United States Attorney's Office may want to send out a news release announcing the United States Attorney's resignation. The press release should include in general terms why he/she is leaving, his/her future plans, and any specific accomplishments (see example attached). The press release should not be used as an announcement of a political campaign or a new business. Copies of the press release should be forwarded to EOUSA and the Department of Justice, Office of Public Affairs.

OAG000000170

• **Who handles paperwork for a United States Attorney's resignation, and what documents need to be prepared?**

- The EOUSA's Personnel Staff handles separation actions for all United States Attorneys, both Servicing Personnel Office districts (SPO) and non-SPO districts. EOUSA also processes all insurance forms and associated benefits for departing United States Attorneys.
- The district's Administrative Officer should complete an SF-52, Request for Personnel Action, for the United States Attorney's resignation. He/she then forwards this document, along with a copy of the United States Attorney's resignation letter, to EOUSA's Assistant Director, Personnel Staff, Linda Schwartz.

• **What happens to the United States Attorney's annual leave upon his/her resignation?**

Presidentially appointed United States Attorneys do not earn leave. If a United States Attorney was a federal employee earning leave prior to this appointment, however, his/her leave was frozen upon appointment. The United States Attorney generally will receive a lump sum leave payment upon resignation for any annual leave accrued prior to the appointment. The lump sum payment is calculated at the hourly rate the employee earned at the time his/her annual leave was frozen. If the United States Attorney accepts a position in the federal government after his/her resignation, e.g. appointment to a federal judgeship, leave may transfer to the new appointment. Lump sum leave payments are processed by EOUSA's Personnel Staff.

• **What other steps need to be taken before the United States Attorney actually separates from the office?**

The United States Attorney should ensure that the district's Administrative Officer has his/her correct home and work forwarding information. The United States Attorney should also work with the district's Administrative Officer to ensure that he/she has met obligations concerning: the return of government property, the removal or preservation of federal records, and post-employment restrictions.

• **Are there any restrictions on hiring and staffing changes within the office after the United States Attorney announces their resignation?**

Yes. After a United States Attorney announces his or her resignation, please be aware that discretionary staff personal changes (e.g., appointments, promotions, and reassignments), at all grade levels, from all sources will be restricted. Please note that this affects actions which increase employment by adding a new employee to the district's rolls and internal actions which involve a change in position, such as promotion or reassignment. Career ladder promotions for support employees are excepted because they

do not involve filling a different position and, of course, all non-discretionary personnel actions (e.g., within-grade increases and pay adjustments) are also excepted.

Offers of employment extended verbally or in writing before the United States Attorney announced his or her resignation, including offers that were contingent on clearances such as drug testing or background investigation, will be honored.

No new offers of employment in the district may be made after the United States Attorney announces his or her resignation. If the office is in the final interview stage with any candidate, the selecting official must inform the applicant that no offer can be extended until the new United States Attorney is appointed either by the President or as an interim.

• **What is the process for determining the new United States Attorney?**

When the vacancy of a Presidentially appointed United States Attorney occurs, the Attorney General has the authority to appoint an interim United States Attorney for a maximum period of 120 days. Upon the expiration of this period, and, in the absence of a Presidentially appointed candidate, the federal district court may appoint the interim United States Attorney whose term lasts until the confirmation of a Presidential appointment, or until a new court appointed interim United States Attorney is appointed. After the President nominates a candidate to the Senate, and before that candidate is confirmed, the Attorney General may want that candidate to serve as an interim United States Attorney pending confirmation. Presidentially appointed United States Attorneys serve for a four year term but may hold over after their term expires (and without formal reappointment), at the pleasure of the President.

• **An Interim United States Attorney has not yet been appointed. Who may act as the United States Attorney?**

In the absence of an interim United States Attorney appointed by the Attorney General, the Department of Justice's Office of Legal Counsel has determined that the First Assistant United States Attorney may act as the United States Attorney under the Vacancies Reform Act for no more than 210 days and should call him- or herself the Acting United States Attorney. No paperwork (SF-52, SF-61 Appointment Affidavit, etc.) is required for this change.

• **Where should recommendations for United States Attorney Appointments be sent?**

Recommendations for United States Attorneys should be forwarded to the Attorney General. Copies of recommendation letters should be sent to the Director, EOUSA.

• **Who can make recommendations for an interim United States Attorney?**

The departing United States Attorney may, if he/she so desires, make a recommendation to the Director, EOUSA as to the appointment of an interim United States Attorney.

OAG000000172

- **When serving as an interim United States Attorney, what title should be used?**

When serving under an Attorney General appointment, court appointment, or Presidential appointment, the title of "United States Attorney" should be used. "Interim United States Attorney" refers to the status not the title of the appointment. If the FAUSA is serving as the Acting United States Attorney under the Vacancies Reform Act, the title "Acting United States Attorney" should be used.

Image Not  
Available

U.S. Department of Justice

*United States Attorney  
Eastern District of the United States*

---

The President  
The White House  
Washington, DC 20500

Dear Mr. President:

I am hereby submitting my resignation as United States Attorney for the Eastern District of the United States, effective midnight March 30, 2004.

I deeply appreciate the opportunity to have served as United States Attorney. I wish you and your administration the best of luck and success.

Sincerely,

John A. Smith  
United States Attorney

OAG000000174

Image Not  
Available

U.S. Department of Justice

*United States Attorney  
Eastern District of the United States*

---

The Attorney General  
United States Department of Justice  
Main Justice Building, Room 5111  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Mr. Attorney General:

I am hereby submitting my resignation as United States Attorney for the Eastern District of the United States, effective midnight March 30, 2004. It has been a great honor and privilege to have served these past two years as a United States Attorney, initially by your appointment and thereafter by Presidential appointment.

Serving the United States as a United States Attorney has been the highest honor and most fulfilling duty of my public career. Thank you for your support and the support of the Department of Justice during my tenure.

I deeply appreciate the opportunity to have served as the United States Attorney for the Eastern District of the United States. I wish you the best of luck and success.

Sincerely,

John A. Smith  
United States Attorney

OAG000000175

**UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF  
THE UNITED STATES ANNOUNCES RESIGNATION**

Washington, DC . . . United States Attorney John A. Smith, 43, of Washington, DC, has announced his resignation effective midnight on March 30, 2004. After his resignation, he plans on joining a private law firm in the Washington, DC, area.

Smith, a graduate of American University and the University of Virginia Law School, had previously served as First Assistant United States Attorney and Chief Assistant United States Attorney for the Criminal Division. During his tenure as United States Attorney, he served on the Attorney General's Advisory Committee and was co-chair of the Civil Rights Subcommittee. Mr. Smith has also served as an Instructor at the Attorney General's Advocacy Institute and the National Institute of Trial Advocacy. He implemented the current Weed and Seed program, which helps local communities reduce crime by bringing in investment and opportunity.

As United States Attorney, Smith also successfully prosecuted many civil rights and hate crime cases. In *US v. Carter*, he sought the conviction in 1998 of Bob D. Carter for racially-biased assaults against African American citizens and police officers in the downtown Washington, DC, area. Mr. Smith also oversaw the prosecution of many individuals under the Deadbeat Parents Punishment Act, which charges parents who fail to pay court-ordered child support.

The Eastern District of the United States covers 13 states, and includes the cities of Washington, DC, New York City, Boston and Philadelphia. The United States Attorney's Office, with staffed offices in Washington, DC, and New York City, has 32 attorneys and is responsible for conducting all criminal and civil litigation in the district involving the United States government.

OAG000000176

**Departing United States Attorneys (USAs returning to positions as Assistant United States Attorneys (AUSA) or Supervisory AUSAs)**

- The United States Attorney (USA) prepares a letter of resignation from the United States Attorney position. The letter should include wording such as:

I am resigning my position as United States Attorney for the ----- District of ----- to return to my former position as AUSA OR Supervisory AUSA (Criminal Chief, Civil Chief, First Assistant, etc.) OR Senior Litigation Counsel [whichever is appropriate] for the ----- District of ----- . This resignation is effective on ----- OR effective contemporaneously with the appointment of (Mr./Ms. Last Name of the Nominee).

I understand that I will not be separated from federal service but returned to my former position within the ----- District of -----.

- The letter should be addressed to Mary Beth Buchanan, Director, EOUSA

3. Please Fed Ex the letter to: Doug Sheorn  
Executive Resources Program Manager  
950 Pennsylvania Avenue, NW, Rm. 2513  
Washington, DC 20530

- Personnel Staff, EOUSA, will process the appropriate personnel actions to return the employee to his/her former position within the district. The actions processed will be as follows:

**Hiring Restrictions After an Interim United States Attorney Announces His or Her Intention to Resign**

After an interim United States Attorney announces his or her resignation, please be aware that discretionary staff personal changes (e.g., appointments, promotions, and reassignments), at all grade levels, from all sources will be restricted. Please note that this affects actions which increase employment by adding a new employee to the district's rolls and internal actions which involve a change in position, such as promotion or reassignment. Career ladder promotions for support employees are excepted because they do not involve filling a different position and, of course, all non-discretionary personnel actions (e.g., within-grade increases and pay adjustments) are also excepted.

Offers of employment extended verbally or in writing before the interim United States Attorney announced his or her resignation, including offers that were contingent on clearances such as drug testing or background investigation, will be honored.

No new offers of employment in the district may be made after the interim United States Attorney announces his or her resignation. If the office is in the final interview stage with any candidate, the selecting official must inform the applicant that no offer can be extended until the

new United States Attorney is appointed either by the President or as an interim.

**Employee Returning to an AUSA Position:**

Conversion to Excepted Appointment effective the day after resignation from the USA position. Pay will be set in accordance with current AD pay guidelines.

**Employee Returning to an AUSA Position and Immediately Being Temporarily Promoted to Former Supervisory AUSA/SLC Position:** This scenario requires two personnel actions (only one SF-52 needs to be completed; both actions may appear on one SF-52).

***Personnel Action 1:*** Conversion to Excepted Appointment effective the day after resignation from the USA position. Pay will be set in accordance with current AD pay guidelines.

***Personnel Action 2:*** Temporary Promotion to Supervisory AUSA or SLC position. Pay will be set in accordance with current supervisory AD pay guidelines.

**NOTE:** The employee should experience no break in coverage of any federal life or health insurance coverage. Retirement coverage and Thrift Savings Plan contributions, as well as annual and sick leave accruals will continue uninterrupted (USAs continue to earn leave on Attorney-General and Court Appointments). The only thing the employee should notice has changed (in the case of those who elected to receive the USA salary during this interim period) is that their pay will decrease.

The Personnel Staff, EOUSA, will monitor the processing of all of the above actions to ensure a smooth transition for these employees returning to former AUSA, Supervisory AUSA, or SLC positions.

OAG00000178

Image Not  
Available

**U.S. Department of Justice**

*Executive Office for United States Attorneys  
Office of the Director*

*Main Justice Building, Room 2242  
950 Pennsylvania Avenue, N. W.  
Washington, D.C. 20530*

*(202) 514-2121*

MEMORANDUM – Sent via Electronic Mail

**TO:** ALL UNITED STATES ATTORNEYS

**FROM:** Mary Beth Buchanan  
Director

**SUBJECT:** Department of Justice Conference – January 10 - 12, 2005

**CONTACT:** Judy Beeman  
Executive Assistant  
Tel: (202) 514-5843  
E-mail: Beeman, Judy

Please be advised that the Department of Justice Conference which was to be held January 10-12, 2005, in Washington, D.C., has been cancelled.

cc: United States Attorneys' Secretaries

OAG000000179

**Sampson, Kyle**

---

From: Sampson, Kyle  
Sent: Sunday, January 09, 2005 7:34 PM  
To: 'David\_G\_Leitch@who.eop.gov'  
Subject: RE: Question from Karl Rove

Judge and I discussed briefly a couple of weeks ago. My thoughts are:

1. As a legal matter, U.S. Attorneys serve a 4-year term and may holdover indefinitely thereafter (all at the pleasure of the President, of course). None of the President's U.S. Attorney appointees have served a full term yet -- the first were confirmed in September 2001, and many were confirmed during the 12 months thereafter. Although they serve at the pleasure of the President, it would be weird to ask them to leave before completing at least a 4-year term.
2. As an historical matter, U.S. Attorneys served at least until the expiration of their 4-year term, even where an election changed the party in power -- until President Clinton fired the Bush41-appointed U.S. attorneys in 1993, nearly all of whom were in the midst of their 4-year terms. In 2001, President Bush43 fired the Clinton-appointed U.S. Attorneys, some of whom were in the midst of a 4-year term, but many of whom had completed their 4-year terms and were serving in holdover status.
3. As an operational matter, we would like to replace 15-20 percent of the current U.S. Attorneys -- the underperforming ones. (This is a rough guess; we might want to consider doing performance evaluations after Judge comes on board.) The vast majority of U.S. Attorneys, 80-85 percent, I would guess, are doing a great job, are loyal Bushies, etc., etc. Due to the history, it would certainly send ripples through the U.S. Attorney community if we told folks they got one term only (as a general matter, the Reagan U.S. Attorneys appointed in 1981 stayed on through the entire Reagan Administration; Bush41 even had to establish that Reagan-appointed U.S. Attorneys would not be permitted to continue on through the Bush41 Administration) -- indeed, even performance evaluations likely would create ripples, though this wouldn't necessarily be a bad thing.
4. As a political matter, each of our U.S. Attorneys has been recommended by one or more political leaders in their home State. I suspect that when push comes to shove, home-State Senators likely would resist wholesale (or even piecemeal) replacement of U.S. Attorneys they recommended (see Senator Hatch and the Utah U.S. Attorney). That said, if Karl thinks there would be political will to do it, then so do I.

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

From: David\_G\_Leitch@who.eop.gov [mailto:David\_G\_Leitch@who.eop.gov]  
Sent: Thursday, January 06, 2005 12:34 PM  
To: Sampson, Kyle  
Subject: Fw: Question from Karl Rove

Let's discuss

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

From: Newman, Colin <Colin\_Newman@who.eop.gov>  
To: Leitch, David G. <David\_G\_Leitch@who.eop.gov>  
Sent: Thu Jan 06 12:30:17 2005  
Subject: Question from Karl Rove

David -- Karl Rove stopped by to ask you (roughly quoting) "how we planned to proceed regarding US Attorneys, whether we were going to allow all to stay, request resignations from all and accept only some of them, or selectively replace them, etc." I told him that you would be on the hill all day for the Judge's hearing, and he said the matter was not urgent. Please let me know if you have any questions. Thanks, -Colin

Colin M. Newman  
Office of Counsel to the President  
(202) 456-5887

February 17, 2005

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: KYLE SAMPSON

SUBJECT: AGAC APPOINTMENTS

After talking further with the Deputy Attorney General and several U.S. Attorneys, I have revised my recommendations as follows. If these meet with your approval, I will have appointment letters prepared and sent in advance of your first meetings with the AGAC on March 2, 2005.

Recommendations

Appoint (for terms expiring 12/31/2007)

Holdovers

Re-appoint (for terms expiring  
12/31/2006)

Ex officio members

OAG000000181

3.9.2005

Thanks. In response to similar inquiries you may receive, you should make these points:

- due to the statutory holdover provision, it is unlikely that the President will make any reappointments
- because U.S. Attorneys serve at the pleasure of the President, there should be no presumption that a sitting U.S. Attorney will continue to serve beyond the expiration of his or her current term

OAG00000182





---

**From:** Sampson, Kyle  
**Sent:** Wednesday, April 05, 2006 6:13 PM  
**To:** Beach, Andrew; Elwood, Courtney  
**Cc:** Sellers, Kiahna (OAG); Sours, Raquel; Goodling, Monica  
**Subject:** Re: Senator Domenici request for an AG phone call

Yes.

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

**From:** Beach, Andrew  
**To:** Sampson, Kyle; Elwood, Courtney  
**CC:** Sellers, Kiahna (OAG); Sours, Raquel; Goodling, Monica; Beach, Andrew  
**Sent:** Wed Apr 05 18:01:05 2006  
**Subject:** FW: Senator Domenici request for an AG phone call

Kyle: may we proceed to schedule this phone call? It would have to be late in the day tomorrow.

---

**From:** Webb, Lauren  
**Sent:** Wednesday, April 05, 2006 5:56 PM  
**To:** Beach, Andrew; Sellers, Kiahna (OAG)  
**Cc:** Sours, Raquel  
**Subject:** FW: Senator Domenici request for an AG phone call

Andy and Kiahna,

Please see the below request from Senator Domenici. Will has no objections to scheduling the call. If you need additional info, please let me know.

Thank you,  
Lauren

---

**From:** Wade, Jill C  
**Sent:** Wednesday, April 05, 2006 5:13 PM  
**To:** Webb, Lauren  
**Subject:** Senator Domenici request for an AG phone call

Senator Domenici would like to talk to the AG regarding his concerns about staffing shortages in the U.S. Attorneys Office (District of NM). The Senator would like to talk to the AG today or tomorrow on this issue. I explained to the Senator's staffer (Jennifer Heath, 224-7093) that the AG was on the Hill this afternoon so I wasn't sure if he would be able to accommodate the call today. I also explained that he'll be on the Hill tomorrow for the House Judiciary hearing. The staffer said tomorrow would be acceptable to schedule a call. The Senator considers this a timely matter. Can you forward it to the appropriate OAG staff?

I have informed AAG Moschella of this request.

Thank you,

--J--

Jill C. Wade  
U.S. DEPARTMENT OF JUSTICE  
Office of Legislative Affairs  
Jill.C.Wade@USDOJ.gov  
(202) 514-3597