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COMMITTEE ON THE JUDICIARY,  
U.S. HOUSE OF REPRESENTATIVES,  
WASHINGTON, D.C.

## UNOFFICIAL TRANSCRIPT

INTERVIEW OF: HARRIET E. MIERS

Monday, June 15, 2009

Washington, D.C.

The interview in the above matter was held in 2138 Conference Room, Rayburn House Office Building, commencing at 9:10 a.m.

Appearances:

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[Miers Exhibits No. 1 and 2  
were marked for identification prior  
to the start of the interview.]

Mr. Schiff. We are here this morning for a transcribed interview of former White House counsel Harriet Miers, pursuant to the March 4, 2009, agreement of accommodation between the Judiciary Committee and the former Bush administration.

Ms. Miers, will you please state your full name and address for the record?

Ms. Miers. It is Harriet Ellen Miers, 12076 Tavel Circle, Dallas, Texas, 75201. I also have an address here in Arlington, Virginia, which is 1211 Southeast, Unit 1105. And it is Arlington, Virginia, 22202.

Mr. Schiff. My name is Adam Schiff, and I'm a member of the Judiciary Committee. I will be questioning you today, along with the committee's chief oversight counsel, Elliot Mincberg, after which Daniel Flores, for Committee Republicans, will have the opportunity to ask questions.

I'd ask you to open your notebook to Exhibit 1 and turn to --

Mr. Flood. Is there a way we could put appearances on the record?

Mr. Schiff. Sure, sure. Why don't we go around the table, then.

Mr. Manning. George Manning, Jones Day, counsel for Ms. Miers.

Mr. Francisco. Noel Francisco, Jones Day, counsel for Ms. Miers.

Mr. Flood. Emmet Flood, counsel for former President Bush in his official capacity.

Mr. Flores. Daniel Flores, House Judiciary Committee, minority.

Mr. Weideman. Chris Weideman from the White House counsel's office.

Mr. Minberg. Elliot Minberg, House Judiciary Committee.

Mr. Schiff. Adam Schiff.

Mr. Tahtakran. I'm Philip Tahtakran, counsel of Congressman Schiff.

Mr. Broderick-Sokol. Sam Sokol, House Judiciary Committee, majority staff.

Mr. Tamarkin. Eric Tamarkin, House Judiciary Committee, majority staff.

Mr. Kravis. Jonathan Kravis, White House counsel.

Mr. Tyler. John Tyler, Department of Justice.

Mr. Hertling. Richard Hertling, minority staff, House Judiciary.

Ms. Jeziarski. Crystal Jeziarski, minority staff, House Judiciary Committee.

## EXAMINATION

BY MR. SCHIFF:

Q Can we take a look at Document 1? This is the March 4, 2009, letter from White House counsel Greg Craig to Chairman Conyers and counsel for former President Bush, along with the agreement concerning accommodation between the committee and the former Bush administration.

Am I correct that you and your counsel have seen this agreement?

A Yes, sir.

Q For the record, today's interview will be conducted in accord with the terms of that agreement.

Three preliminary matters before we begin.

First of all, if anyone questioning you today asks you any questions that you don't understand, please let us know. Otherwise we'll assume that you understand our questions, all right?

A Yes.

Q The second: If you'd like to take a short break for any reason, just let whoever is questioning know, and we'll try to get to the end of that line of questioning and be happy to accommodate, all right?

A Yes.

Q Finally, this interview is taking place as part of an authorized investigation under the jurisdiction of the Judiciary

Committee of the U.S. House of Representatives.

Do you understand that any knowing and willful misstatement that you provide in answering questions today, including any omission of material information that renders any statement misleading, would be a violation of Section 1001 of Title 18 of the United States Code, which would be a felony and could be prosecuted in Federal court?

A Yes.

Q Ms. Miers, when did you begin your service as White House counsel for President Bush?

A I don't know the exact date, but I think it was early February of 2005.

Q And when did you complete that service?

A Effective January 31, 2007, but I actually stayed until February the 6th, as I recall, 2007.

Q Is it correct that, after that point, you returned to Locke Lord Bissell & Liddell in Dallas, where you're currently practicing law?

A There were a few months intervening, and then in May of '07 I began again as a partner at Locke Lord, at that time Locke Liddell.

Q And prior to serving as White House counsel, what were your positions in the White House?

A I served about a year and a half as deputy chief of staff. And, before that, I was staff secretary and served from

the beginning of the administration until July of 2003.

Q Prior to serving as White House counsel or in these other capacities, did you have any responsibility or involvement in decisions or discussions concerning U.S. Attorneys?

A Yes, I believe I did.

Q And can you tell us what that was?

A If I'm understanding your question, you're asking me as staff secretary would I have had some involvement or as deputy chief of staff would I have had some involvement?

Q Yes, and also prior to that time. Let me -- why don't I start out asking you, before your work in the White House in any capacity, did you have any role in the selection of U.S. Attorneys or in the discharge of U.S. Attorneys?

A Not that I recall.

Q And when you -- in your capacities in the White House, can you tell us, as assistant to the President or staff secretary, whether you had any involvement in the U.S. Attorney hiring or firing process?

A The staff secretary would have gotten, looked at, and tendered forward to the President the books that were developed that would contain judicial or U.S. Attorney individuals. So we were responsible for getting that book, making sure it was internally consistent and no typos and all that sort of thing, and then send it on to the President.

Q And where did that book come from, who put that book

together?

A White House counsel.

Q So you would have received it from White House counsel, you would have proofed the book and then passed it on to the White House?

A To the --

Q I'm sorry. To the President.

A To the President.

Q And at the time you were staff secretary, who was the White House counsel?

A Alberto Gonzales.

Q And tell me, if you would, what role you had in the proofing material or discussing with then-White House counsel Alberto Gonzales the process of hiring or firing U.S. Attorneys?

A I don't recall anything specific. And most of the time I wouldn't have thought I would've actually talked to the White House counsel.

Q Do you remember discussing any of the particular recommendations in the binder you would've received from White House counsel Gonzales?

A Not that I can recall.

Q Do you recall any discussions concerning the hiring or firing of U.S. Attorneys while you were in the position of staff secretary?

A I think I have told you all that I can recall. In

addition to the books, it is possible that we would get one-off submissions. By that I mean, there wouldn't be a whole book but there would be one single nomination approval or something that otherwise came to the staff secretary's office. Whatever was going to the President on this topic, at least to my knowledge, would have been funneled through the staff secretary.

Q And in your position as deputy chief of staff, did you have any role in the hiring or firing of U.S. Attorneys?

A As deputy chief of staff, you sometimes attended the meeting that was called the Judicial Selection Committee meetings. So I would've heard things or been at least aware of that process.

Q And do you recall, in your role as deputy chief of staff, being a participant in discussions about whether particular U.S. Attorneys should be retained or should be discharged?

A I just don't have a recollection of that.

Q U.S. Attorneys are appointed for 4-year terms, is that correct?

A That's my understanding.

Q And is it your understanding that, after the term expires, they continue in office until resignation or removal by the President?

A Or appointment of a successor.

Q Well, the appointment of a successor would have to be preceded by the removal or resignation by a U.S. Attorney, right?

A I would have to think about that, whether it happens

upon the appointment pursuant to the statute or whether you have to actually ask the person to step down and the person do so. But I don't -- I'd have to look at the statute.

Q But, generally, the U.S. Attorneys are appointed for 4 years and allowed to continue their -- allowed to fulfill their full 4-year term?

A I think it is every individual circumstance. Certainly, the vast majority would do exactly that.

Q All right. And after a U.S. Attorney's 4-year term expires, what generally was the process, when you arrived at the White House, for deciding who would stay and who would go?

A When I first came, I would have been staff secretary, and I would not have had visibility into that.

Q And as deputy chief of staff?

A As deputy chief of staff -- and maybe I should ask you, what exactly are you asking?

Q What I'm interested in is, the U.S. Attorneys are appointed for a 4-year term. At some point after their 4 years, they either continue in office or they resign or leave office. And what I'm interested in is, when you were deputy chief of staff, were you familiar with the process that your predecessor, Mr. Gonzales, or others in the White House used to determine who should continue in office and who should be asked to resign?

A I don't really recall anything specific about those activities. I was deputy chief of staff before I became counsel.

So once I was named as his successor, we had transition meetings. And so I would have been told at that time sort of generally what was going on with respect to judicial and U.S. Attorney appointments.

Q And do you recall at any of the transition meetings the discussion about how you should handle U.S. Attorneys' ongoing service or whether they should be asked to resign?

A I don't -- I can't tell you specifically. It would not surprise me if there wasn't a discussion about U.S. Attorneys and whether they were continuing to serve in those transition meetings. The whole purpose of them was to say, this is where things stand, and these are vacancies, that sort of thing.

Q And when did these transition meetings take place?

A Oh, I couldn't tell you when they -- but it would have been after I was named as the successor to Judge Gonzales and then before I took over, although there have been discussions as I take over also. So --

Q Are we talking about a multi-week period?

A Yes, we are.

Q Would it have been less than a couple of months?

A I think it would have been less than a couple of months, yes.

Q All right.

Let me ask you, if I could, a few questions about your views on the proper grounds to remove a U.S. Attorney. As former White

House counsel, what grounds would you consider appropriate to remove a U.S. Attorney?

A Well, I think that is a topic that should be dealt with at the Department of Justice, and the reasons would be based on the Department of Justice's examination of the individual circumstance.

Q So, in your view, the primary decision-maker would be the Department of Justice?

A For a recommendation of someone being removed, yes, sir.

Q And those recommendations by the Department of Justice should be based on the performance of that U.S. Attorney?

A I certainly expected it to be based on a rigorous examination of the circumstances and whether a person should continue to serve or be asked to step down.

Q But when you're talking about the circumstances, you're referring to their performance in office, right?

A I don't want to be semantical, but I think the Department could come to any number of reasons why they felt that an individual should be recommended to be asked to step down.

Q Can you tell us, though, what would be appropriate reasons why the Department of Justice would decide to ask a U.S. Attorney to step down?

A I think anything that they determined would allow the office to be better served and based on an examination of the circumstances.

Q Well, wouldn't that involve an analysis of the performance of the U.S. Attorney?

A It certainly would involve the performance of the individual, I would think and hope.

Q And can you think of any other factors, legitimate factors, that they might consider in determining whether to replace a U.S. Attorney, other than performance?

A Well, if you're using performance in the broadest sense, that there has been an examination of the person's service and an evaluation of whether the office is better served with a new person, I think that is what the Department of Justice should look at.

Q Now, there could be inappropriate reasons why a U.S. Attorney would be let go, as well, right?

A Yes.

Q If the Department of Justice were to recommend removal of the U.S. Attorney for a political partisan purpose, that would be an inappropriate basis for removal, right?

A I don't know what that term means. U.S. Attorneys are, by their nature, political.

Q Well, would you find it proper to remove a U.S. Attorney to stop him from prosecuting a friend of the President?

A I would not expect the Department to recommend removal for the U.S. Attorney doing his or her job. And if his or her job was investigating someone and there was an effort to cause that

person to step down because of that reason, I would view that as inappropriate.

Q So if the Department of Justice were recommending a U.S. Attorney be forced to resign because he was investigating a friend of the President, that would be an inappropriate reason for the Department to recommend his removal?

A If the reason was to interfere with a prosecutor's ongoing investigation of a particular matter, I would consider that inappropriate.

Q And, along those lines, if a U.S. Attorney refused to prosecute a political opponent of the President, that would also be an inappropriate reason to remove them?

A If the reason for a recommendation to ask a person to step down or to take action against the person was to cause them to take action that was inappropriate, then, yes, I would consider that not something that should happen.

Q Well, I just wanted to be very clear on this. If a U.S. Attorney is asked to resign because he refused to prosecute an opponent of the President, that would be improper, wouldn't it?

A If it was to cause the U.S. Attorney to take some action that the U.S. Attorney and others believed to be appropriate -- or inappropriate, then I would consider that something that should not happen.

Q I just want to make sure we are talking about the same question. I'm not trying to be difficult.

A Nor am I.

Q No, I know, I know. If a U.S. Attorney were removed because he refused to prosecute one of the President's opponents, that would be an improper reason to remove him, am I right?

A I don't want to be too difficult in responding to your question, but if the person should have been prosecuted and they just happened to be a friend of the President and the U.S. Attorney just totally refused to do so, you would have to look at that.

I mean, if the person should be prosecuted, then they should be prosecuted. They shouldn't get off the hook just because they know the President.

Q Okay. So if they should be prosecuted, if they violated the law, and they are a friend of the President, and the prosecutor moves forward to prosecute them and they are fired for going forward, that would be inappropriate, right?

A Yes, if there was action taken to interfere with an ongoing prosecution that was a legitimate prosecution, that would not be appropriate.

Q And if, by the same token, a prosecutor refuses to bring a meritless prosecution against an opponent to the President, that would be improper also, right?

A If someone is asked to step down because they weren't bringing something that they, in good faith, thought they shouldn't and the examination concluded that that was a legitimate

position, then I would not expect them to be asked to step down.

Q Let me ask you also about the timing of prosecutions. Would it be improper to remove a U.S. Attorney because that U.S. Attorney failed to bring a prosecution that would aid a candidate during election time?

A It would be inappropriate to interfere one way or the other, either by asking somebody to bring an action they shouldn't bring or to not bring an action that they should, in both instances it would be inappropriate.

Q And particularly so if it was done with a design to influence an election?

A If that was the purpose, then I would think it would be inappropriate to attempt to influence an election.

Q Are there circumstances in which it would be proper to remove a U.S. Attorney based on purely partisan political considerations?

A I would have difficulty answering that question.

Q Would it be proper to remove a U.S. Attorney because he refused to use his office to assist Republican candidates for elective office?

A If the sole purpose of asking someone to leave or to step down is to influence an election or do something the individual thought shouldn't be done, and the examination indicates that is correct, or to not do something, I think any of those things would have been inappropriate.

Q Would it be appropriate to remove a U.S. Attorney simply because one of the President's political allies or supporters has asked that U.S. Attorney to be removed?

A That would depend on the circumstances.

Q If the sole reason that the President removes a U.S. Attorney is because a supporter asked, would that be appropriate?

A U.S. Attorneys are serving at the pleasure of the President. And so, if anything is presented to him, then he has the ability to remove that person.

Q The President has the power. What I want to ask you, Ms. Miers, is whether it is appropriate to use that power.

You said earlier that the genesis for the removal of a U.S. Attorney ought to come from the Department of Justice. I would like to ask you about under what circumstances it is appropriate for the genesis of the removal of the U.S. Attorney to come from the White House.

Do you believe it appropriate to exercise the presidential power to remove a U.S. Attorney for the sole reason that a political ally of the President asks him to remove a U.S. Attorney?

A You're really asking a question that involves a lot of speculation, and I certainly do not believe that -- I don't believe my President or any President would act without a recommendation, I would hope, from both the Department of Justice initially, because they are the ones that know about U.S.

Attorneys, and his White House counsel's office.

Q Well, I'm interested as White House counsel and what advice -- since I can't get into specific conversations you had with the President, their contents -- what advice, what philosophy you brought to the office.

And, along those lines, would you ever recommend to a President that they remove a U.S. Attorney solely because a political supporter has asked for them to be removed?

A I did -- I guess you're describing circumstances that call for speculation. And I don't want to leave the impression, by answering it, that such a circumstance ever became a fact.

Q Well, I will ask you a little later on about specific U.S. Attorneys, but I'm, at this point, really just asking your general philosophy about whether it is a sufficient reason to remove a U.S. Attorney, simply because a political ally asks.

A I would have to answer that question by saying that I would look to the Department of Justice to tell the White House what was appropriate or not appropriate, because they are the only ones who are in a position to make an analysis of the totality of circumstances in whether a person should be asked to step down or not.

And I would have had confidence that, given the Department of Justice and its structure, that such a request would be based on an examination that was appropriate.

Q If the Department of Justice viewed a U.S. Attorney as a

star performer, under those circumstances would it be appropriate for a President to remove that star performer merely because a political ally asked him to do so?

A I don't think that would have happened.

Q And by that do you mean that you would find that inappropriate?

A I would find inappropriate a request to ask someone to step down for inappropriate reasons.

Q Well, let me just ask one more time, would it be appropriate for the President to remove a U.S. Attorney the DOJ viewed as a star performer merely because a political supporter of the President asked him to do so?

A If you just adhere to the language of the statute and the prerogative of the President, he makes his own decisions. And he would seek, I would hope, the recommendation of the Department of Justice and his counsel, and I believe he would rely upon that recommendation.

Q Would you recommend to the President that he remove the U.S. Attorney the Department of Justice viewed as a star performer merely because a political ally asked him to do so?

A I would not make that recommendation.

Q Under what circumstances -- you've talked about the primary decision-maker or the primary originator of a request to remove a U.S. Attorney ought to be the Department of Justice.

A Yes, sir.

Q Under what circumstances do you think it would be appropriate for the origination of the idea to remove a U.S. Attorney to come from the White House?

A I would think that would be perfectly appropriate from any other source.

Q And on what basis would it be appropriate for the White House to recommend the firing of a U.S. Attorney that the Department of Justice had not recommended be removed?

A My sense is that there would be a request to the Department of Justice. If the White House was receiving information, that request would go to the Department of Justice, and the Department of Justice would be asked for their view.

Q Are there circumstances in which it would be appropriate for the White House to recommend the firing of a U.S. Attorney not based on information given to the Department of Justice?

A I don't see how that could happen.

Q Under what circumstances would you think it appropriate to remove a strongly performing U.S. Attorney simply to create a vacancy for someone else?

A I believe that it would be up to the Department to evaluate the circumstances and make a recommendation.

Q And would you recommend to the President the removal of a strong-performing U.S. Attorney merely to make room for someone else to burnish their resume?

A We at the White House would not recommend to the

Department of Justice the removal of a U.S. Attorney. We would simply ask the Department to evaluate circumstances and let us know whether a seat was available or a seat was not available.

Q So the White House would not ask the Department of Justice to remove a U.S. Attorney who was a strong performer merely to make room for someone else the White House wanted to advance?

A I believe that the question would be posed to the Department of Justice as to whether a vacancy exists or will exist so that it can be filled. We certainly viewed U.S. Attorney positions as extremely valuable experience, and providing people opportunities to serve there would be a very educational and good thing for an individual to experience.

Q But I take it that would be a secondary consideration to having a strongly performing U.S. Attorney administering justice in that judicial district?

A I guess that's in the eyes of the beholder as to what is an individual that should be removed or should not -- should be asked to step down or not.

Q Well, let me ask you how you would weigh the hierarchy of public interest. Is it a higher priority to have a strong-performing U.S. Attorney effectively administering justice in the judicial district, or is it a higher priority to advance someone's career that the White House would like to advance?

A The former. I think the interest of justice and the

operation of the office and getting the job done in the office has to be the first priority.

Q So before recommending replacement of a U.S. Attorney to make room for another candidate, you would want to be assured that the administration of justice in that district would not be adversely affected?

A I would assume that the Department of Justice and all of the people who are involved in U.S. Attorneys would be both knowledgeable and interested in whether the office would be better served under someone else.

Q If the goal were to allow a supporter or loyalist of the President to bolster their professional credentials by serving as a U.S. Attorney, would that be an improper partisan political basis on which to remove a U.S. Attorney?

A Without appropriate review of whether that individual you're mentioning, who just happens to fit other categories, versus the existing -- if that was the sole and only reason for considering asking the person to step down, then I don't think that should happen and don't think it did.

Q Finally, I would like to ask you whether you agree or disagree with a series of statements from the report by the Department of Justice's Offices of Inspector General and Professional Responsibility, which has been marked as Exhibit 2. And I will read respective quotes, and you can refer to the report or not, as you like.

On Page 194 of the OIG/OPR report, it states --

Mr. Manning. Could you wait one second, please?

Mr. Schiff. Sure.

Mr. Mincberg. Off the record.

[Discussion off the record.]

BY MR. SCHIFF:

Q "If a U.S. Attorney must maintain the confidence of home State political officials to avoid removal, regardless of the merits of the U.S. Attorney's prosecutorial decisions, respect for the Department of Justice's independence and integrity will be severely damaged and every U.S. Attorney's prosecutorial decisions will be suspect."

Do you agree with that statement?

A I didn't write this document. I don't know what this individual intended by all those words.

But if there is a question of the integrity of the U.S. Attorney office, despite whatever political input someone is getting, you would err on the side of protecting the operation of the office.

Q Let me ask you to turn to the bottom of page 330.

It provides, "Removing U.S. Attorneys based on their lack of political support could affect the integrity and independence of prosecutive decisions and the public's confidence that such decisions are insulated from political considerations."

Do you agree with that statement?

A I agree that U.S. Attorneys have to feel free of pressure that is criticizing them for doing exactly what they think should be done, whether it is take action or not take action. And I think any kind of effort to subvert that would be a very wrong thing.

Q Let me ask you about a statement on the following page, if I could, at the top of page 331.

The report continues, "U.S. Attorneys should make their prosecutive decisions based on the Department of Justice's priorities, the law, and the facts of each case, not on the fear of being removed if they lose political support."

Do you agree with that statement?

A I do.

Q The next paragraph states, "U.S. Attorneys are selected in part based on the recommendations of State and Federal political officials. But, once they assume office, U.S. Attorneys should leave politics behind and make their prosecutive decisions divorced from partisan political considerations."

Do you agree with that?

A And I'm sorry, I didn't know where you were reading.

Q Okay, I'm sorry.

Mr. Manning. He didn't read the whole sentence.

Mr. Mincberg. Off the record.

[Discussion off the record.]

BY MR. SCHIFF:

Q Let me reread the portion of the paragraph.

"U.S. Attorneys are selected in part based on the recommendations of state and federal political officials. But, once they assume office, U.S. Attorneys should leave politics behind and make their prosecutive decisions divorced from partisan political considerations."

Would you agree with that?

A I would agree that U.S. Attorneys should not make decisions based on partisan political consideration.

Q The report continues --

Mr. Minberg. Off the record.

[Discussion off the record.]

BY MR. SCHIFF:

Q "For Department officials to recommend the removal of U.S. Attorneys even in part because they do or do not have political support undermines the public's confidence that Department of Justice prosecutive decisions are based on the facts and the law and not on political considerations."

Would you agree with that?

A I don't want to -- I don't want to defend anything that is indefensible, but I think if someone is deserving of being asked to step down or the Department judges that the office will be better run under someone else, the mere fact that they are not liked by some of the partisan leadership shouldn't insulate them from otherwise being judged on the merits.

Q At the same time, if the U.S. Attorney is doing a good job but loses the political support, the partisan political support of those in his district, should that be a reason to remove him?

A I would just have to know more facts. Because if someone is sitting there and not bringing actions they should bring or bringing actions they shouldn't, then the fact that the political leadership has a view one way or the other shouldn't insulate them from being requested to consider stepping down.

Q Well, let's say you had a U.S. Attorney who refused to bring meritless cases.

A Well, you can stop right there. No one is going to condone bringing meritless cases.

Q And so, removing them for the failure to bring meritless cases would be an inappropriate reason to remove them?

A I believe we have already covered that. And I said you should not ask someone to leave because they won't bring a meritless case.

Q And so, if a political ally of the President asked for a U.S. Attorney to be removed for failure to bring cases, you would need to determine whether there was merit to those cases before deciding whether to remove them, right?

A I think if anyone brings to the attention of the White House or the Department of Justice, if they bring circumstances to the attention of either, that the Department would have to look

into it.

Q So that if a political ally of the President asked for a U.S. Attorney's removal because they refused to bring certain cases, you would need to determine whether there was merit to those cases before deciding whether to remove them, right?

A Well, if someone is referring a matter, and it is, again, just somebody that happens to have some relationship to the administration, being of the same party, then you'd still look into whether the cases were legitimate or whether they were illegitimate in taking action against someone for not bringing an illegitimate matter would be wrong.

Q So you wouldn't simply rely on the recommendation of a political ally to remove a U.S. Attorney for failure to bring certain cases without actually looking into whether those cases should be brought in the first case, right?

A Well, just specifically zeroing in on that type of situation, if the ally is wrong and it is researched by the Department of Justice and they believe it to be wrong, then I would assume the Department of Justice would not recommend action in such a situation.

Q And, as White House counsel, before you would recommend to the President that someone be removed for failure to bring certain cases, you would want to be satisfied that there was merit to those cases, right?

A I don't know that I would make that inquiry because I

don't believe that counsel has the ability to be privy to what is occurring in a U.S. Attorney's office. And so, all I'm saying there is that the Department of Justice and the people who are involved in the U.S. Attorney area within the Department, they have access to information that I would assume, in many respects, should not be shared with the White House counsel.

Q But you would want to be certain that the Department of Justice had looked into the merit of the cases?

A I would assume, given the U.S. Attorneys and how they are structured within the Department, that the Attorney General, the Deputy Attorney General, and everybody up and down the chain would want to be very careful in ensuring that they knew the circumstances before someone was asked to step down.

Q I want to ask you about the process of removing U.S. Attorneys. But I wanted to ask you, before I get into a new area, whether you'd like to take a break or have a glass of water or like a moment.

A I think I'm fine right now. Thank you.

Q Okay. All right.

As best you recall, how and when did the idea of replacing some or all of the U.S. Attorneys who had been previously appointed by President Bush first come up?

A My recollection is not good about this, and I don't recall when it first came up. I assume that it is likely that it came up in the transition context, that when you are taking over

the job and it is the second term, that you would hear where things stood and what was planned going forward.

Q Who do you first recall discussing the matter with?

A I have no recollection of who I would've heard it from for the first time.

Q Do you remember who you discussed the issue with early in your tenure as White House counsel? Whether it was the first or the second, but early in your tenure, who would you have had early conversations with on the subject of the removal of U.S. Attorneys?

A I actually don't have a recollection about these matters as to -- I have seen lots of documents and lots of things said and it discussed in documents. And when it first developed I don't have the ability to pinpoint.

And with whom it would have been discussed, the transition meetings were with members of the existing White House counsel staff. And whether we discussed, beginning of the second term, will the U.S. Attorneys continue or what is the precedent, I don't recall that. But it would not surprise me.

Q During some of the early discussions about the tenure of the U.S. Attorneys, did you propose removing all of the U.S. Attorneys once they had finished their 4-year terms?

A I'm sorry. Could you repeat that question?

Q Sometime early in your tenure as White House counsel, did you propose the removal of all of the U.S. Attorneys once they

had concluded their 4-year terms?

A I don't recall doing that.

Q Some of the White House personnel, Tony Snow I think among them, in an interview with ABC News said that "the idea of removing all of the U.S. Attorneys originated with Harriet Miers." Was that an accurate statement?

A I believe he thought it was accurate or I don't believe Tony Snow would have said it. That is not the same as -- I don't believe that I would have recommended that.

I may have asked the question. I may have asked about precedent. I certainly saw advantage, as we talked about a little ago, that people moving out of offices and allowing others to serve is a good thing. But I can't -- I don't recall saying we should remove all of the U.S. Attorneys. I wouldn't, as the counsel's -- I wouldn't think that is something I would have suggested.

Q Do you know who you might have discussed the issue with?

A Any number of people. Any number of people.

Q Can you tell me who they might be?

A Well, it would have been within the White House counsel's office. If it was -- I mean, I don't have the recollection, so I'm speculating here a bit. But it could have been Judge Gonzales. It could have been Dabney Friedrich, who had responsibilities for these things. It could have been for -- it could have been representatives of the Justice Department, like

Kyle Sampson.

But -- and I believe my interests would have been in trying to find out what our responsibilities were in terms of these kinds of questions.

Q And Ms. Friedrich was in whose office?

A White House counsel.

Q Did you discuss with Karl Rove at all whether all the U.S. Attorneys should be removed?

A It would surprise me if Karl was involved in discussions about that subject.

Q So you don't have any specific recollection of discussing it with him?

A I don't have a specific recollection of actually speaking to Karl. It would not surprise me if he was involved.

Q Do you recall -- I'm sorry, say that again?

A It would not surprise me if he was involved in conversations about that topic. And I have actually seen e-mail that indicates he was. I'm not remembering that, myself; I'm remembering having seen documents.

Q But you don't recall discussing it with him, yourself?

A Again, I don't have a recollection of a specific conversation.

Q Is there anyone who you do remember having a specific conversation with about whether to remove all of the U.S. Attorneys?

A I don't have a recollection of a specific conversation.

Q At some point, was the idea of the potentially firing all of the 93 U.S. Attorneys shelved in favor of choosing a more select number to remove?

A The discussions that I participated in were to ask certain U.S. Attorneys to step down. And when exactly I had those discussions or with whom I can't recall, other than I can see documents and read them, but I don't recall a specific discussion.

Q We'll be having a chance to go through the documents, but I want to ask you what you recall generally before we go into specific documents.

Who do you recall discussing the idea of replacing only certain U.S. Attorneys with?

A Well, there were numbers of months over which we had ongoing discussions, I'm sure, about various situations. But in terms of my recollection over all those months of specifics, it would be hard for me to describe.

Q When did the conversations generally take place about U.S. Attorney replacement? Were they around the JSC meetings?

A Certainly could have been before, during or after Judicial Selection Committee meetings. It could have been as a tail end to another meeting. It could have been any number of times when you discussed that subject.

Q And where did the JSC meetings take place?

A In the Roosevelt Room.

Q Who was generally present?

A Most, if not all, of the counsel. There were representatives of the Department of Justice. There was the attorney general, if he could be there, and he was if there was something he wanted to participate in and if we would move the meeting to accommodate his schedule, if he wanted to be there to discuss a particular topic. Kyle Sampson, Rachel Brand, Kristi Macklin were the folks from DOJ that I remember attending the most. And then we had a young person on our staff who would attend also.

Q And who was that?

A It varied from time to time, so I couldn't tell you. But it would have been the young people who assisted in the counsel's office.

Q And who from the counsel's office, apart from the young people you mentioned, were generally present at the JSC meetings?

A Everyone. I mean, all of the counsel came --

Q And can you tell me who that would have been?

A -- including the counsel to the Vice President.

Q Can you tell me who those folks are?

A Could I get a list for you?

Q Well, why don't you try the best you can?

Mr. Manning. There are at least 15.

Ms. Miers. Well, no, there are not that many. There are not that many. But, you know, my deputy, in the early days that was

David Leach, and secondly it was Bill Kelley. And then Shannon Coffin was the Vice President's counsel, as I recall. And then Dabney Friedrich, who had, sort of, responsibilities initially for the U.S. Attorney and judicial nominations. That would have changed, shifted over at some point to Jennifer Brosnahan.

And then there were a variety of White House counsel. And I hope you don't make me list them all because I don't want to offend that person that I leave out.

BY MR. SCHIFF:

Q If you could supply us a list later on, that would be great.

A Well -- and they changed over time, because some of the folks that were in the office were there a short period of time after I took over, and then we replenished those ranks. But we'll be happy to get you a list.

Q And do you recall a specific meeting, either before or after the JSC meeting or during the JSC meeting, where the decision was made not to replace all of the U.S. Attorneys, but to selectively replace some of the U.S. Attorneys?

A I don't have a recollection of that, but it wouldn't surprise me if that happened, that would be some general discussion of, well, we have the Justice Department saying we have a certain number that we feel should be looked at and that that is better because it doesn't create the upheaval that removing all of the U.S. Attorneys would have.

I think the original discussion did not involve the kind of plan, as that term has been used, that eventually evolved.

Q I'm sorry, can you explain that?

A Well, I think initially the discussions, at least in my mind, didn't mean we were going to have some plan that involved everybody, for example, being asked to leave on the same day or as some kind of all-at-one-time analysis of all of the U.S. Attorneys. It, in my mind, was going to be a more gradual process of the Department looking at all of the offices and making their recommendations.

Q So the plan was one that emerged over time?

A That's my perception.

Q At the beginning, when the decision was made to selectively replace U.S. Attorneys, you're saying that there wasn't a decision made at that point that you would pick a date when they would all be asked to be let go?

A Correct.

Q Do you recall who made the decision to proceed in this manner?

A I think it just evolved.

Q And how was the process to be implemented? How were the U.S. Attorneys to be identified who would be asked to be let go?

A The Department of Justice was going to be reviewing their ranks to determine where they would recommend an individual be asked to step down.

Q And once those recommendations were made, then what would happen? How would the process work?

A They would keep the White House advised, and at some point they would act on what they were recommending.

Q And what was the role of the White House Office of Political Affairs to be in this process?

A That office, along with a variety of other offices in the White House, would be something that counsel would touch base with.

Q And for what purpose? What input would the Office of Political Affairs have?

A Well, they would have knowledge of what was going on in the State. They, for example -- I know I did ask and I recall doing this. I did ask that they assist, in the areas where there might be removals, the location of sources for recommendations. And so the political office was as it is called; they had the political piece.

RPTS MERCHANT

DCMN ROSEN

BY MR. SCHIFF:

Q So you would turn to the political office for recommendations about who replacement U.S. Attorneys ought to be?

A No. We would turn to them for identification of the sources that you could go to and ask for people to be considered. You wouldn't turn to them and say tell us who we ought to recommend.

Q So you would ask them to point you in the right direction about where to find people who could help you find the right candidates to help you replace U.S. Attorneys?

A Correct, that would certainly be one source of information that we would look to.

Q Would they have any other role in the choice of replacement U.S. Attorneys?

A Well, certainly if they had a preference for, someone, they would state it so that they certainly had input.

Q So they would not only point you in the right direction to potential, people who could refer candidates, but they would also express a preference for which candidates came forward?

A That certainly happened.

Q And what about the Office of Political Affairs' role in the decision to let U.S. Attorneys go. What role did they play in

the process?

A I would say providing information.

Q And what type of information would they provide?

A Whatever they had in any particular situation. And if they had any, I would think many times they would not, but if they had any they may well have let their views be known. And in fact, and I apologize for not thinking about this at the time, someone from that office frequently attended the Judicial Selection Committee. So they were always there to provide the political sense with respect to the environment in any particular state.

Q And who was it from the Office of Political Affairs that attended the JSC meetings?

A Sometimes Karl Rove himself participated, but he may have had on his deputy chief of staff hat. But the Office of Political Affairs reported to him, so he could have been there. I don't really have a recollection of Sara Taylor being there, but she would have been logical. I remember Scott Jennings being there.

Q Do you recall any of the JSC meetings where it was clear Mr. Rove attended for the specific purpose that a U.S. Attorney removal was the issue to be discussed?

A I don't have a recollection of that.

Q Do you recall any case where the suggestion for the removal of a particular U.S. Attorney originated in the Office of Political Affairs rather than the Department of Justice?

A I think that's a good question. And I know that, for example, with respect to Mr. Iglesias that there were comments made about him and his performance. And those comments certainly could have been made at a Judicial Selection Committee meeting, but I don't recall it.

Q And did you raise the case of Mr. Iglesias because the first suggestion that he be considered for removal came from the Office of Political Affairs rather than the Department of Justice?

A I don't know whether it did or not come from the Department of Justice or whether that was just one more voice if, in fact, it happened. But I don't really know who came up with the idea. But certainly there were comments about Mr. Iglesias coming from the political office, or the deputy chief of staff for that matter.

Q And were those the first criticisms you had heard about Mr. Iglesias, the ones that came from the Office of Political Affairs?

A I'm sorry, I can't tell you.

Q Well, you raised the case of Mr. Iglesias when I asked you whether the idea to terminate any U.S. Attorneys originated in the Office of Political Affairs as opposed to DOJ. Why did you raise the case of Mr. Iglesias in that context?

A I raised it because I have seen a lot of documents and recall having a conversation where that was the topic. And my particular conversation, I recall, was with Karl Rove as best I

remember it.

Q And where did that conversation take place?

A My best recollection is that it was on the telephone.

Q And approximately when did that conversation take place?

A I can't be specific as to the timing.

Q Can you give us your best estimate of when it would have taken place?

A I can tell you what I believe I recall about it. And that helps from a timing standpoint somewhat. Or at least might. But my recollection was I took a call from Karl while he was on the road. And I thought, my recollection is that he was in New Mexico. And I believe that I referred his information that he gave me to Paul McNulty. So it would have to be after Jim Comey left and Paul McNulty came on as deputy attorney general. So that gives us some timing.

Q And were you in your office at the time of the telephone conversation?

A I believe I was. I'm not totally certain of that because I took calls from Karl on my cell phone, of course. But my recollection is that that call came into my office, but I can't be certain of it.

Q But it was a call that Mr. Rove originated, you didn't call him?

A Well, unless I called him back. But, yeah, he instigated the call.

Q And tell us the best you can about what you recall what Mr. Rove had to say when he called?

A My best recollection is that he was very agitated about the U.S. Attorney in New Mexico. I don't know that I knew the gentleman's name at that time.

Q And what did he tell you about the U.S. Attorney in New Mexico?

A That he was getting barraged by a lot of complaints about the U.S. Attorney and his not doing his job.

Q And who were the complaints coming from?

A People that he was in contact with, which I assumed, of course, and he may have said, were political people that were active in New Mexico.

Q These are Republican Party activists?

A They were the people that he would have been interfacing with as political leadership of the State, is my assumption.

Q And who would that have been?

A I have no idea.

Q Would they have been Republican Party activists?

A All I can tell you is that Karl was reporting multiple people complaining about Mr. Iglesias.

Q And did he identify any of the people who were complaining to him about Mr. Iglesias?

A I don't recall that.

Q Did he tell you what they were complaining about?

A That he wasn't doing his job. I do recall that.

Q Do you recall what specifically the complaints were that he wasn't doing his job?

A I don't recall the specifics of what he was saying.

Q Did Mr. Rove raise with you complaints about voter fraud prosecutions?

A That's my best recollection, that he did.

Q And what did he say about that?

A I don't know what he said. I know it's my impression that he talked about the complaints that the guy wouldn't do his job. And I believe he mentioned voter fraud.

Q What else do you recall that Mr. Rove said about the complaints, if anything?

A I'm giving you all the information that I can about that call. That's my best recollection that that happened.

Q And you said Mr. Rove was agitated. What led you to believe that he was agitated?

A He was just upset. I remember his being upset.

Q Was it the language he used or was it the tone of his voice that told you he was upset?

A I can't tell you. It's my recollection that he was upset. And how that was conveyed to me I can't tell you.

Q Did Mr. Rove tell you that he wanted the U.S. Attorney gone?

A I don't have that specific recollection. And I'm under

oath and I'm not going to swear to something coming out of his mouth that I just can't remember. The clear import was that he was upset with how this individual was performing.

Q And was the clear import also that he wanted him removed from his position?

A He was getting complaints about the guy. And he wanted to express, I think, and this is my general sense about the New Mexico situation, that there were complaints about how he was performing.

Q Ms. Miers, wasn't the clear import of his conversation with you that he wanted the U.S. Attorney removed from office?

A I can't say with certainty that he ever used that language. He may well have. I don't recall it.

Q Well, I'm not asking about specific language, but you were able to tell us the clear import of part of his conversation was that the U.S. Attorney was not doing his job and he was getting an earful?

A That's correct.

Q If Mr. Rove communicated to you that he wanted a U.S. Attorney replaced, you would recall that, right?

A Not necessarily.

Q Well, in this case did Mr. Rove communicate to you in whatever language he used that he wanted this U.S. Attorney removed?

A I can't put those words in his mouth.

Q I'm not using any specific words. But when you hung up with the -- when you hung up the phone call with Mr. Rove, was it clear to you that he wanted this U.S. Attorney removed?

A It was clear to me that he felt like he had a serious problem and that he wanted something done about it. And whether he said, and the answer is ask the guy to be removed, I can't -- I don't recall that, I just don't recall it.

Q But you do recall he wanted something done about it?

A Yes, sir. I think he was calling for that purpose.

Q And he may have asked you, or he may have told you that he wanted the U.S. Attorney removed?

A That's speculation. And I can't put those exact words in his mouth. I mean, he was complaining about the guy.

Q The clear import was that he wanted something done about it, right?

A Yes, sir. That was his purpose in calling me.

Q And at this point, you can't rule out whether he asked that he be removed from office?

A I can't swear that he did or did not say that.

Q So he may have?

A I can't swear one way or the other.

Q So he may have asked for him to be removed, you just can't recall?

A I don't recall his using words like I want him fired or words of similar import. I just don't have that recollection.

Could he have said that, I can't rule it out. I probably should say that he may have said can't we get rid of this guy or something like that.

Q And do you recall what your response would have been?

A I don't recall him saying even that, so I certainly don't recall my response.

Q But he may have said that?

A I can't rule it out.

Q If Mr. Rove wanted him removed, what would the next step have been?

A If he had said that he wanted us to consider removing the guy, then I would have relayed that along with whatever else I believe I called Paul McNulty about. Because my belief is that I called Paul McNulty and reported this situation.

Q So at some point after your conversation with Mr. Rove, you called Mr. McNulty at the Justice Department?

A That's my belief. That I took whatever information he gave me and I called Paul and gave it to him.

Q And what did you tell Mr. McNulty?

A I don't recall exactly more than what I've told you, which is that he was getting lots of complaints, and it was a problem, and that I was reporting it.

Q How soon after your conversation with Mr. Rove did you contact Mr. McNulty?

A I don't have a recollection of that because I just don't

have a recollection based on what I believe to be true; it was shortly thereafter.

Q Would you have called him the same day that Mr. Rove called you?

A I would be surprised if I didn't.

Q And was your conversation with Mr. McNulty in person or by phone?

A My recollection, as I recalled it, was that I would have phoned him.

Q And normally if you had received a call from Mr. Rove where he was agitated, it would have been something you would have acted on fairly promptly?

A Well, I think it depends on the situation. But in this case, I certainly would have felt that calling Paul was the right thing to do.

Q Prior to the conversation you had with Mr. Rove had anyone else communicated to you concerns about Mr. Iglesias?

A I can't answer that question.

Q Do you recall whether you had any discussions with the Department of Justice about the New Mexico U.S. Attorney prior to Mr. Rove's call?

A I don't recall it. Based on documents I've seen, I have to assume that that's the case.

Q You have to assume that you did have a conversation with the Department of Justice?

A That would be my assumption based on some of the materials I've seen. I don't recall it, though.

Q And can you describe for us as best you can what you said about the conversation with Mr. Rove to Mr. McNulty?

A I don't have a recollection of anything more than calling him and -- I do think it's fairly safe to assume that whatever Karl said to me I said to Paul, or passed along as input from Karl.

Q And did you tell Mr. McNulty what, if anything, Mr. Rove wanted done about it?

A I don't have a recollection of doing that.

Q Do you recall whether you got into a discussion with Mr. McNulty about whether the New Mexico U.S. Attorney could be removed?

A I don't recall.

Q Do you recall what Mr. McNulty's reaction was when you relayed your conversation with Mr. Rove to him?

A I think he -- I mean I don't have a specific recollection more than that he listened and took the information.

Q Did Mr. McNulty tell you any steps that he planned to take, on the basis of the information you relayed to him?

A I don't recall.

Q Did you know how Mr. Iglesias was rated by the Department of Justice at the time of Mr. Rove's call?

A I don't know that I knew Mr. Iglesias' name at that

point in time.

Q And did Mr. McNulty give you any feedback on what he knew of the New Mexico U.S. Attorney's performance during your conversation?

A I just don't recall that.

Q Were there any other cases in which the idea of replacing a particular U.S. Attorney may have originated in the Office of Political Affairs as opposed to the Department of Justice?

A I don't think I can answer that question because I don't know how the situation we've been discussing originated. But I don't -- if the question is was there another situation where the political office weighed in, as a practical matter that always happened to the extent that people were being discussed as part of the Judicial Selection Committee where their views had been sought. With respect to -- that's with respect to people to be considered. With respect to any kind of complaints about another U.S. Attorney, I would just have to think about it. None come to mind.

Q Do you recall any other case where the first complaints you heard about a U.S. Attorney came from the Office of Political Affairs rather than the Department of Justice?

A I can't -- I would have to think about it. But if I'm thinking about specific complaints about specific States or individuals none come to mind.

Q None come to mind in which the complaint you first heard from the Office of Political Affairs as opposed to the Department of Justice?

A I just can't be certain about the New Mexico situation as to did I first hear about that from Justice or from internal to the White House. It's possible in that case that the first criticisms I heard came from the political office, and it's possible I heard them about other people. But I don't have any that come to mind as I sit here right this minute.

Q Were there other complaints about other U.S. Attorneys that you recall hearing from the Office of Political Affairs, whether you heard those complaints before or after the Department of Justice?

A None that I recall. It may well have happened. I just don't have a recollection of it.

Q Do you recall any other occasions where Mr. Rove relayed his concerns or the complaints of others about a particular U.S. Attorney?

A I can't think of any other than his complaints about the New Mexico situation. Again, it may well have happened, I just don't recall it.

Q And you mentioned that you weren't certain whether the complaints you heard about the New Mexico U.S. Attorney came first from the Office of Political Affairs or the Department of Justice. Can you tell us about any conversation you had with someone at the

Department of Justice where they raised a concern about the New Mexico U.S. Attorney?

A I don't have a recollection of it.

Q So the only recollection of a complaint against the New Mexico U.S. Attorney that you have is the one that came from Mr. Rove?

A Yes, sir.

Q During 2005 and 2006, did you have frequent conversations with Mr. Kyle Sampson at the Department of Justice about which U.S. Attorneys should be replaced and how various U.S. Attorneys should be rated?

A Kyle Sampson became sort of the principal person that reported to us about the review by the Department of U.S. Attorneys.

Q And over that 2-year period, did you have frequent conversations or e-mail traffic with him about which U.S. Attorneys should be replaced?

A I received e-mails with lists, and there may well have been also a conversation about different situations. Just like the complaints by the political office. I mean they were present at the JSC. They may well have chimed in on particular situations. I think the U.S. Attorneys were kind of a general topic.

Q Did you, from time to time, ask Mr. Sampson for a list of potential U.S. Attorneys to be replaced?

A I would ask him where the process was.

Q And when you asked him that what would he respond?

A Well, I actually remember doing that one time. And he would respond, did in that instance, with a report about where things stood.

Q And periodically, would he send you updated lists of potential candidates replacement?

A He did send several lists.

Q Do you recall Mr. Rove asking you to provide his office with a list of locations where replacement of U.S. Attorneys was being considered?

A Either I initiated that or he initiated it. I do recall that we asked the political office for the identity of potential sources for names in various districts.

Q Can you take a look at Document 4 in your binder. If I could direct your attention to an e-mail from you to Sara Taylor. And she was in Mr. Rove's office?

A I believe she was the head of that office.

Mr. Manning. Can we, as a housekeeping matter, just refer to the document number at the bottom of the page in case there's some collation problem at some later point.

Mr. Schiff. Sure. This is HJC00108.

Mr. Manning. Thanks.

BY MR. SCHIFF:

Q And in that e-mail you write "Sara, Karl asked me to

forward to you a list of locations where we may consider replacing the USAs." Does that refresh your recollection about where the request came from?

A Well, I misunderstood your question then. But the possibility exists that I asked Karl to help us with people in a particular State or more than one State to assist in proposing names. And I have a recollection that there was some particular State where we were having trouble getting names that seemed to be as qualified as we would have liked to have found. So this would have been in an effort to -- I probably talked to Karl and expressed that concern. And he would have said go to Sara.

Q And what district is that that you are referring to?

A I wish I could remember but I can't.

Q In the reply on the same page from Sara Taylor, a few minutes later she said, thanks. We will start working the process to identify suitable candidates for your office to consider. Karl and I also spoke about some of the States and the breakdown in getting good candidates. I will work with your staff to help rectify that situation. What situation were you asking for their help in rectifying?

A I think it's the one I mentioned. That we weren't getting the names of people, or we weren't getting them fast enough, of people that seemed to be as qualified as we were wanting to see.

Q And at some point, did you get feedback back from Mr.

Rove about the districts that are mentioned in this e-mail with suggestions for replacement U.S. Attorneys?

A No, sir. And I'm aided by having seen documents recently, because I'm not sure I would remember this without seeing the documents. But I clarified to Sara that she should not do what she was saying in that response. That's not what we were asking her for. We were asking her for who were the sources, whenever it was that we needed to go to a particular State and locate potential candidates, that we wanted to know the sources, not names.

Q Did they respond to you with names?

A I don't believe I recall any -- I don't recall any response. They may have helped with the individual State that caused a problem at some point.

Q And this further clarification that you made to Sara Taylor, did you do that by e-mail or over the phone?

A I believe it was an e-mail because I've seen it.

Q And this was an e-mail where you clarified that you weren't looking to them to find candidates but only sources information about candidates?

A Well, or sources for the surfacing of names that we could then consider.

Q Did anyone from Mr. Rove's office ever come back to you and ask you why certain locations were not on the list to be considered for replacement of U.S. Attorneys?

A I don't remember that.

Q Other than the case of the New Mexico U.S. Attorney, do you recall Mr. Rove passing along complaints about other U.S. Attorneys to you?

A I don't have any specific recollection of it, but I can't rule it out. I mean, he may well have passed along a number of complaints that I would not remember.

Q Do you remember if not the individuals, that he might have complained about the subject matter of any complaints he may have made?

A No. I do know that the issue of voter fraud came up more than once. Whether it was from Karl himself or some other source I can't tell you.

Q Could you turn with me to document 12. I don't think this has a stamp on it, but it's a Knight Ridder article dated March 12, 2007, entitled White House Says Rove Relayed Complaints About Prosecutors. On page 2, beginning with the fifth paragraph, the article provides that Perino offered Rove's account of his dealings with the Justice Department after talking with him by telephone. She said Rove routinely passed along complaints about various U.S. Attorneys to the Justice Department and then White House Counsel Miers. Was that accurate, that statement?

A I have no way of knowing.

Q Well, Mr. Rove said evidently through Ms. Perino that he routinely passed on complaints about U.S. Attorneys to you. Did

he do so?

A I told you what I recall about that.

Mr. Flood. So that the record is clear, this is a newspaper account. It doesn't have any quotations. We all know dealing in government and the press, they don't always get it right. I don't think it all together consistent with maximum clarity to treat this snippet as though it were a quotation to which Ms. Miers should be subject to a yes or no on a factual basis.

Mr. Schiff. Counsel, I appreciate your comments. Ms. Miers can certainly tell us whether the way the report is characterized is accurate or not?

Mr. Flood. Respectfully, Congressman, Perino offered Rove's account, so we've got Rove talking here, we've got Perino talking here and we've got a reporter writing it down. If Ms. Miers was a witness to Ms. Perino's conversation with Mr. Rove and Ms. Perino's conversation with either Mr. Hutchison, Ms. Taylor, Ms. Dulev or some combination of the three, I agree with you, otherwise I think not.

Mr. Schiff. Counsel, I'm asking Ms. Miers about an allegation that was made in a newspaper article, unless you're instructing her not to answer the question I would like to hear her answer.

BY MR. SCHIFF:

Q This article quotes Perino --

Mr. Flood. With respect, sir, it doesn't quote. That's part

of the problem.

Mr. Schiff. Counsel, excuse me.

BY MR. SCHIFF:

Q This article states that Perino offered Rove's account of his dealings with the Justice Department. It alleges that Rove routinely passed along complaints about various U.S. Attorneys to you. Do you have any recollection of Mr. Rove routinely passing along complaints about various U.S. Attorneys to you?

A I've already told you all I can recall. I can try to State it all again if you would like for me to do so.

Q Well, let me ask you this. If Mr. Rove were routinely relaying complaints about particular U.S. Attorneys to you wouldn't that be something you would recall?

A I don't.

Q Well, if someone in Mr. Rove's position were routinely and frequently relaying complaints to you would that be something you would recall?

A Very possibly not.

Q Again, the article asserts that Rove acknowledged that he personally complained to Miers that voter fraud cases were not being treated as a priority by the Justice Department, Perino said. He also passed along complaints about Iglesias that he heard going back as far as 2004. Do you recall whether Mr. Rove complained to you about voter fraud cases not being treated as a priority by the Justice Department?

A I have that general sense, yes.

Q Were you aware of any conversations that Mr. Rove had with the gentleman named Weh, W-E-H, in New Mexico?

A I've seen documents about that gentleman that reference him. I wouldn't have an independent recollection of it.

Q And I apologize if I asked you this question already, Ms. Miers, but the article also states that among the complaints that Rove relayed were concerns among republican party officials in various jurisdictions that the Justice Department was not being aggressive in pursuing allegations of election fraud by democrats. Such allegations by Republicans were a particular concern in New Mexico and Washington. Did Mr. Rove ever relay concerns to you that he had heard from republican party officials in various jurisdictions that the Justice Department was not being aggressive pursuing allegations of election fraud by Democrats?

A I don't have a recollection of a specific conversation. But as I indicated, I have a general sense that voter fraud came up more than once.

Q Did Mr. Rove ever complain to you about voter fraud allegations not being aggressively pursued in the State of Washington?

A I don't have a recollection of that. I can't rule it out.

Q Are you aware of any communications between Mr. Sampson or others at the Department of Justice directly with Mr. Rove or

others in his office about the performance or possible replacement of any U.S. Attorneys?

A I don't, unless they were brought up in the Judicial Selection Committee and they were present. I mean, they were represented. So if the topic came up in a particular meeting, it could have been they would be there listening like the rest of us. I don't have a recollection of knowing that Karl was going directly to the Justice Department.

Q So you don't recall anyone from the Department of Justice ever telling you that they had received a communication directly from Mr. Rove complaining about a particular U.S. Attorney?

A I don't have that, I don't have a recollection of that happening.

Q Do you recall any others in Mr. Rove's office relaying concerns to you about U.S. Attorneys not aggressively pursuing election fraud by democrats?

A I don't have a specific recollection of any communication like that, but I can't rule out that Scott Jennings or Sara Taylor or someone else didn't, but I don't have a recollection, I'm not able to recall any instance of it.

Q Do you recall anyone else from Mr. Rove's office complaining during a JSC meeting or at some other time about the performance of the U.S. Attorney from New Mexico?

A It wouldn't surprise me if that happened, but I don't

recall it.

Q As White House counsel, did you discuss directly with the attorney general the performance of any particular U.S. Attorney and whether they should be replaced?

A I don't recall doing so. Again, it could -- if anything came up in the Judicial Selection Committee, he could have been present, but I don't recall, I don't recall a specific conversation.

Q If you would turn with me to document number 9. This is document number 00000014, 15 and 16 and 17. Looking at the e-mail on the first page from Karl Sampson to Mr. Kelley and to you, what was copied to Mr. McNulty, "subject matter: USA Replacement Plan; Importance: high." Does this e-mail purport to attach a plan to remove certain U.S. Attorneys?

A It appears to contain as an attachment the plan that is attached.

Q And in Mr. Sampson's e-mail, it provides in a parenthetical, "nor have I informed anyone in Karl's shop, another pre-execution necessity I would recommend." That's referring to Karl Rove, correct?

A Correct.

Q In your reply e-mail you wrote, not sure whether this will be determined to require the boss' attention. If it does, he just left last night so would not be able to accomplish that for some time. We will see. Thanks. Who is the boss that you're

referring to?

A President Bush.

Q And Mr. Sampson then replies, who will determine whether this requires the President's attention. How did you respond to his e-mail?

A I did not respond to it.

Q Did you communicate with him orally who would determine whether it would require the President's attention?

A I did not.

Q And why was that?

A I felt like he was the chief of staff to the attorney general and he was inquiring about something that was in White House counsel's domain and not his own.

Q And was this something that required the President's attention?

A It required informing him in my view as best I recall it.

Q If you could turn to Exhibit 13. This is a press background briefing by senior administration officials on executive privilege. If you could turn to page 3 of that press background briefing. At the bottom of the page the questioner says, maybe you should get one that would help. No, in this case, the President is saying that he had nothing to do directly himself with receiving advice about the firing of the U.S. Attorneys and approving the list or adjusting the list. Just because Ms. Miers

or Ms. Taylor or Scott Jennings appeared in e-mails with DOJ discussing that he is asserting that there is no involvement. His personal involvement did not engage in these discussions. And then it quotes the senior administrative official saying, he has no personal involvement. Our position has never been any different than that. Was that a true statement?

A I have no reason to believe that what is reported here, that the President had no personal involvement, I have no reason to believe that that is wrong.

Q If the President was informed of the U.S. Attorneys proposal to be removed, would you characterize that as no personal involvement?

A Could you restate that, please.

Q If the President was informed of a proposed list of U.S. Attorneys to be removed, would it be accurate to say he had no personal involvement?

A Well, I don't want to get into parsing words, but if the President or the White House said that the President had no personal involvement, whatever they meant by that I would have no reason to take issue with it.

Q And if the President had a final sign-off on the removal of particular U.S. Attorneys, would that, in your view, be personal involvement?

A That's a bit contrary to the facts as I know them to be that that would have been presented to him.

Q So the President had no role in approving or disapproving the list of U.S. Attorneys to be replaced?

A What I've said earlier is what I believe to be the case, that he should be informed about the fact that there is a plan and that it's moving forward.

Q But the President had no role in approving or disapproving a list of U.S. Attorneys to be removed?

A If he or the administration took that position, I have no way to disagree with it.

Q I want to make sure we're saying the same thing. Administration officials stated that the President had no personal involvement. If the President approved the list would that be an accurate statement?

A Well, I guess what's troubling me about your question, sir, is that it assumes that he would have under any circumstances gone through the list and been presented it for his approval in the sense that I believe you're asking that question.

Mr. Flood. Let me add what troubles me about the question is that I took it a contrary way, Congressman. Namely, that you weren't assuming anything about it because if you had been assuming that it had been actually communicated to him, that would be a communication to the President, which I would feel, under our agreement, would be objectionable, so I took you to be offering kind of a hypothetical comment.

Mr. Schiff. I am asking because I'm trying to determine

whether Ms. Miers has knowledge of whether the senior administration was being candid or not.

BY MR. SCHIFF:

Q But I want to make sure that you and I have the same understanding about what personal involvement means. So I'm asking you hypothetically, if a President approved or disapproved of a list of U.S. Attorney replacements, would that constitute personal involvement in your view?

A I certainly would characterize a specific act of, for example, signing an order or taking an affirmative act as personal involvement.

Q If the President was merely informed of the process, would you view that as personal involvement?

A I would.

RPTS KESTERSON

DCMN NORMAN

[11:07 a.m.]

BY MR. SCHIFF:

Q I think earlier you said that you didn't respond to Mr. Sampson's e-mail because he was one of the staff of the Attorney General and that you believe that the President should be informed of the process; was that right?

A I'm not sure what connection you're drawing between those two. But my sense -- based on my own belief, having given it a whole lot of thought -- I believe my view was that he should be informed.

Q And you have further said that if he was informed, that would constitute personal involvement?

A I would view that as his having been involved personally, correct.

Q And just to further clarify, you're not in a position to comment on whether the senior administration official's statement that the President had no personal involvement was true or not true?

A What I said was that I have no basis on which to take issue with it.

Q So you have no personal knowledge of whether the senior administration official's statement that the President had no personal involvement was true or false?

A That is a whole different question and a much broader question. And what I'm trying to say is that I can't take issue with the truth of this statement that is in the press that -- I just can't take any issue with it. I personally know of nothing that makes me conclude that it is an error.

Q Okay. That's what I was asking.

Mr. Flood. Congressman, I don't want to interrupt your flow. But if there is a good time to break --

Mr. Schiff. Okay. Thank you. Why don't we take a break right now.

[Recess.]

BY MR. SCHIFF:

Q Ms. Miers, before we broke, I think you stated that your view was that the President should be informed of the process or the candidates to be replaced as U.S. Attorney. Did you discuss with someone else whether they should be the one to inform the President?

A I don't have a specific recollection of what I'm about to say, but I believe it to be the case that I would have informed the chief of staff, Joshua Bolten, and that he would have taken it on to inform the President. That's my belief about what happened.

Q But you can't recall specifically whether you discussed this with Mr. Bolten?

A I believe that I did, but it is my impression that I spoke with Mr. Bolten about this and that I would have informed

him generally of what was happening, and it would have been my understanding that he would take that on as something to inform the President.

Q Do you recall anything about what Mr. Bolten may have responded to?

A I don't have a specific recollection and it is just my belief that I spoke with him about it and reported the existence of the plan, and that the DOJ was making the recommendations and Counsel's Office concurred, and other offices in the White House had been informed. But I don't have a recollection. I can't tell you this meeting happened. I just don't have a recollection of it. But looking at the situation, looking at what I believe was appropriate, I have given it a lot of thought and that's what I believe happened.

Q Did Mr. Bolten ever inform you whether he acted upon your recommendation?

Mr. Flood. If you can answer that without reference to conversations Mr. Bolten may or may not have had with the President, go for it.

Ms. Miers. I do not recall hearing back or even expecting to hear back from Mr. Bolten.

Mr. Schiff. And I want to clarify, counsel. My understanding of the agreement is that we can't go into the contents of your -- Ms. Miers' discussions with the President; however, if third parties have related their meetings or

conversations with the President to Ms. Miers, we can inquire about that.

Mr. Flood. With respect, the language says questions relate to communications to or from the President. And for what it is worth, I will say to all assembled that in the ordinary course of representing the White House in congressional inquiries, if someone asks a question about did you talk to the President, we think it appropriate to interject a request to find another way to get at it. And if somebody says, well, you didn't talk to him, or you won't tell me about so and so, if you know he talked to the President and we extend that -- we have extended that, and it may be better to say to third parties. I'm not averse to asking questions in this area, but I do think that wherever the contents of Presidential communications that you derive from, they are by our agreement off limits. That's how I read it.

Mr. Schiff. Counsel, I appreciate that. Our written agreement is that you can refrain from answering questions that relate to contents of conversations that you had with the President. But we believe you're duty bound to report if you're aware of other conversations with the President by third parties.

BY MR. SCHIFF:

Q But in this case, if I understood what you said, Ms. Miers, you're not aware of whether Mr. Bolten acted on your recommendation that the President be informed?

A I don't know whether -- I don't know what Mr. Bolten

did; whether he reported it or whether he did not.

Q At any time was there discussion with Mr. Bolten or anyone else as to whether it would be better not to inform the President?

A That absolutely did not happen.

Q Could you turn to Document 10, please. And that has a stamp, HJC 00394. At the top is an e-mail from you, Ms. Miers, to Mr. Kelley. And Mr. Kelley, again, was in your office, correct?

A He was my deputy.

Q And your e-mail reads: Please note his comment about political upheaval that may result in reference to Senators. I think we need to take the ramifications of this quite seriously, as I know we are.

Can you explain to what political upheaval you're referring to?

A It is referenced in the e-mail that is attached from Kyle Sampson to Mr. Kelley and myself and it says "and be steeled to withstand any political upheaval that might result."

And what I took him to be referencing -- and I think what had -- I've seen in documents, been referenced before, was that very often when you take action and it relates to somebody that has friends in the senatorial offices, that they will get upset.

Q And what were you asking Mr. Kelley to do? What steps did you want him to take with reference to potential political upheaval?

A You know, I can't go back and think about what was going on in my mind back that far ago. I can tell you what my impression would be from the e-mail if that would be helpful.

Q Sure.

A I think what I was talking about was making sure that whatever was going to be done was staffed, as we would call it in the White House, so that the people who could be impacted by whatever was planned could be -- touch base -- or you can touch base with them. And so I don't really know what I was referring to, but what makes sense to me from reading the e-mail is that we were sure that we touched base with our legislative people, for example -- excuse me -- so that if they knew something we didn't, or if there really was an anticipated opposition from the Senator's office or someone else's office, we would at least know about it. And what I was saying is that we had the obligation to understand and weigh those concerns.

Q So the ramifications that need to be taken quite seriously, by this you were referring to Senators who might be very upset with U.S. Attorneys being removed?

A Correct. That we would understand what -- and anticipate what opposition may occur, and that we had fully thought it through.

Q Do you know if anything was done on this topic after this e-mail -- as a result of the e-mail?

A I don't tie it necessarily to this e-mail. But my

understanding was that Mr. Kelley did do some checking with offices to ensure that they knew that the plan existed and that it was contemplated it would go forward.

Q Which offices would he have reached out to?

A Well, I assumed -- because I can't tell you factually, but I assume it would have been any that had a vested interest in this particular issue.

Q And you're referring by that to Senate offices, as well as the Office of Political Affairs?

A Well, I would be referring to communications, the people who would need to know about and respond to public issues, the Leg Affairs Office, because that is I think where we anticipated there could be some concern; and the Political Office would be the ones that Bill undertook.

Q And do you recall hearing back from the Political Office about what they thought of this plan?

A I don't recall. I mean, obviously it went forward, so I am assuming that Bill got the go-ahead from all of the various offices.

Q Now, this e-mail is in mid-November of 2006. Do you recall any other internal White House discussions about the U.S. Attorney removal plan before it was carried out on December 7th, after this e-mail and before December 7th?

A Well, I assume there were some, but I can't recall -- I don't recall any specific particular -- piece of feedback or

discussion other than, obviously, what I have already testified about.

Q And do you recall any conversations you had with Mr. Rove during this period between mid-November and early December when the plan was carried out?

A I don't recall any.

Q You don't recall any feedback --

A I'm not saying they didn't happen, but I am -- I can't recall any.

Q So you don't recall any input by Mr. Rove on the final removal plan?

A If it happened, I don't recall it.

Q During early 2007 -- you were there January through some point in February, right?

A Correct. I was there until February the 6th.

Q And during that period in early 2007, what involvement did you have with respect to the controversy concerning the U.S. Attorney firings?

A Not very much. Some.

Q Can you tell us what that was?

A I think I would have been generally aware of what was transpiring in the aftermath of the request for the U.S. Attorneys to step down. I was in the process of transitioning, so it -- there was a lot happening to try and make sure that the transitioning was happening and -- so I don't recall a whole lot.

Q Do you recall a conversation you had with the Attorney General around this time about the effect of the U.S. Attorney firings?

Mr. Manning. January to February 6th?

Mr. Schiff. Yes.

Ms. Miers. And I'm sorry, your word was?

BY MR. SCHIFF:

Q Do you recall a conversation you had with the Attorney General on this subject during the period from the beginning of January '07 until you left on February 6th?

A I'm sure we had some, but I don't -- or I would think we had some, but I don't recall anything.

Q Did you have any communications relating to Senate and House hearings on the subject with anyone in the Department or the White House?

A Yes, I do recall that developing, and I'm sure I had some communications about it.

Q Can you tell us what those -- who those conversations were with and what they concerned?

A Well, I do recall and I believe it was in that time frame that the response from the Justice Department was a response that I did not agree with, and I expressed that. And I expressed it on more than one occasion.

Q And tell us what it was about the Department of Justice communication that you didn't agree?

A Well, I believe it was Senator Feinstein who was raising issues about these matters, and maybe other Senators. But I recall that the response of the Justice Department was very defensive in terms of defending the bases on which they had decided to include certain people in the plan. And I felt that was a very wrong thing to do.

Q And what in particular did you find objectionable about what the Department was saying?

A I found it objectionable that they were communicating issues about these U.S. Attorneys in a way that was going to become public.

Q And can you tell us what it was that disturbed you about this?

A I was disturbed for the reputation of the individuals.

Q Was this a letter that the Department of Justice was sending to the Senate to justify the removal of the U.S. Attorneys?

A I don't recall whether it was just they were indicating they were going to do it, or whether it was in writing or an e-mail, or how it came to me. But I do know that responsive to criticism, the Justice Department felt like they needed to defend themselves and demonstrate why they made these decisions. And I felt that was wrong.

Q And you felt it was wrong because they would be communicating publicly about the performance of the U.S. Attorneys

who were asked to resign?

A Or just that they were asked to leave rather than it being a mutual decision.

Q Were you concerned at all that it was being represented that all of the U.S. Attorneys on the list were being removed for cause?

A I don't recall having that thought. I was -- that was the import of what the proposal was, that they would communicate outside the Justice Department, outside our branch, that these individuals were asked to leave for specific reasons.

Q And did it disturb you that -- did that disturb you because not all of the U.S. Attorneys were being asked to leave for cause, or because you didn't like the causes being made public?

A My concern at that point was the latter, that they were being -- because there were Senators who were saying, "You shouldn't have done this, you shouldn't have done this," that the response was to say, "Oh, yes, we should, and here is why." And I just thought that was not appropriate.

Q To your knowledge, were any of the U.S. Attorneys who were removed, removed for reasons other than cause?

A I was not aware of what all reasons the Justice Department had, nor would I venture to say that it would have been appropriate for me know what they internally developed about the individual offices involved in each of the cases.

Q Do you know whether any of the U.S. Attorneys that were being removed were being removed primarily to make room for someone else?

A It was not my impression that judgments were being made solely on that basis.

Q Was one of the objections that you had or one of the concerns that you had with the Department's position vis-a-vis the Senate, that one or more of the U.S. Attorneys were primarily asked to leave to make room for someone else and not because of poor performance?

A I don't think I had that thought, because I would not have known that that was a basis on which they were asking someone to leave.

Q Can you take a look at Document 14? This bears a stamp of 0AG 000001122. And the bottom e-mail referenced on the page is one from Tim Griffin to Mr. Oprison. Mr. Oprison was in your office?

A Yes.

Q And the subject matter of the e-mail -- it says FYI, January 25, 2007, reading from the contents of that e-mail, notice of full committee hearing. Senate Committee on the Judiciary has scheduled a hearing on preserving prosecutorial independence. Is the Department of Justice criticizing the hiring and firing of U.S. Attorneys. In an e-mail above that, a copy of this is sent to your attention as an FYI by Mr. Oprison, right?

A Correct.

Q And then in the top e-mail of the page, you sent an e-mail -- not the top e-mail, but the e-mail just above that there is an e-mail from you to Mr. Sampson, dated January 25, 2007, at 9:52 in the morning responding, Re: Conversation I just had with the AG."

Can you tell us what conversation you had just had with the Attorney General?

A Do you mean what I said to him and what he said to me?

Q Well, let's start out with where the conversation took place.

A I don't recall.

Q Do you recall having a conversation with the AG?

A As I said before, it wouldn't surprise me if I did, but I don't recall any specific communication with him.

Q Do you recall having any conversation with the Attorney General about the Senate holding hearings on the subject matter of the Department of Justice politicizing the hiring and firing of U.S. Attorneys?

A I don't recall it.

Q Do you recall any conversation with the Attorney General to prepare the Attorney General for testimony before the Senate or the House on the subject of the U.S. Attorney hirings or firings?

A I don't recall that. In other words, where I participated in preparing him for testimony?

Q Yes.

A I just don't recall that.

Q Do you have any recollection whatsoever of the conversation that you referred to in your e-mail to Mr. Sampson, where you said regarding -- "Re: Conversation I just had with the AG"?

A I don't recall the substance of the conversation.

Q Do you know why you would have sent this e-mail to Kyle Sampson?

A I just can't go back and reconstruct it.

Q Reading the context of your e-mail, does this indicate that you had a conversation with the AG on the subject of the Senate hearing into the politicizing of the hiring and firing of U.S. Attorneys?

A You could certainly assume that. I don't have a recollection of it, whether I called them or -- since I forwarded the e-mails below, that is a logical assumption.

Q Did you discuss with Mr. Sampson the conversation with the AG that you refer to in this e-mail?

A I don't have a recollection of it.

Q Is there a reason why you would have refrained from relating that conversation in your e-mail, the conversation with the Attorney General that you referenced? Is there a reason why you would have indicated to Mr. Sampson that you have discussed the issue with the Attorney General but not relate the contents of

the conversation?

A That wouldn't be my interpretation of it, but --

Q And how would you interpret it?

A I was simply sending to him the information that had been forwarded. So I don't have any way right this minute of recalling what was in my head back then.

Q Do you recall objecting in January 2007 to a draft letter to Senator Leahy on the U.S. Attorney removals because he had implied removal for cause too much for your appetite?

A I think I have seen that and it is consistent with my recollection.

Q Why don't we take a look at -- it is Document 15, the next page, HJC 10061. An e-mail from you to Mr. Kelley, subject matter, "Re: Leahy-Feinstein letter, re: USA appointments." I believe the letter implies that there was removal for cause, too much for my appetite, so I can't sign off on the letter. Can you clarify for us why the removal for cause language was too much for your appetite?

A I have already told you that and it is because, as in any employment situation, you try and minimize the harm done to the employee. And in this instance, I was aware of no precedent where there was some kind of public discussion of individuals and their performance in a way that was contemplated by the Department. And I felt like it was not right.

Q And did the letter go into the specifics of why

particular U.S. Attorneys were being removed?

A I would have to look at the letter, sir. I don't recall. But something in it made me feel that we were making public information that was not appropriate, as it wouldn't have been in any situation. The employer always has this reaction when you get into a dispute like this, and they want to go out and defend themselves. And doing so is unwise and it is, in this instance, I felt, not customary. And I think I said somewhere that there is no precedent for doing this.

Q Would you have objected to merely indicating they were removed for cause, or was it the discussion of the particulars of each U.S. Attorney --

A I wanted them to say there had been a decision made, period, paragraph. I did not expect that they would get into for cause or not for cause. Just like you advise employers all the time, you don't defend your decision. In most cases, you say this is a personnel matter and we are not going to comment.

Q But none of your concern involved whether, in fact, it was true that some of the U.S. Attorneys -- whether it was true that all of the U.S. Attorneys were being removed for cause?

A I don't remember having that concern. I really don't recall having that concern.

Q Did you believe that Mr. Cummins was being removed for cause?

A I believe that the Department of Justice recommended his

being asked to step down, and that had been -- it certainly had been discussed for some time.

Q Part of the reason for asking Mr. Cummins to step down was to make room for Mr. Griffin, wasn't it?

A The decision to pursue Mr. Griffin becoming the U.S. Attorney was something that was discussed quite a bit.

Q It was part of the reasons Mr. Cummins was asked to step down?

A You would have to ask the Department of Justice on what basis they made that judgment, but I know our inquiry about the availability of that particular U.S. Attorney's seat was a question to the Department. It wasn't any kind of direction.

Q Did you ever indicate that it was important to either you or Mr. Rove that Mr. Griffin obtain that position as U.S. attorney?

A I think I certainly made abundantly clear that we supported Mr. Griffin to become the U.S. attorney in the event the office was available.

Q Did Mr. Rove share your concern over publicly stating that the U.S. Attorneys were being removed for cause?

A I don't know. I can't tell you.

Q Did you ever discuss the matter with him?

A I don't have a recollection of discussing it with him.

Q Did you provide any other advice or have any other involvement with regard to responding to the controversy

concerning U.S attorney firings either while you were at the White House or afterwards?

A That's a hugely broad topic, and I can't possibly answer it.

Q Let me break it down. Prior to your leaving the White House, other than what you have described to us already, between the beginning of January '07 until February '06, did you have any other involvement with the brewing controversy over the removal of the U.S. Attorneys?

A I don't recall any that -- I'm not saying I didn't have any, because I was there and I was in the office and there were ongoing discussions. So I just don't recall anything specific other than my objection about the discussion of these people were removed for cause.

Q And shortly after your departure from the White House, did someone from the Department of Justice or the White House reach out to you to get further information about the U.S attorney firings in the wake of the controversy?

A I had some inquiries from -- and I would say maybe two or three calls I would get where -- I think there were at least three -- where I would get called and asked questions.

Mr. Manning. Questions from the DOJ?

Ms. Miers. Oh, from the DOJ? I don't recall anything coming from the DOJ. I'm sorry.

BY MR. SCHIFF:

Q And how about from the White House?

A I did have those sort of snippet calls where they would call and ask some questions.

Q And who called you after you had left the White House to discuss with you the U.S attorney firings?

A I believe Mike Scudder and Chris Oprison and Emmet Flood are the three that come to mind.

Q I'm sorry. What was the last gentleman's name?

A Emmet Flood, the gentleman --

Q And what do you recall of your conversation with Mr. Scudder?

A Well, I think I got a call where more than one person was on the phone, and that may have been the first call that I received. And I'm taking from the documents that I have seen since, that at least Chris Oprison and Mike Scudder were on that call.

Q And what was the nature of the call?

A They were asking some questions, particularly, I think, beginning with the question about my having brought up the topic of asking all of the attorneys to step down.

Q And who raised that question with you? Was that Mr. Scudder?

A I don't recall, and I hope I'm remembering that correctly. But I remember getting a call where they talked about a memo that came from Kyle Sampson, addressed to me, that made it

look like I had suggested that all of the U.S. Attorneys should be asked to step down.

Q And what did you tell them about that?

A I think at the time I told them I didn't recall it.

Q And --

A But they were referring to an e-mail that they said they had that seemed to suggest that.

Q And this conversation took place how soon after you left the White House?

A I don't have an independent recollection of that.

Q But it would have been within a matter of days or weeks?

A Probably weeks.

Q And what else do you recall discussing in that conversation?

A I don't really have a recollection of the conversation beyond that.

Q Do you know whether they asked you about particular U.S. Attorneys and what the chronology was in their being chosen for termination?

A I don't recall. I just don't recall.

Q The subsequent conversations that you had, can you tell us about those?

Mr. Flood. I would ask for a timeout. If by subsequent conversations you mean the conversations with me, those all occurred on or after March 9, 2007. And per the agreement

concerning accommodation, third rule of point, says for the period beginning on March 9, 2007, interviews will not include content of conversations involving -- ellipsis -- Ms. Miers and White House Counsel's Office. And on that basis, Congressman, I ask you not to -- to withdraw the question, I guess. I don't want to assert a privilege here, although I don't think it is a privilege situation, but I think it is potentially one. But rather we have, by agreement together, collectively decided not go there.

Mr. Schiff. Counsel, let me rephrase.

BY MR. SCHIFF:

Q What other conversations did you have up until March 9, 2007, after you left the White House, other than the one you described with Mr. Scudder and Mr. Oprison?

A My best recollection is that I had two other conversations, one more brief than the others, and one other. And I'm not even sure who that was with.

Q So you had two other conversations. And, I'm sorry, can you tell me who either was with?

A Well, one of them was with Mr. Flood for sure, and the other one might have been also. In fact, I have reason to believe that the other was with Mr. Flood also. And for that matter, even what Mr. Flood just mentioned, the call -- I don't know the timing on the call with Mr. Scudder and Mr. Oprison, but that could have been after that date too.

Q Well, do you recall whether your conversations with

Mr. Flood took place before or after March 9th?

A I don't recall the timing.

Q Well, this presents a problem.

Mr. Flood. Can we go off the record a second?

[Discussion off the record.]

Mr. Mincberg. This is a document produced to you by us.

Mr. Manning. No question about it.

Mr. Mincberg. I think we should probably do that.

BY MR. SCHIFF:

Q Ms. Miers, if you could turn to Document 16, which is stamped HM 001, 003, 005, 007, 009, 0011 and 0012. Let me say for the record --

Mr. Mincberg. The only reason for the gaps is we didn't make copies -- 002 had nothing on it. So we --

Mr. Manning. We understand that, except where Bates-stamped.

Mr. Mincberg. Yes, I understand.

Mr. Manning. So that the record is clear, up through 1 through 12 is one document; 12 and 13 is a second document. So that we don't get too confused.

Mr. Schiff. I'm sorry. Could you say that again?

Mr. Manning. Yes, 1 through 12. If you had what I gave you, we could get it squared away pretty quickly. But for sure 1 through 11 is the first document, and 12 was a two-pager. And that is missing, the second page. Whether it is --

BY MR. SCHIFF:

Q Ms. Miers, looking at the first page, there appears a date in handwriting of June '06 through August of '06. Is this note in your handwriting?

A Yes, it is.

Q And can you tell us when you took these notes?

A I can't give you a date, sir.

Q Can you tell us the circumstances in which you took the notes?

A I must have gotten a call from Mr. Scudder and Mr. Oprison. And I believe they told me at the time that Mr. Kelley was supposed to be on the call, but wasn't available.

Q And some of the early notations explain why calling U.S attorney issue. What did you mean by that?

Mr. Manning. Excuse me. So we are not confused here, these notes are all a part of a document which is dated March 12, 2007.

Ms. Miers. No, no, I don't think so. These notes -- we can go off the record if you'd like. But only those notes were on that.

Mr. Manning. Right; 1 through 12.

Ms. Miers. No. These notes were not on this, I don't think.

Mr. Manning. Okay.

Mr. Francisco. Are we off the record?

Mr. Schiff. I would rather stay on the record.

Mr. Manning. It is merely a question of the documents that were provided to the staff and their being incomplete. We could

answer that if we had the full set we gave to you. But if you want to answer it on incomplete questions --

Mr. Mincberg. Let me, on the record, I will go and get the precise documents which are precisely what is here, except for a few blank pages. But I will get them nonetheless. Please, go ahead.

BY MR. SCHIFF:

Q Can you explain to us what you meant by "explain why calling U.S attorney issue"?

A It appears to me I was saying this is what they were calling about.

Q And you further notate Schumer p.m. briefing. What -- was that something they informed you about during the call?

A I don't know. I don't have a way of remembering. It seems to me it is referring to Senator Schumer and, in some connection, Paul McNulty's briefing. So I don't know whether they are getting ready for that or whether -- I don't know -- or whether it has already happened or whatever.

Q So you don't recall what they told you about Senator Schumer or Mr. McNulty in this conversation?

A I don't recall.

Q Your notes then read: Contacts - White House counsel to, - is that "DOJ?"

A Yes.

Q And what does that refer to?

A I am assuming that -- and maybe it is a report and I'm wildly speculating. I can tell you what the words are, but exactly what they mean I would need to further -- have more information. But they may have said -- this may have been saying that in the briefing, the questions were White House counsel contacts to DOJ, and that was the question. But I'm speculating about that.

And then it says: Conversation with me. Kyle job specific to USA, and I wasn't a very good notetaker.

Q Do these notes on this first page refresh your recollection at all about what Mr. Scudder and Mr. Oprison asked you or what you said in response?

A It does not. I'm sorry.

Q Turning to HM 003, your notes read: "Monica-Goodling said was specific conflicts with what Bill said." What does that refer to?

A It appears to pertain to Monica Goodling having testified to something or said something, which was different from what I assume Bill Kelley was saying.

Q And do you know what Monica Goodling was saying that was different than what Bill Kelley said?

A I don't recall. I don't recall what they were saying.

Q You then wrote: "Consistent with our understanding - Tim G. wanted to be U.S attorney. We thought he was a good guy."

Does Tim G. Refer to Tim Griffin?

A It does.

Q And do you know whether the conflict between what Monica Goodling said and what Bill Kelley said had to do with Tim Griffin or the U.S attorney position in Arkansas?

A I would draw that conclusion by looking at the document.

Q Do you know whether Mr. Scudder or Mr. Oprison raised a conflicting view with you about whether Cummins, who was replaced by Mr. Griffin, was replaced for cause or merely to make room for Mr. Griffin?

A That could be the case, but I don't have a recollection of exactly what was said other than what I wrote.

Q Do you recall discussing with the Attorney General whether Mr. Cummins should be removed to make room for Mr. Griffin?

A I think that the impression in the White House, and certainly my impression, was that Mr. Cummins had indicated that he was going to move on and -- so whether the fact that he had indicated that -- it certainly in my mind wasn't something that we at the White House, at least, were indicating should happen absent the Justice Department feeling this was appropriate.

Q Well, if I could, though, do you remember having a conversation with the Attorney General about whether Mr. Cummins was being removed for cause or whether he was being removed to make room for Mr. Griffin?

A I would have viewed that as -- I believe I would have

viewed that as difficult to describe, because if he were already judged to have been someone that should be relieved or asked to step down, or if he was announcing he was going but then you go ahead and ask him to leave, is that for cause or not? I think you get into a debate.

Q Do you recall having any discussion with the Attorney General about Mr. Cummins or Mr. Griffin?

A I am not able to remember any such conversation, but I wouldn't be surprised if such a conversation occurred.

Q When you indicate "consistent with our understanding," do you recall whether it was what Mr. Kelley was saying or what Ms. Goodling was saying was consistent with your understanding?

A I don't recall what either one was supposedly supposed to have said. So I can't answer that.

Q If you could turn to Page 005, your notes, if I read them correctly, say: We would support him; not our prerogative to recommend removal.

What were you referring to here?

A Tim Griffin, I assume; that we would support Tim Griffin, and we would have been inquiring about the availability of that spot to the Department of Justice.

Q When you say "not our prerogative to recommend removal," you're referring to Mr. Cummins?

A That's correct. And I can explain why I feel that way.

Q Please.

A We don't know what Mr. Cummins is involved in in the White House. So we couldn't know everything that was going on with all of these U.S. Attorneys, and nothing makes that clearer than the Inspector General's report. We in the White House had no understanding of what case, for example, Mr. Cummins was handling and what other considerations existed. That had to come from the Department of Justice, who had all the information and all the right people to make judgments.

Q And that would have been true in the case of Mr. Iglesias as well, right?

A Yes, it would have been.

Q If I could turn your attention to Page 0007, always our thought -- reading your notes: Always our thought, Attorney General met with President all the time. What would that have referred to?

A They may be very separate topics. I don't necessarily associate always our thought with Attorney General met with the President at the time. And I wish my notes were more self-explanatory, but they are not. And it looks to me what I would imagine -- that they had asked me what -- whether -- and I'm really speculating, so maybe I shouldn't do it.

But the question was: Could he have independently met with the President and made recommendations to him or had some conversation that related to the U.S attorney matter?

RPTS MERCHANTDCMN ROSEN

[12:23 p.m.]

BY MR. SCHIFF:

Q Ms. Miers, the Office of Inspector General, OPR, report states that former White House counsel encouraged current and former employees to agree to be interviewed. Is that accurate? Were you encouraged to sit down for an interview by the Inspector General or OPR?

A My counsel indicated that we had received word that we were being encouraged to be interviewed.

Q And yet you declined to be interviewed?

A I did, sir.

Q And why was that?

A Because of the letter that I had that indicated that I was to observe the executive privilege, and I felt like that because of the subject matter I should not be interviewed without potentially running afoul the instructions in that letter. And I believe that was conveyed back.

Q Couldn't you have made yourself available to OIG and OPR and still reserved any claim of privilege during the interview?

A I'm not sure how you would have done that.

Q As to any particular question that OIG or OPR asked you, couldn't you assert a privilege if you believed one pertained?

A I didn't believe I should take it upon myself to be interviewed by the Inspector General when I was under instruction not to violate the executive privilege.

Q Turning to the months before the U.S. Attorney terminations took place in December of 2006, was serious consideration being given to using the Attorney General's appointment authority to put in replacements?

A I know that topic was discussed and it was discussed from the time the authority existed forward at various times.

Q And that authority had its origins in the PATRIOT Act?

A That was my understanding.

Q If you can take a look at Document 8. The bottom e-mail, and this is HJC00038 and 39, the e-mail from Kyle Sampson to you, Ms. Miers, dated Wednesday September 13, 2006, subject matter re the United States attorneys. It has several categories, Roman Numeral 4, USA in the process of being pushed out, is that right?

A Correct.

Q And Eastern District of Arkansas Bud Cummins is listed there?

A Correct.

Q And then in Category 5, Roman Numeral 5, it says USAs we now should consider pushing out, correct?

A Correct.

Q And in the next section on the following page, Section

6, in the middle of that paragraph Mr. Sampson writes, "in addition, I strongly recommend that as a matter of administration policy, we utilize the new statutory provisions that authorize the AG to make USA appointments. We can continue to do selection in JSC but then should have DOJ take over entirely to vet an appointment by not going the pas route," P-A-S. "We can give far less deference to home state senators and thereby, one, our preferred person appointed, and, two, do it far faster, more efficiently at less political cost to the White House." Is that correct?

A You read it correctly, yes, sir.

Q Let me know when you have read this. "I have one follow-up item I would want to do over the phone, what say you?" That's the end of that e-mail from Mr. Sampson?

A Yes, sir.

Q Now, this e-mail was in reply to one of yours on the same day a couple hours earlier that said, Kyle, any current thinking on holdover U.S. Attorneys, any recent word on Debra Yang's intentions, correct?

A Yes.

Q What was your reaction to Mr. Sampson's suggestion that the Attorney General's authority to make U.S. Attorney appointments be utilized to give far less deference to home state senators, do it faster and more efficiently with less political cost to the White House?

A I don't recall what my thought was when I read that, if I read it, I assume I probably did, but I don't have a recollection of reading it or having a reaction to it.

Q The following day, Sunday, September 17th, again on that first page, there's a reply from you to Mr. Sampson saying, "Kyle, thanks for this, I've not forgotten, I need to follow up on the info, but things have been crazy, will be back in touch."

Correct?

A Yes, sir.

Q So you did receive Mr. Sampson's e-mail, right?

A Yes. I have no reason to think I didn't.

Q Didn't you subsequently have a conversation with Mr. Sampson where you followed up on his suggestion that the AG appointment authority be utilized?

A I don't recall doing so.

Q Do you recall discussing whether the PATRIOT Act authority to make AG appointments should be utilized or not with others?

A I'm sure the topic came up from time to time. I know it came up in one specific. But I don't recall having a discussion with Kyle specifically about that topic.

Q And the one time it came up that you specifically recall, that was in reference to Mr. Griffin?

A Yes.

Q Did you ever voice disagreement with Mr. Sampson's

proposal either to Mr. Sampson or anyone else?

A I don't recall indicating agreement or disagreement.

Q Do you recall any action you took as a response to Mr. Sampson's e-mail?

A I don't recall it ever really coming up except in the one instance, but I do recall it coming up.

Q But you don't recall ever telling Mr. Kyle you did not agree with his suggestion?

A I don't have a specific recollection of that.

Q As White House counsel, were you involved in or did you have knowledge relating to the PATRIOT Act provision that allowed attorney general appointments of U.S. Attorneys?

A If I did, I don't recall it.

Q And when the e-mail refers to the pas route, P-A-S, is that presidential appointment Senate confirmed?

A Yes, that would be what that refers to.

Q So this attorney general authority would allow the administration to bypass the Senate confirmation and appoint a United States attorney?

A It would allow -- the provision, as I understood it, was designed to enable an appointment that could be, in effect, longer than whatever the length of time was that otherwise was the case.

Q And to do that appointment without getting senate confirmation, right?

A Senate confirmation would not be required to allow the

person to serve longer than was otherwise the case.

Q If the Department of Justice represented to the Congress that it never contemplated avoiding the pas route, would that have been a false statement?

A My reaction to that question, sir, is that the Department of Justice is a big entity and this was one person making that statement. And I have to ask the Department whether it went through a process or whether they concluded as a Department that's what they wanted to do.

Q But you don't have any specific recollection of disagreeing with this recommendation or others disagreeing with it?

A I don't have a specific recollection of disagreeing with it, but I certainly had a disagreement with it in the case that came up, and I assumed I would have in a number, depending on what the facts and circumstances were.

Q So you disagreed with using authority in the case of Mr. Griffin, but not in general, using the authority to bypass the pas route?

A That's not at all what I'm saying, sir.

Q Okay. Please tell me what you are saying?

A I thought I did.

Q Well, let me ask you again then. Did you voice your disagreement with Mr. Sampson's suggestion of using the attorney general appointment authority instead of the pas route at any time

to Mr. Sampson or to others in the White House or Justice Department?

A Well, from the e-mail, it appears that I may not have even read what this e-mail said in its entirety given that I was explaining to him that things were busy and I was going to have to come back to this. And it would never have been my view that you just, across the board, no longer seek Senate confirmation of potential nominees.

Q But you don't recall ever raising objection to this proposal?

A I don't recall any specific response to this e-mail.

Q Do you recall any general pushback against this idea of using the AG's authority in the Patriot Bill to bypass the pas route?

A I don't know that we would have viewed it as even essential. I don't have a recollection of thinking oh, my goodness, this is the route the Department of Justice is going to take and so we need to object to it.

Q Well, Mr. Sampson suggests in this e-mail, I strongly recommend that as a matter of administration policy we utilize the new statutory provisions that authorize the AG to make USA. We can continue to do selection in JSC, but then should have DOJ take over entirely the vet and appointment. Isn't Mr. Sampson recommending a new administration policy of using the AG's authority rather than requiring senate confirmation of new U.S.

Attorneys?

A I read that e-mail the same way you do.

Q Well, that's how I read it. Is that a fair reading?

A I read it the same way that you are reading it, that that's what he wrote in this e-mail.

Q And let me just ask one more time because I want to get clear on this, do you have any specific recollection of disagreeing with his recommendation as a general policy matter?

A I don't recall that it ever became an issue. I don't ever recall that it reached the level of being a real consideration.

Q Mr. Sampson's e-mail concludes by saying he had one follow-up item that he wanted to do by telephone. What was that item?

A I have no idea.

Q Do you recall the issue of using the AG's appointment authority coming up in discussions within your office?

A I don't have a specific recollection of that, but I'm sure it may well have.

Q If you could turn to Document 17. This is HJC00307. And this is an e-mail from Jennifer Brosnahan who is in your office, correct?

A Correct.

Q To you and Mr. Kelley dated September 20, 2006, correct?

A Yes. And it copies, it looks like all the other

attorneys in the office.

Q So this e-mail was sent on the 20th which would have been a week after the e-mail that we just discussed on September 13th, right?

A Yes.

Q And in the e-mail, Ms. Brosnahan writes, "Harriet and Bill, here are a few updates on judicial and U.S. Attorney issues that we discussed on Monday." And item 4 is, the AG's authority to appoint U.S. Attorneys. The U.S. Patriot Improvement Reauthorization Act of 2005, Patriot Reauthorization Act enacted March 9, 2006 authorized the AG to appoint a U.S. Attorney for a district in which the position is vacant. 28 U.S.C. Section 546, Kyle explained that AG appointees under this authority are not interim or acting, they are full U.S. Attorneys with the same title and authority as pas appointees and there's no time or limitation on their service, they may serve until a successor is confirmed and appointed.

The former provision placed a 120-day limit on service after which the court could appoint someone. The only limitation on the Ag appointment authority is that he cannot appoint someone who has been nominated, but whom the Senate has refused to confirm to the position. Kyle's view is that we should take advantage of this authority except when there is a specific net benefit to going to pas route. Please let us know if you have any questions. Did you have a discussion on Monday of that week as the e-mail references

on the use of the AG's authority to appoint U.S. Attorneys.

A I can't tell from this e-mail.

Q Well, in the e-mail that is addressed to you and Mr. Kelley, the first line reads, below are a few updates on judicial and U.S. Attorney issues that we discussed on Monday. Does that refresh your recollection about whether you discussed this issue with the recipients of the e-mail either collectively or individually?

A I just don't have a recollection of doing so, and I don't necessarily think that she's saying that we did based on her initial statement.

Q How do you interpret it?

A I just interpret it she's saying we had judicial and U.S. Attorney discussions on Monday and here's some more information. And what was said about the AG's authority and its use in connection with the discussions on Monday at least is not clear to me.

Q This doesn't indicate to you that one of the items that you discussed on Monday was the AG's authority to appoint U.S. Attorneys?

A It may well be, but it doesn't necessarily mean that.

Q But you don't have any recollection of whether, in fact, you discussed the items on this list including the AG's authority to appoint U.S. Attorneys?

A I don't.

Q Did you ever indicate to Ms. Brosnahan or any other recipients of this e-mail that you disagreed with Mr. Sampson's view that we should take advantage of this authority except where there is a specific net benefit to going to pas route?

A I just don't have a recollection of that.

Q Was it your understanding at this time during the September and October 2006 time frame that the AG appointment option would be utilized?

A I understood that the attorney general had that ability to use it where the circumstances justified it.

Q And was it your understanding that that would be utilized in preference to the Senate confirmation route?

A I certainly never understood that the Department from this e-mail or any other circumstance had decided that their process was going to be to adopt Kyle's suggestion here as it's laid out, that they were going to avoid Senate confirmation anywhere they could, because I would have thought, and still think today, that that would have been impractical.

Q Did you have any reason at the time to think otherwise?

Mr. Manning. Otherwise from?

Mr. Schiff. Otherwise from what Mr. Sampson was suggesting. In other words, Mr. Sampson suggests using the AG authority instead of going the confirmation route, right.

Ms. Miers. Maybe this helps. This is a good example why what was being proposed comes to the White House. Because the

White House's relationship with Senators means a great deal. And Kyle's suggestion that you do something that could sit very unfavorably with the senators and be a broader use of the authority that was given by Congress would not be practical, it would not be wise, it would not be practical. So some ideas get floated and they sort of don't get traction because it doesn't make sense.

BY MR. SCHIFF:

Q Well, Mr. Sampson's September 13th writes to you suggesting the use of the AG authority, and you don't recall ever disagreeing with his suggestion, right?

A I think that's contrary to what I've already testified.

Q Well, I thought you said you didn't recall?

A I don't recall responding to Mr. Sampson and saying specifically I don't agree with this.

Q And you don't recall --

A I don't even recall reading the e-mail. And there's some evidence that I may not have given my response to Kyle at the time.

Q And you don't recall telling anyone else that you disagreed with it either, right?

A I don't recall any discussions along those lines.

Q Do you recall anyone else weighing in and saying they thought this was a bad idea?

A I don't recall -- I can't tell you of an instance where

that happened.

Q So do you have any basis to determine whether this was representative of the Department of Justice's view?

A I don't ever recall it being suggested by the Department that that was its view.

Q Well, it's being suggested by Mr. Sampson of the Department that it should be the policy of the administration, right?

A Correct. Well, it's Kyle Sampson apparently speaking for himself.

Q Ms. Miers, how do you know that it's Kyle Sampson speaking for himself if you've never confirmed with anyone else from the Department of Justice about whether this would be the new policy?

A I said, I didn't recall any such discussions, and I'm just going on what you read to me, sir, which was that I recommend strongly. The only thing I know about it is from what we've just read because I don't have a recollection of this really becoming surfaced where it was an issue.

Q Well, Ms. Miers, if you don't recall any other feedback you received from the Department of Justice how can you assert today that Mr. Sampson's view was not representative of the Department's policy?

A I didn't mean to infer that or to say that. I don't know what internal discussions they had. It was never presented

to us as a policy that was being adopted.

Q So Mr. Sampson's view may very well have characterized the then current thinking of the Department of Justice, correct?

A I don't gather that from the documents that you've shown me, but I have no way of knowing what was going on internally at the Department of Justice. I have no recollection of it being conveyed to me as a Department position.

Q But you have no way of ruling that out either, right?

A I said I can't speak to what was going on in the Department of Justice, what conclusions they had reached that I don't recall being conveyed to the White House.

Q I want to ask you about some testimony by Deputy Attorney General Paul McNulty to the Senate Judiciary Committee in February of 2007?

A Is that a document in this book?

Q Document 18. Let's go to the second page and the third paragraph.

Mr. Manning. This is page 16 from the hearing, correct?

Mr. Schiff. Correct.

BY MR. SCHIFF:

Q Mr. McNulty testifies, and the fact is that there was a change made there that was not connected to, as was said, the performance of the incumbent, but more related to the opportunity to provide a fresh start with a new person in that position.

Mr. McNulty there was testifying about the Cummins position, am I

right?

A I assume that.

Q Since he's referring to in the paragraph above that with regard to Arkansas, it would be logical to conclude he was talking about the Cummins position, correct?

A Yes, I would.

Q Was that accurate testimony that the change was not connected to the performance of the incumbent, that would be Mr. Cummins, but more related to the opportunity to provide a fresh start for a new person, namely Mr. Griffin?

A I assume Mr. McNulty thought it was correct.

Q Do you have any reason to believe that Mr. McNulty would knowingly testify otherwise?

A I have -- what I would say about this particular assertion is that we asked the Department if there was going to be a vacancy in the Eastern District of Arkansas. We also asked the Department if there were other possibilities for positions that Mr. Griffin could be considered for. We left it to the Department to tell us if a change there was going to happen. And we also had information that Mr. Cummins was looking at moving on.

Q Well, when Mr. McNulty, the Deputy AG, testified that the change in going from Mr. Cummins to Mr. Griffin was not connected to the performance of Mr. Cummins but more related to the opportunity to provide a fresh start with a new person, Mr. Griffin, was that accurate testimony as far as you knew?

A More related to the opportunity to provide a fresh start with a new person in that position to me also includes having made an evaluation of what made the most sense for the Department. There is no question that a number of people in the White House supported Tim Griffin for that position. But we looked to the Department of Justice to tell us was it a vacancy that would exist.

Q And who in the White House supported Mr. Griffin for that position?

A Myself, Karl Rove, Colleen Litkenhaus was someone who had strongly recommended Mr. Griffin. There were others in the White House that knew him. And certainly Scott Jennings was supportive of his being considered for that position.

Q And what office was Ms. Litkenhaus in?

A She was in the Office of Management.

Q And Mr. Jennings worked for Mr. Rove?

A Correct.

Q Well, if I could return to the deputy attorney general's testimony, the Deputy AG testified that Mr. Griffin's replacement to Mr. Cummins was not based on the performance of Mr. Cummins but more related to the opportunity to give Mr. Griffin the position. Do you have any reason to believe that that testimony wasn't true?

RPTS KESTERSON

DCMN NORMAN

[1:55 p.m.]

A It was our understanding that the Department of Justice made a judgment that supported asking Mr. Cummins to step down. That was certainly at a time when Tim Griffin had a lot of support from the White House as a potential candidate for that position.

Q So then you would agree with the Deputy Attorney General's testimony?

A I would ask the Deputy Attorney General exactly what he meant by that testimony.

Q Well, if what he meant by the testimony was that it had more to do with putting Mr. Griffin in and was unconnected to the performance of Mr. Cummins, would that be accurate testimony?

A I still would want to ask Mr. McNulty what he was intending to say by this statement. If -- I can think of circumstances where it was certainly a mixture of those two, and in any event we assumed that they concluded that the office would function better if the change was made.

Q Well, if Mr. McNulty meant by this that the removal of Mr. Cummins was not connected to his performance, would that have been an accurate statement?

A I am assuming that they evaluated Mr. Cummins' performance.

Q Well, Ms. Miers, I'm asking you: Do you have any

information that would lead you to believe that when the Deputy Attorney General said Mr. Cummins' removal was not connected to his performance, that he was either testifying falsely or in error?

A My recollection of the circumstances would differ.

Q And tell me how your recollection would differ from that of the Deputy Attorney General?

A We had asked would there be a vacancy, and we expected the Department to tell us if there would be a vacancy. And we assumed if there was a vacancy, it was because they made the judgment that it was appropriate that Mr. Cummins not continue or Mr. Cummins himself had decided he wasn't going to continue.

Q Ms. Miers, you said you would assume if the Deputy Attorney General is saying that it was not performance-related, do you have any reason to question whether the Deputy AG, as a top official in the Justice Department, would know the facts?

A Well, he goes on to say, though, "but more related," and that implies there were other factors.

Q But you wouldn't believe you would have superior knowledge of how the Department of Justice evaluated an incumbent than the Deputy AG, would you?

A That's the whole point I have been trying to make; that we would not.

Q So if the Deputy AG believes the removal is not performance-connected, you would defer to his better knowledge of

the subject?

A I would say that my understanding of the circumstances at the time would differ.

Q Ms. Miers, isn't it true that the Attorney General, Mr. Gonzales also testified, with respect to the reason for Mr. Cummins' termination, that a change was desired by the White House because they had identified a well-qualified individual that they wanted to have as U.S attorney.

If you'd like, you can take a look at Page 19 if it will refresh your -- I'm sorry -- Document 19, if that will help refresh your recollection?

Mr. Manning. Page 77?

Mr. Schiff. Yes. Page 77. It is the second page in Document 19.

BY MR. SCHIFF:

Q Mr. Gonzales, towards the bottom of the page, testifies: Mr. Cummins was asked to leave in June; June 14, not December 7th. He was not part of that group and he was asked to -- a change was desired by the White House because they had identified a well-qualified individual that they wanted to have as a United States attorney.

Is he referring there to Mr. Griffin?

A I assume so.

Q So both the Attorney General and the Deputy Attorney General testified that the change was desired by the White House,

did they not?

A The documents speak for themselves.

Q And is that a fair reading of the documents?

A They say what they say.

Q Were they both wrong?

A What they are saying differs from my impression at the time, which was that Mr. Cummins was serving and would continue to, as far as we knew, until the Justice Department determined that he shouldn't or he left himself.

Q Can you tell us what source of information you would have had from the Department of Justice that would have given you different information than the information that was provided to the Deputy Attorney General and the Attorney General as to the reason why Mr. Griffin was let go -- Mr. Cummins, I'm sorry, Mr. Cummins?

A I don't really think that even necessitates the conclusion that is embedded in your question. I can just tell you what we anticipated, as the White House, and that was that Mr. Griffin be given a chance to serve if, in fact, there was a vacancy.

Q Ms. Miers, I ask the question because the Attorney General and the Deputy Attorney General testified that Mr. Cummins' removal was not performance-related; that he was removed to make room for someone that essentially the White House wanted.

I think you said that you disagree with that, and I'm

interested to know whether your disagreement is based on any information you received from others at the DOJ?

A It is based on my understanding of the circumstances at the time of what we would have been requesting, because it was essential that we not dictate someone be removed. That wasn't our role. The DOJ had to evaluate and advise as to whether a position should be vacant or not. And it would not have been our responsibility or even ability to dictate that somebody be fired. We wouldn't have had the information available to us that would have supported that.

Q And you don't recall receiving any information from anyone at the DOJ that contradicts what the Attorney General and Deputy Attorney General testified to?

A Well, I do recall having the impression that this was a gentleman who had said he was going to move on, and that was existing for some period of time.

Q Is it correct that Mr. Rove communicated on a number of occasions to you about -- or inquired of you about job possibilities for Mr. Griffin?

A He did.

Q Did Mr. Rove specifically raise with you the possibility of Mr. Griffin replacing Mr. Cummins as U.S. Attorney in Arkansas?

A I believe he did.

Q And did you tell Mr. Rove that this was a definite possibility?

A I did. I said it was a possibility. Mr. Griffin was never told that he was going to be recommended, at least not by us.

Q And did you communicate to DOJ, and in particular Mr. Sampson, the idea of Mr. Griffin replacing Mr. Cummins?

A We definitely surfaced the possibility of him being considered for that position, and, as I indicated before, possibly other positions if the U.S. Attorney position was not available. And I shouldn't say Mr. Griffin was -- never was said that he would be recommended because obviously at some point he was recommended to the President.

Q In fact, Mr. Griffin was told to step down as U.S. attorney -- I'm sorry -- Mr. Cummins was told to step down as U.S. Attorney sometime after you spoke with Mr. Sampson about the possibility of appointing Mr. Griffin; is that right?

A I'm sorry. I don't understand that question.

Q Wasn't Mr. Cummins told to step down as U.S. attorney sometime after you spoke with Mr. Sampson about the possibility of appointing Mr. Griffin?

A I now know that Mr. Cummins was requested to step down in June. I actually didn't remember that of my own knowledge.

Q And that is June of 2006, right?

A 2006, yes, sir.

Q We can turn to a particular page in the IG report, but you can let me know whether that is necessary.

Mr. Manning. What page?

Mr. Schiff. Page 124.

Mr. Manning. Thank you.

BY MR. SCHIFF:

Q In the second sentence of the second paragraph, it states that Mr. Sampson told congressional investigators that you asked him about the possibility of Mr. Griffin becoming U.S. attorney for the Eastern District of Arkansas in the spring of 2006. Do you have any reason to question that timing or that statement?

A I have no reason to question it.

Q Is it also true that Mr. Sampson was aware that getting Mr. Griffin appointed was important to you and to Mr. Rove?

A I have seen an e-mail where he says that was his view.

Q Well, getting Mr. Griffin appointed was important to you, wasn't it?

A I was in favor of Mr. Griffin having that opportunity if the opportunity existed. If you continue to read in the Inspector General's report, it discusses more about the circumstances at the time with respect to Mr. Cummins than we have previously discussed in your questioning.

Q It was important to Mr. Rove also to have Mr. Griffin appointed?

A Mr. Rove certainly supported Tim Griffin.

Q If you can look at Document 20. In the e-mail from Mr.

Sampson to Mr. Oprison -- again, Mr. Oprison was in your office, correct?

A Yes, sir.

Q The last line of that e-mail is a parenthetical that says: I'm not 100 percent sure that Tim was the guy on which to test-drive this authority, but know that getting him appointed was important to Harriet, Karl, et cetera.

The "him" in this case is Mr. Griffin, correct?

A That's how I read it.

Q Why did Mr. Sampson think this was important to you?

A For the reasons that I have already said. Among others, I was impressed with Mr. Griffin and I supported him for the position if it was vacant.

Q And you communicated that support to Mr. Sampson?

A Yes, I did. I assume I did.

Q And Mr. Rove, why was it important to Mr. Rove?

A Because he knew Tim Griffin also and thought highly of him.

Q And do you recall conversations you had with Mr. Rove about Mr. Griffin?

A I know we had some. I know he either e-mailed or talked to me about Tim on a number of occasions and -- so I'm sure we had conversations about Tim, and I know he thought highly of him. He was irritated with him sometimes and --

Q But if this was someone that Mr. Rove repeatedly

e-mailed you about, it would have been someone pretty important to Mr. Rove; is that fair to say?

A I don't know that I would use the word "repeatedly." But he certainly e-mailed me about Tim Griffin and asked what possibilities existed for him, both when he was coming to the White House as well as when he was being considered for the Eastern District.

Q But it would be fair to say, wouldn't it, that the DOJ was aware that this was important to both you and Mr. Rove, that Mr. Griffin get an appointment somewhere?

A I would have thought that they understood that we supported Mr. Griffin and thought highly of him.

Q Isn't it also true that, in contrast with usual practice, one of your assistants was told to ask for prenomination paperwork to be done on Mr. Griffin in June of 2006, before there was a vacancy and before he was recommended by the JSC?

A That may be the case.

Q Do you want to, if you would, turn to Page 125 of the IG report.

A All right, sir.

Q The first paragraph states, does it not, that an administrative assistant in your office called EOUSA to request prenomination paperwork for Mr. Griffin on June 13th. Do you have any reason to dispute that?

A No, I do not.

Q The report goes on to state that, according to the EOUSA official, the routine procedure was to submit such paperwork after interviews by the Department selection panel and the JSC had made its decision about who to recommend to the President and that in this case there had been no panel interviews and there was yet no vacancy. Is that an accurate description also of what took place?

A My recollection from reviewing documents is that Mr. Griffin had been already interviewed by a panel and that he was being considered as a sole candidate.

Q And that was a departure from the routine procedure, correct?

A Certainly, most times there is consideration that is different than this, where you have a candidate and they are not, for that position, interviewed by the panel. The more normal process was the panel would interview and make a recommendation.

Q So under normal circumstances, there would be a number of folks interviewed by the Department selection panel and that would take place after there was to be a known vacancy, right?

A That is more often than not the case.

Q And why was the more exceptional procedure used here?

A In this instance, my recollection is that Tim had actually interviewed for a position for the U.S attorney in Arkansas and -- so both the Department and the White House had a lot of knowledge about him.

Q Did it have something to do with the fact that

Mr. Griffin was a priority of yours and Mr. Rove's that the usual procedure was not followed?

A I am sure that the Department of Justice knew that, as I have indicated, a number of people in the White House supported Mr. Griffin and he was considered as a sole candidate. And I'm sure mine and Karl's and everybody else's support for him made a difference, as well as how well he had interviewed the first time he was considered.

Q Were there any other cases where you had a sole interviewee for a U.S attorney position that was not yet vacant, that you can recall?

A I would have to check the records.

Q There is none that you can recall?

A I don't recall any.

Q Is it also correct that Mr. Griffin was approved by the JSC and by the President to be U.S attorney months before Mr. Cummins resigned in December of 2006 and without following the traditional practice of informing the home State Congressional Delegation and soliciting candidate names?

A Could you repeat that? I'm sorry.

Q Sure. Is it also correct that Mr. Griffin was approved by the JSC and by the President to be U.S attorney months before Mr. Cummins resigned in December of 2006, and without following the traditional practice of informing the home State Congressional Delegation and soliciting candidate names?

A I believe that all of that is correct, but I would have to check to determine it for sure. But it all sounds correct to me.

Q Sometime after Mr. Griffin was approved by the President, isn't it correct that the plan became not to follow the usual nomination approval process involving the Senate, but instead to appoint him as U.S attorney or interim U.S attorney using the AG's PATRIOT Act authority?

A I'm sorry, I don't believe that is correct.

Q So there was no decision made after his approval by the President to depart from the normal nomination and approval process and, instead, use the AG's PATRIOT Act authority?

A I think that is much too broad a statement, sir, than what I would have understood to be the circumstance.

Q Well, let's take a look at Document 23. At the top of the page, there is an e-mail from Mr. Oprison to Andrea Looney. And whose office is Andrea Looney in?

A Andrea Looney was one of the representatives in the Legislative Affairs area and she would have had responsibility for U.S. Attorneys.

Q And the subject matter is "Re: Tim Griffin, Eastern District Arkansas USA spot." And the text reads, "As an AG-appointed interim U.S. Attorney for the remainder of the time."

Does that refresh your recollection as to whether Mr. Griffin was being considered for appointment under the Attorney General's

PATRIOT Act authority?

A It does not refresh my recollection.

Q At some point, did you become aware of a desire to appoint Mr. Griffin using the AG's patriot act authority?

A I guess my best recollection is that, of course, when he is approved by the President to be nominated, he goes through review first. That makes a difference as to whether he will or will not be nominated. So the President approves and then he goes into background. And that takes quite a while to get it cleared as to whether he can be nominated. And then you have to actually go back to the President and get him actually nominated.

So in this instance, my recollection was that he was put into the office in another capacity, not U.S attorney, and then later on was appointed U.S attorney. And whether it was pursuant to the new authority or just the regular authority that the AG had, I don't believe I ever knew. In fact, I didn't -- I don't know that it made any difference.

Q Were you aware of any effort to use the AG's PATRIOT Act authority to appoint Mr. Griffin to the U.S attorney position and therefore bypass any opposition from the home state senators?

A My understanding was that there was no attempt to bypass the senators, quite to the contrary.

Q Can you turn to Document 20. This is an e-mail from you to Mr. Rove at the very top. It says forward -- another Griffin article is the subject. "FYI. This does not seem to be

developing as we thought."

If you look at the previous e-mail, Mr. Oprison to you and Mr. Kelley, it says also "Richard Klinger confirmed with Paul Perkins earlier today that Tim had been approved by the President as a nominee in 2006, but after Senator Pryor indicated he would oppose Tim's nomination, the plan turned to putting Tim up as an AG appointment."

And the e-mail prior to that from Mr. Sampson to Mr. Oprison states: "My thoughts. I think we should gum this to death, ask the senators to give Tim a chance, meet with him, give him some time in office to see how he performs, et cetera. If they ultimately say no, never, then the longer we can forestall that the better, and we can tell them we'll look for other candidates, ask them for recommendations, evaluate the recommendations, interview their candidates and otherwise run out the clock. All of this should be done in, quote, good faith, unquote, of course.

"Number two, officially Tim as the U.S attorney will identify himself as such on pleadings and other official documents. I think it is fine for us to refer to him as, quote, interim U.S attorney, unquote, in talking points with the understanding that by, quote, interim U.S attorney, unquote, we mean AG-appointed as opposed to Presidentially appointed and Senate-confirmed U.S. Attorney.

"Number three, overall I think we should take the temperature way down. Our guy is in there, so the status quo is good for us.

Ask for them to consider him. Note that he is qualified and doing a good job. Whenever asked, pledge to desire a Senate-confirmed U.S. Attorney and otherwise hunker down.

"And number four, the only thing really at risk here is a repeal of the AG's appointment authority. We intend to have DOJ Leg Affairs people on notice to work hard to preserve this. House Members won't care about this. All we really need is for one Senator to object to language being added to legislative vehicles that are moving through. There is some risk that we will lose the authority, but if we don't ever exercise it, then what is the point of having it? I'm not 100 percent sure that Tim was the guy in which to test-drive this authority, but know that getting him appointed was important to Harriet, Karl, et cetera."

When you wrote to Mr. Rove in this December 19th e-mail, "FYI, this does not seem to be developing as we thought," what were you referring to?

A What I was referring to is that I understood the plan with Tim Griffin would be that we would ask the Senators to meet with him, consider him, watch him perform and that they would come to the conclusion that they would support him to be the U.S attorney. That was my understanding of what was supposed to happen.

Q Where did you get that understanding?

A I would have gotten it from the circumstances at the time.

Q Well, who would have conveyed to you that that was how the process was intended to work?

A It was just my impression, sir. I can't go back and tell you all of what went into it. I know at some point I had a conversation with Senator Pryor that prompted me to call the Attorney General and discuss this concept; and by this concept, I mean appointing him permanently to that office, with Judge Gonzales.

Q Well, the e-mail I asked you about earlier, that I believe was dated September 13th to Mr. Sampson, the subsequent e-mail a week later, September 20th where the issue was raised both by Mr. Sampson and your own staff about using the AG's appointment authority under the patriot act, doesn't that appear to be exactly what was done in the case of Mr. Griffin?

A That was not my understanding.

Q That was not your understanding of what was going to be done or what was in fact done?

A I didn't know exactly within the Department what procedure they used, but my understanding was that Mr. Griffin was appointed as an interim, pending working with the Senators to get them comfortable with him as a U.S attorney.

Q And what was Mr. Rove's response to your e-mail that this does not seem to be developing as we thought?

A I don't recall a response from Mr. Rove.

Q Did you speak with him about this afterwards?

A I don't have a recollection of speaking with him after this.

Q Is this -- was this an issue of enough significance that you would have expected to have heard back from Mr. Rove about it?

A I just don't know. I just wanted him --

Q Mr. Griffin was someone that Mr. Rove had been advocating for, right?

A That he supported; and I think that is why I would have sent him the latest.

Q And after you received this e-mail chain, what was your response to Mr. Sampson's suggestion that we should gum this to death?

A Well, in fairness I can't go back and remember what I thought or -- I don't think. But I think it is totally beyond reasonable to think that you would do something like this or attempt to do it.

Q But you have no recollection of whether you conveyed your disapproval to Mr. Sampson?

A I just have to go back in time and piece it back together. But I know it was my impression, when Senator Pryor called, that I did not think this was the game plan nor would I ever have thought this was practical.

Q But you don't recall taking issue with Mr. Sampson's suggestions here, or when Mr. Sampson earlier proposed using the AG's interim authority; am I right?

A I don't recall having a specific discussion with Mr. Sampson about his suggestions. But he made suggestions from time to time that we found to be unacceptable.

Q Isn't this, though, the type of situation that, as White House counsel, you would be intimately involved in?

A I don't know how intimately involved in it I would have been.

Q Well, if someone in the DOJ were proposing to evade Senate confirmations by using this patriot act authority, wouldn't that be an issue you would weigh in on as White House counsel?

A It would be a reason why suggestions come to the White House because -- and why you would examine them in the offices of the White House, because you would want to make sure that nothing was being done that would harm relationships with Senators unknowingly.

Q But you don't recall weighing either when Mr. Sampson originally proposed using the patriot act authority or when Mr. Sampson recommended gumming the Griffin situation to death?

A If I'm recalling the right e-mail, it is the e-mail that I'm not sure I even reviewed, so -- because I was indicating I couldn't respond to him. With respect to the use of the AG's authority, if it had been presented as, well, we are going to do this under circumstances that were inappropriate, I believe I would have weighed in, yes. And it would have been part of the White House counsel's responsibility to ensure that it didn't

happen inappropriately.

Q But you have no specific recollection of weighing in after receiving this e-mail about gumming this to death?

A I don't actually think it ever came up except in the connection with Senator Pryor and Mr. Griffin. I could be misremembering something, but I don't recall that it ever really came up.

Q But you don't specifically recall weighing in on this issue?

A I think that is different than what I have already said.

Q When do you recall specifically weighing in on this issue?

A I believe with respect to Tim Griffin and Senator Pryor.

Q And who did you weigh in with?

A I would have weighed in with the Attorney General, for one. I believe I testified that when I got Senator Pryor's call that Mr. Griffin was appointed permanently and not interim, I called the judge and talked with him about the situation to ensure myself that, in fact, it was an interim to see if the Senators working with Tim would be as impressed with him as we were.

Q And the conversation you had with the Attorney General, it was by telephone or in person?

A By telephone.

Q Did you call him or did he call you?

A I called him.

Q And what was the -- what precipitated your calling him?

A Senator Pryor's call.

Q And when did Senator Pryor's call take place?

A I don't know.

Q And were you at your office when you were called by Senator Pryor?

A Yes, I was.

Q And what did Senator Pryor have to say when he called you?

A Senator Pryor was concerned with just this issue, whether the intention was to appoint Tim Griffin and have him serve indefinitely or whether he really was an interim appointment.

Q And what did you tell Senator Pryor?

A My recollection is I told him I would check with Judge Gonzales.

Q And did you call the Attorney General on the same day that you had received the call from the Senator?

A Immediately, as I recall.

Q What did the Attorney General relate to you?

A The Attorney General indicated that he thought -- he thought it was -- my recollection of that call was that he agreed that it was an interim appointment; that it was not intended to be permanent in the face of Senator Pryor's opposition.

Q Did you discuss with the Attorney General whether he had

used or should use the AG's appointment authority under the PATRIOT bill?

Mr. Manning. With respect to Mr. Griffin?

Mr. Schiff. Yes.

Ms. Miers. I don't know that we talked about it in those terms. I don't have that recollection.

BY MR. SCHIFF:

Q Well, were you calling him to find out whether he had been appointed under the AG's PATRIOT Act authority or under the interim authority?

A I called him to determine whether his intention was to bypass the Senators when he did this, because I didn't think that was the case.

Q And his response was?

A He did not intend to bypass the Senators is what I recall his position was.

Q Did you raise with him the proposal that Mr. Sampson had made to do exactly that, to bypass the Senators?

A I don't recall doing that.

Q The conversation you had with the Attorney General was after you had received this e-mail chain; about a week after, wasn't it?

A I don't know when it was timed with this.

Q On Document 23, which we looked at a moment ago, in the bottom e-mail from Mr. Oprison to Ms. Looney, it says: "Harriet

has a call with Senator Pryor today and I would like to brief her on the latest. Thanks.”

Is that the same conversation that you just spoke about?

A I would think so. I didn't speak to Senator Pryor that often, and I would assume that that is the same call.

Q And do you recall being briefed by Mr. Oprison for your call with Senator Pryor?

A I don't remember it at this point.

Q When Mr. Oprison replied to this e-mail on that same page, Document 23, “As an AG-appointed interim U.S. Attorney for the remainder of the term” -- I'm sorry - “for the remainder of the time,” that's referring to the conversation you were going to have with the Senator?

A I'm sorry, sir. What was your question?

Q The top e-mail on that page has an AG-appointed U.S. interim attorney for the remainder of the time. This was Mr. Oprison replying with respect to the same conversation you were going to have with Senator Pryor, right?

A It appears to be.

Q And I just wanted to -- let's see. So your conversation, then, with Senator Pryor took place, according to this, on December 13th. So it was 6 days later, on December 19th, that you received the e-mail chain which included Mr. Sampson's e-mail about gumming the matter to death, right?

A The e-mail that is number 20 in the book is dated

December 19, 2006.

Q So this -- you received this e-mail, then, after your conversation with the Senator?

A That's what it appears like.

Q So you speak with the Senator on the 13th and told him you would get back to him about the authority that was being used to appoint Mr. Griffin, right?

A No, not really. The question was: Was this intended to be interim or was it intended to be permanent?

Q And on December 13th, you told the Senator you would get back to him?

A I don't know whether I said I would get back to him or I would call the Attorney General and he would get back to him. But in any event, the message was going to get back to Senator Pryor that this was interim and it wasn't intended to be permanent without the Senator's approval.

My recollection and understanding was that with respect to Senator Pryor, we intended to convey to him that this was interim and that -- and when I said it is not developing as we thought, it refers to the fact that any hope that the Senators would agree that Tim was doing a good job and therefore would get their support wasn't happening.

Q So it was sometime, then, after your conversation with the Senator and after your conversation with the Attorney General that you received the e-mail chain which included the e-mail from

Kyle Sampson suggesting that the matter be gummed to death? Do I have the chronology correct?

A If my conversation with Senator Pryor was on the 13th and this e-mail is dated the 19th, I got it after my call to Senator Pryor.

Q Mr. Griffin became the AG-appointed U.S. attorney for the Eastern District of Arkansas on the day following Mr. Sampson's gum-this-to-death e-mail; is that right?

A I don't know when he was appointed, and I don't know under what authority.

Q Could you take a look at the IG report, Page 134?

The third paragraph at the bottom says, "Mr. Griffin was sworn in as interim U.S attorney on December 20th, the day Mr. Cummins resigned." Do you have any reason to question those dates?

A I don't.

Q Did you ever agree that Mr. Griffin should be left in place in Arkansas, as Mr. Sampson suggested, despite the Senator's opposition?

A I did not agree to that. I did not agree to that.

Q Did you ever voice your disagreement with his proposition?

A I don't have a recollection of what occasion would have indicated that. But I did not agree that, in the face of senatorial opposition in Arkansas, that Mr. Griffin should

proceed.

Q When Mr. Oprison e-mailed Mr. Sampson -- forwarded Mr. Sampson's e-mail to you, Mr. Oprison wrote -- and I'm reading in the middle of his e-mail: Tim had been approved by the President as a nominee in June 2006. But after Senator Pryor indicated he would oppose Tim's nomination, the plan turned to putting Tim up as an AG appointment.

Did you read that to mean a PATRIOT Act appointment or an interim appointment?

A I don't know that I focused on it at the time.

Q And did you attempt to clarify this with Mr. Oprison?

A I don't know that I would have felt any clarification was necessary, because we were not going to take action that would have been opposed by Senators Pryor and Lincoln in this appointment. And the idea that you could continue to press that for any substantial period of time I don't think would have made sense to me.

Q Is it fair to say, Ms. Miers, you and Mr. Rove each played a role in the decision to appoint Mr. Griffin?

A I certainly did in the sense that we supported his being appointed, and I presented the papers to the President. I certainly was very involved. Mr. Rove was involved as a supporter of Mr. Griffin.

Q Is it also correct that the decision to have Mr. Griffin replace Mr. Cummins was contemplated by DOJ no later than the

beginning of 2006?

A It is true that the DOJ contemplated that no later than January of '06 --

Q Why don't we take a look at Document 6. That might make it easier. And this is an e-mail from Kyle Sampson to you dated, January 9, 2006, correct?

A Correct.

Q And on the second page, Mr. Cummins is listed as a possible U.S attorney to be replaced, and Mr. Griffin is listed as a possible replacement candidate. Let me try to find the line for you.

A Oh, I see it. "Term expires 1/9/06. Replacement candidate Tim Griffin," question mark.

Q So we know at least by January of '06 that the DOJ is thinking about replacing Mr. Cummins, right, with Mr. Griffin?

A I believe they were thinking about replacing him even before that.

Q But at least as of January, they are thinking of replacing him with Mr. Griffin?

A At least there was a question as to whether that was an appropriate replacement.

Q After you left the White House, were you aware that a letter was drafted in February involving the DOJ and White House to respond to questions from Senators about the Cummins-Griffin matter?

A I think I have seen documents about that.

Q And were you aware that in this draft correspondence there were false statements regarding the involvement of Mr. Rove and the contemplation of Mr. Griffin's appointment?

A Was I aware?

Q Yes.

A At what point in time?

Q Well, at any point in time, did you become aware there were false statements relating to Mr. Rove's involvement and relating to when Mr. Griffin's appointment was contemplated?

A Well, just like I have seen documents about that, I think I have seen documents that indicated that was clarified or corrected; that it was not accurate.

Q And in the drafting of the letter, did anyone consult with you to determine whether -- what was being said in the letter was accurate or not?

A I sure don't recall that.

Q If you could turn to Document 25. This is an e-mail from Mr. Oprison to Mr. Sampson, February 23, 2007. "Kyle- attach is a version with slight revisions. Fred, as I want to ensure that it is absolutely consistent with the facts and that it does not add to the controversy surrounding the issue." -- and the attachment -- and these are stamped OAG 000001130 through -- well, through 1133 at least for the purposes of this question. Did you ever see this draft letter when it was still in draft form?

A I sure don't recall it.

Q You don't recall anybody fact-checking the letter with you?

A I don't recall it.

Q Based on the e-mails that we have reviewed, to and from you and Mr. Oprison, should Mr. Oprison have been aware that parts of this letter were inconsistent with the facts?

A I think in the sense that you stated at the beginning of this interrogation, that if you leave something out, it is tantamount to being incorrect. This statement was much broader than what I understood the truth to be.

Q When the draft letter states that the DOJ is not aware of anyone lobbying for Mr. Griffin's appointment, that statement in the draft wasn't accurate, was it?

A The DOJ is not aware of anyone lobbying for Mr. Griffin's appointment?

Q Yes.

A I would consider that inaccurate.

Q I'm sorry. You would consider that inaccurate?

A Correct.

Q And wouldn't Mr. Oprison have been aware that was inaccurate?

A I would feel like that is a question better addressed to Mr. Oprison.

Q Are you aware, Ms. Miers, of whether Mr. Oprison was

part of any conversation that you were present for with Mr. Rove in which Mr. Rove advocated for Mr. Griffin's appointment.

RPTS MERCHANT

DCMN HOFSTAD

[2:55 p.m.]

Ms. Miers. I'm reading a paragraph, sir, if that's okay.

BY MR. SCHIFF:

Q Of course.

A I guess I'm -- I don't know how to read this paragraph, because it starts off by saying, "Justice is not aware of anyone lobbying for Mr. Griffin's appointment, but consistent with longstanding practice in this administration the question of whether Mr. Griffin, who then was on active duty in Iraq, might be considered for appointment as U.S. Attorney upon his return was addressed by the Department and the White House."

So what are they saying? I think you either have to ask who drafted this or Chris about what he intended, why he didn't change that.

Q Well, let me ask you about the last sentence, this penultimate sentence on the following page, "The Department is not aware of Karl Rove playing a role in the decision to appoint Mr. Griffin on either an interim or permanent basis."

Was that an accurate statement?

A It technically could be accurate, as I read it, but I think it is incomplete in serious ways.

Q Would you agree it's just plain misleading?

A I can see how it could be characterized as that. The

reason that I'm pausing is that it's limited to the decision to appoint him as either on an interim or permanent basis. So Mr. Rove could be in the same position I actually see myself in, which is that it's not -- it wasn't clear to me at the time, as I recall it, what specific authority was being used. I see the e-mails. I just don't recall a clear understanding at the time that it was one or the other authority.

And so, if they're limiting it to that, I would have to say I would consider it deficient just because I think Karl's support for Mr. Griffin should've been expressed. And I know the administration decided that it wasn't accurate and it should be changed from documents that subsequently came.

I just am not going to be really quick to judge Chris when he's under the same kind of pressures that other people are under and he's trying to do the best he can to edit a letter that he's been given on probably pretty short notice.

Q Well, if you look at the first bullet point on that second page.

Mr. Manning. Which is 1132?

BY MR. SCHIFF:

Q Yes. It reads, "Regarding specific questions raised in your letter, we respond as follows." First bullet point: "Although the decision to have Mr. Griffin replace Mr. Cummins was first contemplated in the spring or summer of 2006, the final decision to appoint Mr. Griffin to be interim U.S. Attorney in the

Eastern District of Arkansas was made on or about December 15, 2006."

But we've seen on one of the prior exhibits that I showed you that, in fact, Mr. Griffin was contemplated for possible replacement of Mr. Cummins as early as January of 2006, right?

A He was identified on the e-mail as a possible replacement, yes.

Q So this first bullet point wasn't accurate, right?

A I think that's correct.

Q And if the -- do we have the letter that prompted this reply?

Mr. Mincberg. We can get it.

BY MR. SCHIFF:

Q Well, let me ask you this. I don't have the letter in front of me, but if the letter that this is responding to asked whether Mr. Rove played a role in proposing Mr. Griffin for this position, replying that the Department was not aware of Karl Rove playing a role in the decision to appoint Mr. Griffin as either on an interim or permanent basis, that would be misleading as well, wouldn't it?

A That's not how I would have responded to it.

Q At any time in the process that led to the removal of Mr. Cummins, were you aware of an investigation being conducted by Mr. Cummins of Republican Missouri Governor Matt Blunt, son of Representative Roy Blunt?

A I don't recall being aware of that.

But it's a perfect example of why you have to look to the Department of Justice to tell whether someone is involved in something that makes their request that they step down inappropriate. I'm not saying that was the case, that he wasn't doing that investigation, because I don't know. We wouldn't know, but the Department of Justice would. So you've got to have that reservoir of information to know what to do with respect to any of these sitting U.S. Attorneys.

Q Before we move to a new section, would you like to take a short break to get some water or stretch your legs or anything?

Mr. Manning. I'd love to take a comfort break.

Mr. Schiff. Okay, let's do that. Maybe 10 minutes.

[Recess.]

BY MR. SCHIFF:

Q I would like to ask you now some questions about the U.S. Attorney in New Mexico who was replaced, David Iglesias. When do you recall first hearing or communicating about replacing him?

A Replacing him, I can't tell you when I first understood that he was being recommended for replacement.

Q What's the first communication regarding him that you can recall?

A I can't tell you, sir.

Q The conversation that you related earlier that you had

with Mr. Rove when he called agitated about the U.S. Attorney in New Mexico, is that the first time that anyone had raised the subject matter of the U.S. Attorney in New Mexico with you?

A I don't believe so.

Q What prior communications did you have with respect to the New Mexico U.S. Attorney?

A Well, I just recall complaints about him coming up, not necessarily by name but coming up as the U.S. Attorney in New Mexico. And I also -- I know I've seen some early communications about Mr. Iglesias, but I have no recollection of those.

Q So before the conversation you relayed earlier with Mr. Rove, you remember hearing complaints about Mr. Iglesias, or about the U.S. Attorney from New Mexico, but you don't recall whether those complaints were oral or in writing or who made the complaints?

A I don't really recall.

Q Do you know whether they were complaints you heard from others in the Office of Political Affairs or whether they came from DOJ?

A I just don't know.

Q Do you recall in 2005 receiving through an attorney in your office, Leslie Fahrenkopf, complaints from Karl Rove's office about Mr. Iglesias not pursuing possible vote fraud cases that Republicans in New Mexico wanted to pursue?

A Is that what the e-mail says from Leslie? Because I

don't have an independent recollection of that e-mail exchange.

Q Well, let me ask it this way. Do you recall any decisions being made about replacing Mr. Iglesias as U.S. Attorney later in 2005 after his 4-year appointment expired?

A I have seen the e-mails that reference that, but I don't have any independent recollection of them.

Q Well, let's look at Document 26. This is an e-mail from Mr. Griffin to Leslie Fahrenkopf. Subject Matter: Forward: New Mexico U.S. Attorney; Importance: High. It says, "FYI, as discussed." And below that is an e-mail from Scott Jennings to Mr. Griffin.

And, at that time, in May of '05, Mr. Jennings was working in Mr. Rove's office, is that right?

A I don't really know for sure. I assume that he was part of the Political Affairs Office.

Q Do you know where Mr. Griffin was working at that time?

A I assume he was working at the -- well, I can't assume that. I don't know. I was going to say I assume, because it was coming out Tim Griffin without an e-mail address, that it was internal to the White House and, therefore, he was in the White House. But I can't say that because up above it's a [GWB43.com](mailto:GWB43.com) e-mail address, so I don't know where he was.

Q Is that [GWB43.com](mailto:GWB43.com), is that a Republican Party e-mail address?

A I don't know for certain.

Q Or a party account?

A I don't know.

Q As opposed to the -- that's not an extender for the official government offices, I take it?

A I would say it is not an official e-mail address. I don't know what address it is for. The one I've seen that was RNC I seem to recall was "GeorgeWBush," not "GWB." So I don't really know where that address comes from.

Q It begins, "TG" -- I assume Tim Griffin -- "here's the info you wanted on David Iglesias, the New Mexico U.S. Attorney. Please let me know what else I can do to move this process forward. Is it too early to formulate a list of extremely capable replacements? There are several I know personally and can recommend. JSJ."

And then there's an article that follows about voter registration fraud issues, is that right?

A There's a whole lot in that e-mail.

Q The e-mail concludes, "It continues to be the opinions of the county sheriff and GOP lawyers that numerous cases of voter fraud can be made and are highly prosecutable. The director of Bernalillo County Clerk's Office has also privately conveyed his dismay with the lack of interest in the U.S. Attorney's Office in pursuing these cases."

Do you recall ever seeing this e-mail?

A I don't recall seeing it, other than I've seen it

recently.

Q Were you aware that in May 2005, the date of this e-mail, that people in Mr. Rove's office were communicating about replacing Mr. Iglesias?

A I don't have a recollection of knowing that.

Q Did Ms. Fahrenkopf ever raise with you in May 2005 or thereafter that she had received information about complaints from GOP lawyers and others about voter fraud prosecutions in New Mexico?

A I've seen the e-mails relating to the New Mexico U.S. Attorney that Leslie Fahrenkopf sent to me, but I didn't have an independent recollection of it.

Q Let's take a look at Document 27. And my copy is cut off at the bottom. "HJC0" is what it says at the bottom of mine. I don't know if there are more digits after that.

[Discussion off the record.]

BY MR. SCHIFF:

Q The e-mail at the bottom, May 12, 2005, is from Leslie Fahrenkopf. It looks like it is to you, Ms. Miers. It says, "Harriet, per our conversation last week regarding the U.S. Attorney for New Mexico, David Iglesias, I double-checked the dates of Iglesias's confirmation and appointment. He was confirmed October 11, 2001, and appointed by the President on October 16, 2001. You also asked me to remind you to check the chart grading U.S. Attorneys on their performance."

Does that refresh your recollection as to whether you discussed the New Mexico U.S. Attorney with Ms. Fahrenkopf?

A It doesn't refresh my recollection. I mean, I see it, and I have no reason to doubt that I received it. It just doesn't ring a bell that I remember seeing it.

Q A few weeks later, on June 9th, the e-mail just above that, again from Ms. Fahrenkopf to you, reads: "Harriet, just want to follow up on this item to see if you wanted to take any action. You will recall that this is the individual who is ruffling some feathers in New Mexico."

Does that refresh your recollection about any further conversations you had with Ms. Fahrenkopf?

A It does not.

Q Why does she say, if you know, that you'll recall this is the individual who is ruffling some feathers in New Mexico?

A I can read the documents and make some assumptions, but I don't have any way of knowing. But it appears that she must have mentioned something to me about this situation and then was referring back to that conversation.

Q And you don't have any reason to believe that her e-mail is inaccurate do you?

A No, not at all.

Q You then replied to her on June 9th, "I believe the decision is to let his 4 years run and then appoint someone else, if this is the right case." What did you mean by "believe the

decision is to let his 4 years run and then appoint someone else"?

A I can't tell you today what I was thinking at the time. I assume that it had been discussed, from the context of the e-mail, that it had been discussed and some decision at least tentatively talked about that the individual would serve 4 years and then someone else would be appointed.

And I said "if this is the right case," because I wasn't, apparently, clear at the time what case I was thinking of or what case she was thinking of that that decision related to.

Q Was there any other case that you're aware of of a U.S. Attorney who was ruffling feathers in New Mexico or elsewhere that you might have been referring to?

A I'm sorry, I must have miscommunicated, because I wasn't saying that. I was saying that whether the New Mexico case was the one that I was thinking of related to the decision referenced in my e-mail to Leslie, whether that was the same. Apparently, I wasn't sure.

Q Yes, I'm just trying to gather whether there was more than one individual that you were discussing with Ms. Fahrenkopf at this time who was ruffling feathers with GOP lawyers or others regarding voter registration fraud?

A And I guess what I'm saying is that apparently I had had some discussion relating to someone where we had indicated at least early thinking that, when the 4 years ran, that person would be not continued and someone else appointed. But I wasn't sure at

the time, apparently, whether that related to the person that Leslie is describing in her e-mail.

Q No, I understand. But I still would like to know, was there anyone else during this time period that you would have been discussing with Leslie Fahrenkopf who was ruffling feathers because he was not prosecuting voter fraud cases that Republican lawyers thought he should?

A Well, having just a little bit glanced at the previous e-mail you were asking me about, I have difficulty with that question. Because one of the concerns expressed in here is that his prosecutorial decisions not to do things were being dictated by D.C. leadership.

So I don't know what it was that the ruffling feathers related to. We would have to see if we could go back and piece that together from information that's available.

Q Well, Ms. Fahrenkopf states in her e-mail, "This is the individual who's ruffling some feathers in New Mexico." Is there anyone that could have been other than Mr. Iglesias?

A If that's your question, which is not what I understood your question to be previously, I wouldn't have been able to remember the name, but it clearly is referencing the U.S. Attorney in New Mexico. I'm sorry, I didn't understand your question.

Q No, no, I'm just trying to narrow the range of who it could be. And you said, you said in your e-mail that "I believe the decision is to let his 4 years run -- "his" referring to this

New Mexico person who is ruffling feathers --

A I guess that's --

Q -- "and then appoint someone else, if this is the right case." And I'm just trying to make sure there's no one else that description would apply to.

A And I guess I am trying to express back to you that I am not sure, as stated in my e-mail, that the first part of my statement relates to New Mexico, because I say "if this is the right case." Because I, even sitting there then, apparently, based on the e-mail, wasn't sure that whatever that earlier discussion had been related to this person.

Q Well, that's why I'm asking you, if it wasn't this case, then what other case could it have been?

A And I don't know. I don't have a recollection.

Q Presumably it wouldn't be Mr. Cummins, right?

A I don't have a recollection who else would've been discussed in that connection. If I did, I would certainly tell you, but I don't have a recollection.

Q Well, assuming that your recollection at the time you sent this e-mail was correct, who had made the decision to let his 4 years run and appoint someone else?

A I would have to assume that those discussions involved the Department of Justice.

Q Well, wasn't Mr. Iglesias, at this time, ranked as a strong performer by the Department of Justice?

A The very first communication from the Department of Justice rated Mr. Iglesias as a strong performer, as I recall.

Q And that would have been when?

A That would have been in early March of '05.

Q So, 3 months later, you sent an e-mail to Ms. Fahrenkopf which you believe referred to Mr. Iglesias and said the decision was to let his 4 years run and then appoint someone else. Why would that decision have been made if the Department of Justice had him ranked then as a star performer?

A I can't answer that question.

Q Is it possible that the decision you're referring to is a decision in the White House, not in the Department of Justice?

A I can't rule that out, that there had been discussion within the White House.

Q Did anyone in your office -- or, I should say, did you or anyone in your office attempt to verify the validity of complaints concerning Mr. Iglesias in vote fraud cases?

A I did not. And, to my knowledge, no one in the White House did.

Q Was it considered enough that such complaints were coming from leading Republicans in the State?

A Enough for what, sir?

Q Enough to recommend that he be let go without checking the validity of the complaints?

A I don't believe that the White House would have taken

any action until it had been considered by the Department of Justice and there had been some sort of determination that the person should continue or not continue.

Q Would complaints from party Democrats have produced the same reaction?

A I don't know what you mean by "reaction," so could you clarify your question?

Q Yes. You've said that your office received complaints about Mr. Iglesias and his unwillingness to prosecute certain voter fraud cases, right?

A I best recall that there were complaints about Mr. Iglesias, or at least the U.S. Attorney in New Mexico, and that I had the conversation with Karl Rove. And I've since seen other documents about New Mexico that exist.

I am assuming that, if you had complaints from Democrats, you would have to look closely at what those complaints were and whether they had merit.

Q And did you look closely at the complaints that were received from Republicans and whether they had merit?

A The Department of Justice would have to. I'm sorry, I misspoke. I wasn't saying "we," the White House. We would not have done that. We would have referred them to the Department of Justice.

Q Did you ever inquire of the Department of Justice whether these allegations that had been made by leading

Republicans in New Mexico had merit or not?

A We sent the information to the Department of Justice, and we expected them to act on it or not act on it, as was appropriate, based on the in-depth knowledge that they had and the knowledge that everyone involved at DOJ in the U.S. Attorney world had as to whether someone should be asked to step down or continue.

Q Well, getting back to the conversation we had earlier today, you wouldn't believe it appropriate to terminate someone's position as U.S. Attorney based on unsubstantiated complaints from Republican Party activists, would you?

A I'm not sure which answers that you're referring to, in terms of the breadth of that question. My belief is that the understanding was, and I would certainly hope to be the case, that the Department of Justice would do the kind of research and rigorous study that would indicate whether a person should continue to serve or be asked to step down.

Q And if that review was never done, it wouldn't be appropriate to terminate Mr. Iglesias's position solely on the basis of Republican Party complaints, would it?

A It would not be appropriate to, as we talked about before, if a U.S. Attorney believes a case should be brought and they're criticized for bringing it or if they have a case that they're not bringing and they're criticized for not bringing it when they are in good faith believing they should not, in both of

those instances it would be inappropriate.

Q In the e-mail, again, looking at Document 27, Ms. Fahrenkopf in the bottom e-mail says, "You also asked me to remind you to check the chart grading U.S. Attorneys on their performance." Did she report back to you that Mr. Iglesias on the chart was rated as a star performer?

A I don't recall that she did that. And it actually looks like she is suggesting to me that I should do that.

Q And do you recall whether you did, in fact, check the chart to see how Mr. Iglesias was ranked?

A I don't recall doing so.

Q Do you have any personal information as to why the decision was made to replace Mr. Iglesias, who had been highly ranked by the DOJ at the time, other than the complaints that you heard from Mr. Rove and maybe others about his handling or non-handling of voter fraud cases?

A I would have to go to the DOJ and ask them on what basis they made that recommendation. I do know, of course, that there were complaints. And I personally, at least in one instance, believe I passed one along.

Q If you could look at Document 28, this is an e-mail chain that begins at the bottom on June 28, 2005, from Scott Jennings to Tim Griffin.

"I would really like to move forward with getting rid of the New Mexico U.S. Attorney. I was with CODEL this morning, and they

are really angry over his lack of action on voter fraud stuff. Iglesias has done nothing. We are getting killed out there."

Mr. Griffin then responds a few minutes later, "I hear you. It may not be that easy, though. The President has to want to get rid of him. I will ask counsel's office to see if it is even in contemplation."

There is then an e-mail at 11:36, just above that, on the same date, "The New Mexico U.S. Attorney" -- and I've got a binder hole there -- "Is the New Mexico" -- I assume it's "is" -- "the New Mexico U.S. Attorney even on your radar screen? I think we discussed," and it may say "his performance, at some point. See below."

And then a note from Ms. Fahrenkopf to Mr. Griffin: "He is on my radar screen. I raised it with Harriet a few weeks ago, and she would like to wait until his term is up in October 2005. If you think it merits another conversation with her, let me know," to which Mr. Griffin replies, "That is fine. Thank you, Leslie. I appreciate it."

Do you recall Ms. Fahrenkopf raising this with you and your telling her you would like to wait until his term is up in October 2005?

A No, I don't recall it, as I indicated before. And I think she is simply reacting to the previous e-mail that we talked about, which was on June 9th at 4:19, where I said in this e-mail what I said. But I think that's what she's referring to.

Q Did you know who was on this CODEL that Mr. Griffin is referring to -- or Mr. Jennings is referring to at the bottom of the page?

A I would have no idea.

Q Do you know what he means by saying "we are getting killed out here"?

A I can only assume.

Q Would you assume that he's referring to being killed out there by an excess of Democratic registrations?

A I wouldn't read that that way and assume, necessarily, that that was what this gentleman was saying.

Q Well, what's your reading of it, Ms. Miers?

A I really feel uncomfortable trying to guess at what Mr. Jennings was intending. I think it would be much better to ask Mr. Jennings.

Q Well, did Mr. Jennings or Mr. Rove or anyone in that office ever use the terms "we're getting killed out there" to refer to the situation in New Mexico?

A I just don't recall that.

Q Do you know any other way they would be getting killed in New Mexico?

A If there was rampant voter fraud and it was not being prosecuted and it should be, they could certainly refer to that as getting killed.

Q And by referring to it as "we are getting killed out

there," do you read that as "we Republicans are getting killed out there"?

A I certainly would read that as whoever is the victim of the voter fraud is getting killed out there.

And I should say, I'm not suggesting I know whether there was voter fraud or not.

Q Were you aware at this time, in June of 2005, that there were people in Mr. Rove's office who really wanted to move forward getting rid of Mr. Iglesias?

A I don't have a recollection of that.

Q Do you recall hearing of any further Republican complaints about Mr. Iglesias?

A As I indicated, there were complaints. I can't tell you how many. The one I recall is the one that came to me from the call with Karl Rove, but there were other complaints.

Q Could you turn to Document 29, please?

A Yes, sir.

Q At the bottom -- this is HJC00077. The bottom e-mail on this page is from Allen Weh to Scott Jennings. It's copied to Karl Rove, Sara Taylor, Tim Griffin, Steve Bell in Senator Domenici's office, and reads, "We discussed the need to replace the U.S. Attorney in New Mexico several months ago." And this is dated August 9, 2005. "The brief on voter fraud at the RNC meeting last week reminded me of how important this post is to this issue and prompted this follow-up."

"As you are aware, the incumbent, David Iglesias, has failed miserably in his duty to prosecute voter fraud. To be perfectly candid he was 'missing in action' during the last election, just as he was in the 2002 election cycle. I'm advised his term expires or is renewed in October. It is respectfully requested that strong consideration be given to replacing him at this point." The e-mail goes on further from there.

There was then an e-mail above that from Mr. Griffin to Karl Rove and Sara Taylor, copied to Scott Jennings. "I have discussed this issue with the counsel's office. I will raise with them again. Last time I spoke with them, they were aware of the issue and they seemed to be considering a change on their own. I will mention again unless I am instructed otherwise. Thanks, TG," I assume Tim Griffin.

Do you recall the issue being raised with you again in the August 2005 time frame?

A I really don't.

Q Well, Mr. Iglesias was not replaced in October 2005 but, rather, more than a year later, in December of 2006, along with other U.S. Attorneys. Do you have any information about why the delay took place? In other words, why he was not terminated at the expiration of his term but rather only a year later.

A I can't think of any reason.

Q Did anyone at DOJ resist firing Mr. Iglesias?

A I don't recall that.

Q Turning to Document No. 9, which we looked at earlier, this begins with DAG0000014. This is a November 15, 2006, U.S. Attorney replacement list as an attachment. And Mr. Iglesias now appears on the list to be let go, correct?

A He's on the list to be approached and asked to step down.

Q In fact, this is the first time he is on such a list from the DOJ to you, isn't that correct?

A I don't remember.

Q Do you have any further understanding of how Mr. Iglesias came to be included on this list other than what you've already described?

A Again, sir, the lists were developed at DOJ and they were proposed to the White House, and we would not have delved into the reasons each person was on the list.

Q Did you ever discuss whether to replace Mr. Iglesias with anyone at DOJ?

A I relayed the information, as I've earlier described. And I really cannot recall any communications with anyone at DOJ specifically about Mr. Iglesias.

Q Now, when you say "relay the information," are you saying relayed it to DOJ?

A Yes, in the conversation with Mr. McNulty.

Q And apart from that conversation with Mr. McNulty, was there anyone else you relayed complaints about Mr. Iglesias to?

A I may well have, but I don't recall it.

Q Are you aware of whether there were additional complaints from Republicans in New Mexico about Mr. Iglesias during the September through November 2006 time period?

A I have seen a lot of documents and seen the inspector general's report about complaints that were made.

Q But did you have any personal knowledge of these complaints being made during that time period?

A I was aware of some of the complaints. Whether I focused on the specific nature of them or not I don't recall.

Q Did you receive a phone call from Republican Representative Heather Wilson of New Mexico complaining about Mr. Iglesias during the fall of 2006 which you then passed on to the Department of Justice?

A I don't recall that.

Q Both the Scudder memo and the OIG/OPR report state that Mr. McNulty received a phone call from you in the fall of 2006 in which you relayed a phone conversation you had with Representative Wilson in which you stated Representative Wilson was displeased with Mr. Iglesias's performance as U.S. Attorney. Did that occur?

A I don't have a recollection of it occurring.

Q Do you recall --

A And there are several versions of what supposedly transpired, depending on what document you're reading.

Q Do you recall ever having a conversation with

Representative Heather Wilson regarding Mr. Iglesias?

A I do not recall that.

Q Do you recall ever having a conversation with Representative Heather Wilson about anything?

A I don't recall it.

Q So you don't know whether you've ever spoken to her?

A I just don't have a recollection of speaking with Congresswoman Wilson.

Q Do you know where Mr. McNulty -- well, let me ask you this. Do you have any reason to disbelieve Mr. McNulty's statement that you had relayed a conversation between yourself and Representative Heather Wilson to him? Do you have any reason to disbelieve his statement, his recollection?

A My recollection is imperfect, and I assume his could be imperfect also.

Q But do you have any reason to believe that his recollection is incorrect here?

A I don't have a recollection of having spoken with Heather Wilson and reporting that to Mr. McNulty.

Q Is it possible you had the conversation with Heather Wilson and don't remember it?

A We used to say anything is possible, but I have no recollection of having spoken to Heather Wilson or having passed anything from her to Mr. McNulty.

Q If you could turn to Document 30, these are stamped

HJC00329 through 332. The top of the first page is an e-mail from Mr. Rove to you, dated October 2, 2006. And the text reads, "Domenici is calling me about the USA for New Mexico." And part of the e-mail chain includes one from Mickey Barnett to Karl Rove.

Do you know who Mickey Barnett is?

A I don't really.

Q In Mr. Barnett's e-mail to Mr. Rove, he explains, "This article confirms what I mentioned Saturday. An FBI agent told me more than 6 months ago that their investigation was done and had been turned over to the U.S. Attorney a long time ago. He said agents were totally frustrated, with some even trying to get out of New Mexico. I can put you or anyone you designate with lawyers knowledgeable about the U.S. Attorney's Office, including lawyers in the office, that will show how poorly it is being run.

"Scott Jennings was kind enough to set up an appointment at the Justice Department several months ago where Pat Rogers and I laid all this out. I hope Justice can now be persuaded to send out some crackerjack prosecutor and perhaps promote Iglesias to a Justice Department position.

"We still await the results of the task force Iglesias convened about this time 2 years ago on the clear ACORN fraudulent voter registrations. We were told it would look too political" -- I assume that's a typo -- "to indict anyone that close to the election, then we never heard anything else. Mickey."

Do you recall receiving this e-mail from Karl Rove appending

the article that Mr. Barnett sent him?

A I don't have a specific recollection of receiving it. I mean, the nature of it was just more complaint.

Q Do you recall speaking with Mr. Rove after the original conversation you had with him when he was in New Mexico complaining about the U.S. Attorney there in preparation for his call with Senator Domenici?

A I don't have a recollection of that. I'm not saying that we didn't have other instances of it being discussed, but I sure don't remember it.

Q Do you know whether there was also a call from Senator Domenici to Josh Bolten on this subject?

A I've seen documents that indicate that.

Q Did Mr. Bolten ever discuss with you the complaints about Mr. Iglesias?

A If he did, I don't recall it.

Q Part of the article that was forwarded to you, if you look at the second page, about six paragraphs from the bottom, the article states, "Political insiders say that if the main suspects are Democrats, the shoe could drop before the November 7th election. If there are Republicans in the mix, the office might want to avoid an 'October surprise' and seek indictments later, political observers say."

Do you know whether there was any truth to those allegations?

A I would have no way of knowing.

Q Were you aware that Representative Wilson called Mr. Iglesias purportedly about the timing of the corruption case in October of 2006 prior to the November 7th election?

A Did I know about it?

Q Yes.

A I've heard allegations about that, but I didn't know about it. I certainly don't recall hearing about that.

Q So apart from -- I think you mentioned earlier you didn't recall having a conversation with Heather Wilson on this subject or any other. Do you recall discussing Heather Wilson's potential objections to Mr. Iglesias with anyone else in the White House or Department of Justice?

A Not that I recall.

Q Were you aware that Senator Domenici also called Mr. Iglesias about the timing of the corruption case in October of 2006, prior to the November 7th election?

A I have no recollection knowing that.

Q Did you ever speak with Senator Domenici about this?

A Not that I recall.

Q Would you recall if you talked to Senator Domenici about the Iglesias situation?

A I don't recall having spoken with him.

Q Would that be the type of thing you would recall, whether you had a conversation with a Republican Senator about the performance of a U.S. Attorney?

A I just can't say. I know I don't recall having spoken to the Senator about that issue.

Q Do you think it appropriate for a Federal elected official to call a U.S. Attorney shortly before an election and ask about the timing of a corruption probe that could have an influence on the election?

A That would not be something I would recommend.

Q And you wouldn't recommend it because it would be inappropriate, right?

A I wouldn't recommend it because of the implications of it.

Q And the implication would be that it was designed to influence the election?

A Influence a specific prosecutorial decision.

Q For partisan political reasons?

A For any reason, it would be improper.

Q So, Ms. Miers, your view is that it would be inappropriate for a Federal elected official to contact a U.S. Attorney shortly before an election to ask about the timing of a corruption probe under any circumstances?

A It is not something that I would recommend an individual to do, because its appearance is that you are trying to have some impact on the decision.

Q It would be all the more inappropriate if, in fact, he were trying to influence an investigation in a way that would have

an impact on the election?

A If you intended to impact the prosecutorial decision by asking when is it going to happen, then an intent to interfere with that judgment would be improper, in my view.

RPTS KESTERSON

DCMN NORMAN

[4:00 p.m.]

BY MR. SCHIFF:

Q Let me direct your attention to 31, Document 31, if I could. This is an article in the Albuquerque Journal entitled "Domenici Sought Iglesias Ouster," dated April 15, 2007. The article claims in 2006 Senator Domenici told the Attorney General that he wanted Mr. Iglesias removed as U.S. Attorney; yet the Attorney General said he would only fire Iglesias only on direct orders from the President and that Senator Domenici made the request to Mr. Rove and asked that he raise it with the President.

Do you know whether this is true?

A I don't know whether it is true.

Q The article further states that the Senator and the President had a phone conversation on the issue and that Mr. Iglesias was, in fact, fired as a result. Do you know whether that is true?

A I don't know.

Q To your knowledge, did the Attorney General ever refuse to fire Mr. Iglesias without a direct order from the President?

A I don't know whether he did or didn't. I have seen one indication in the documents, that at some point he indicated he wasn't prepared to -- maybe it's in the IG report. But I have seen something that says that. But at some point, he was

indicating he was not prepared to ask him to step down, but I don't have information beyond that.

Q Did anyone ever relate the Attorney General's position on the placement of David Iglesias to you?

A I don't know what you mean by the Attorney General's position, because I don't know what his position was. And I assumed his position was that he should be asked to step down because he came over on a list -- his name was on it and his deputy was copied on the e-mail, as I recall. So I had some indication that Attorney General Gonzales was in agreement that Mr. Iglesias should be asked to step down.

Q But no one ever related to you whether the Attorney General refused to let him go without the President directly ordering it be done?

A I have no information about that. And I have never seen this article before.

Q Do you know whether Senator Domenici ever raised this issue with the President?

Mr. Flood. That's a yes or no, or I-don't-know question.

Ms. Miers. Could you repeat your question, please?

BY MR. SCHIFF:

Q Yes. Do you know whether Senator Domenici ever raised this issue; that is, the removal of Mr. Iglesias with the President?

A I have no personal knowledge of that having been done.

Q I would like to ask you about one of the conclusions of the OIG OPI report on Page 190.

Mr. Flood. I'm sorry, Congressman. What page was it?

Mr. Schiff. 190.

BY MR. SCHIFF:

Q The evidence we uncovered in our investigation demonstrated that the real reason for Iglesias' removal were the complaints from New Mexico Republicans and party activists about how Iglesias handled voter fraud and public corruption cases in the State. Do you agree with that conclusion?

A I'm sorry, Congressman. I don't know where it is.

Q It is the very first paragraph.

A I don't have the ability to answer your question, because the Department of Justice would have to provide you that information.

Q But there were no other reasons for Mr. Iglesias' termination that were brought to your attention other than the voter fraud allegations?

A Sir, you have said that was a reason for the, quote, termination. I don't know what their reasons were and it wasn't a termination. It was a request that he step down.

Q Well, whether you term it a termination or a request that he step down, Mr. Iglesias was asked to leave his job, in the opinion of the Office of the Inspector General and OPR, for the real reason that there were complaints from New Mexico Republicans

and party activists on how he handled voter fraud and public corruption cases.

And what I would like to ask you is were there any other reasons that have been brought to your attention other than the one cited in the OIG OPR report?

A I was just presented with a list that the Department of Justice theoretically, after a thorough review, recommended be asked to move on.

Q Well, you were aware of the allegations that Mr. Rove passed on, and others, about Mr. Iglesias handling of voter fraud case, right?

A I was. And I expected the Department to evaluate those complaints to the extent appropriate.

Q And what I would like to ask you is, other than those complaints, were there any other complaints related to you by others in the White House or by the Department of Justice that merited his termination or removal from office?

A I don't know what evidence the Inspector General was looking at in making this conclusion and I don't know what evidence was available to the Department and all of its various people, starting with others -- in Mr. Iglesias' office on up to the Attorney General. I don't know what they had available to make their judgments.

You asked me about complaints about Mr. Iglesias, and I have told you what I could recall; that there were complaints about

him. And I recall, I believe, based on my recollection, the conversation with Mr. Rove that I then passed on to, in my recollection, Mr. McNulty.

Q Ms. Miers, I'm not asking you what others at DOJ knew. I can only ask you what you knew. What I'm asking you, were you aware of any complaints about Mr. Iglesias, his performance or other issues, other than the voter fraud allegations that were brought to your attention, or was that the sum universe of what you knew about the complaints of Mr. Iglesias?

A I don't know what I knew at the time, or what could have been talked about or what could have been commented on. But I only recall that there were complaints, and there were complaints about voter fraud issues and the failure to prosecute. And I have told you about the call I received, I believe, from Karl Rove.

Q So if I can put it another way, you have no personal information that would refute the conclusion of OPR, that the real reason he was fired was because of the voter fraud complaints?

A Well, I consider having a Department that is filled with very good people, who in some instances have been there decades, I have some hope and reasonable assurance that they didn't stand by and watch something happen that shouldn't have happened. And so, yes, I have reason to believe, reason to at least expect that the Department of Justice reviewed this request or recommendation as they should have.

Q So if I understand what you are saying, Ms. Miers, you

would hope that the Department of Justice would do its homework on Mr. Iglesias, determine if there was merit to the allegations against him or not, but you don't have any personal information about whether they in fact did that, do you?

A I don't have personal knowledge of whether they did that.

Q Could you turn to Document 37? I would like to ask you about a public statement made by the White House on the subject of Mr. Iglesias.

A Before we go on, can I add something to my last answer?

Q Of course.

A And it relates to the Inspector General's report because I said I had no personal knowledge. And what I mean, is I had no actual personal knowledge of what the Department did and didn't do. There is a whole lot of information that is set out by the Inspector General about what did and didn't happen. I'm sorry.

Q No, no. That is fine. Anytime you want to clarify, please interrupt and --

A Thank you.

Q If you could turn to Page 3 of this document. This is entitled "Press Briefing by Dan Bartlett, Counsel to the President." It is dated March 13, 2007. In the third paragraph -- let's see. I need to ask you about two statements from Mr. Bartlett the first is the third paragraph from the bottom where Mr. Bartlett says, "but I think it is important, though,

whether it be wrong or not, that the facts be what they are, and the facts are that we did not play a role in the culmination of the list of the seven U.S. Attorneys.

And then on the fourth page, the question -- the first question is -- third paragraph -- fourth paragraph down: "But wasn't there knowledge beyond Kyle Sampson, people in the White House Counsel's Office understood that they had participated in this process and Congress was not properly informed of that? Mr. Bartlett responds, again, "participated in the process" is inaccurate because -- dash, dash.

Were those accurate statements that the White House did not play a role in the culmination of the list of the seven U.S. Attorneys and that it did not -- and the White House Counsel's Office did not participate in the process?

A This document is a copy of a press briefing by Dan Bartlett, after I had been gone for some time from the White House. And I think it would be appropriate to ask Mr. Bartlett what he meant by and on the basis for which he -- or on which he could make his statements.

Q Ms. Miers, wouldn't you agree that the White House Counsel's Office participated in the process of determining which U.S attorney should be replaced?

A I do not agree to that. We participated in activities around and in connection with this, but the Department of Justice made the judgments about whom would be on the list.

Q And the e-mails that we have gone over today to and from Mr. Sampson and the Department of Justice, your conversations with Mr. Rove and others about Mr. Griffin or Mr. Iglesias, complaints you passed on to the Department of Justice, your scrutinizing lists of candidates to be replaced, you wouldn't consider that participation in the process?

A That is not my testimony and that's not what I said.

Q I asked you if you thought it was fair to say that the White House Counsel's Office participated in the process of determining which U.S. Attorneys should be replaced and who they should be replaced with?

A Your language in determining who should be replaced that I have to take issue with, because only the Department of Justice has the ability to make that analysis. We did provide input. I have already testified over and over and over again that we did.

But I think it is interesting that Mr. Bartlett, on the next page, says "The White House did not play a specific role in the list of the seven U.S. Attorneys. We didn't have that ability. The Department of Justice had to come up with their own recommendations based on everything that they had to know, some of which we not only didn't know but probably shouldn't know."

Q And, Ms. Miers, are you claiming that in the case of David Iglesias that the White House Counsel's Office did not participate in the process of identifying whether he should be replaced?

A I have difficulty with that question. We provided information clearly over the course of time about Mr. Iglesias. I don't know what other sources the Department had. I don't know how they arrived at their decision to list him on the list. They clearly did.

Q Ms. Miers, is it your position that if the White House Counsel's Office recommends someone be terminated or recommends someone be appointed, that unless the White House Counsel's Office has the actual authority to make it happen, that they can claim they never participated in the process?

A That is not what I have said and it is not an accurate characterization of what I have said. But in this arena, it is the Department of Justice who has access to all of the information about an office and an individual, and we in the White House Counsel's Office would look to them to either decide to replace someone or decide that they should not be replaced.

Q What I'm asking, Ms. Miers, is in a process that you have described today in which the White House Counsel's Office requested a chart of ranking U.S. Attorneys, related complaints to the Department of Justice about certain U.S. Attorneys, discussed the appointment authorities that should be used in replacing U.S. Attorneys, isn't it misleading for the White House to say they played no role in the process?

A It depends on what was intended by the statement in terms of whether the White House made decisions about which

individuals to be on the list. And it is my position that that was a decision that was made at the Department.

Q Well, let me ask you --

A As far as I know. I have to say I can only testify about what I know. But I do believe that a decision to go on the list was -- had to be made by the Department.

Q And is it your position today that the White House Counsel's Office played no role in determining which U.S. Attorneys ought to be replaced?

A It is my position that recommendations were made to the White House Counsel's Office based on the list that the Department came up with, and sometimes people would be on it and sometimes they wouldn't. And that was within the prerogative of the Department to put people on it or not, depending on what their resources indicated they should recommend.

Q And you don't think it is misleading for the White House to claim it did not participate in the process of determining which U.S. Attorneys should be replaced, when the White House Counsel's Office was involved in forwarding complaints about existing U.S. Attorneys and recommendations about others they would like to see appointed as U.S. attorney? You don't consider that misleading?

A I would prefer a fulsome discussion of what exactly the role of the White House was. But, again, I would have to ask Mr. Bartlett first what he intended by what he was saying, and

what information he had on which he was basing it.

Mr. Schiff. I'm going to pause at this point and allow Mr. Mincberg to continue.

Mr. Flood. I would like to make a point for the record before you begin, which is that there are a number of other statements made by Mr. Bartlett in this press briefing, which was on March 13, 2007, which I think give a fuller context and that it will provide a different -- or maybe "additional" is a better way to say it -- White House connection to the U.S attorney issues.

Mr. Mincberg. Certainly the entire document is in the record.

Ms. Miers. And I would just like to say if you just read some of it, some of the matters that the Congressman mentioned, are mentioned by him. So I just feel like it would be fair to Mr. Bartlett to understand what he was trying to say and why.

Mr. Mincberg. Thank you very much for that, Ms. Miers.

#### EXAMINATION

BY MR. MINCBERG:

Q I want to ask you about some of the U.S. Attorneys that Congressman Schiff has not asked you about. Let me ask you to go back to document 6 in the notebook, which is the January 9, 2006 e-mail from Mr. Sampson to you. I want to ask you to look at the very bottom of the first page.

A Yes, sir.

Q And among the U.S. Attorneys that are listed as

possibilities for replacement are Todd P. Graves of the Western District of Missouri. Do you see that? At the very bottom of the first page going out to the second page?

A Yes, I see that.

Q What do you recall about how or why Mr. Graves was added to that list?

A I don't believe he was on the list. He was on the list --

Q I'm talking about how has he gotten onto the list which Mr. Sampson transmitted to you in January?

Mr. Manning. This is the document behind Exhibit No. 6?

Mr. Mincberg. That's correct. We are talking about the very bottom of the first page after, quote, if a decision is made to remove or replace a limited number of U.S. Attorneys, then the following might be considered for removal or replacement. And number two, as Ms. Miers acknowledged, is Todd P. Graves.

So my question is, how did Mr. Graves get on this list?

Ms. Miers. I would have to ask Mr. Sampson.

BY MR. MINCBERG:

Q Let me ask you to take a look at Document 38 in the notebook before you, which is labeled HJC 00194A, a series of e-mails between yourself and Mr. Klinger on December 21, 2005. Do you see that?

A I do.

Q And Mr. Klinger was in your office in the White House

Counsel --

A He was an associate counsel.

Q Do you recall receiving this e-mail from Mr. Klinger on replacing Mr. Graves who was the U.S attorney for the Western District of Missouri?

A I have seen this e-mail in recent time, but prior to seeing it I didn't recall that.

Q Do you recall anything at all about what is referred to in the second paragraph about we can indicate that we will quote, work to satisfy Senator Bond's request?

A I don't know more than what is on this page.

Q What do you recall about why Senator Bond was seeking to replace Mr. Graves?

A I didn't have a recollection of that. I have since read the IG report, so I have the benefit of having read that. But I didn't recall this instance, except to the extent that I did recall and was refreshed by this IG report, that there was an instance that I remember that the Senator was interested in the replacement of a U.S attorney but was upset because when the gentleman was asked to step down, he -- the Senator was rumored to have had a role in it. And I remember that being reported to me at the time.

So I couldn't have told you, the State, or even the Senator, frankly. But I did remember that instance being reported to me.

Q So the Senator wanted to remove the U.S attorney because

there were rumors that he was attempting to remove the U.S attorney; is that what you are saying?

A No. I'm saying that when the individual was asked to step down, there were rumors at the Justice Department, apparently, that the Senator had played a role in it, and I recall it being reported to me that the Senator was upset that he was associated with --

Q I see.

A -- with that rumor.

Mr. Manning. Let her finish, please.

BY MR. MINCBERG:

Q Yes, absolutely. Go ahead.

A Well, the Senator was upset that he was identified as or associated with that request for removal.

Q I'm trying to go back one step before that, not whether or not he was upset that his name was raised with the U.S attorney eventually being asked to be removed, but why in the first instance as reported in the this e-mail he wanted the U.S attorney removed?

A I just do not have a recollection of that.

Q Okay. Now, the e-mail goes on to say, referring to the second paragraph, quote, Scott Jennings indicates that Karl is fine with the replacement, end quote. Do you see that?

A Yes.

Q Karl, I assume, is Karl Rove?

A Yes.

Q And why was Mr. Rove consulted on whether the U.S attorney would be replaced -- or removed, I should say, in this instance?

A As I indicated before, if there was the potential for some sort of reaction to an action, it would be logical for the offices that could be affected by it to be contacted. So I am assuming just from the context of the e-mail, that Richard or somebody had checked with Karl Rove.

Q So whenever there was a potential to remove a U.S attorney, the routine procedure would be to check with Mr. Rove's office?

A Well, I don't think I could say that was much of a routine because I don't recall it happening, and I didn't recall this instance. So I think, other than just the general staffing that I talked about earlier, that anytime there is an action going to be taken that impacts communication or Leg Affairs or the Office of Political Affairs, you could touch base with those offices.

Q Well, I notice that within the White House that Mr. Rove was consulted, but I don't see any reference to consulting with communications or Political Affairs -- I'm sorry -- communications with legislative affairs.

So my question is, if you know, why was Mr. Rove consulted here, and not those other offices?

A Well, I'm assuming those other offices were. And the reason I assume that from this e-mail is my response, which is, he shouldn't go forward without consulting -- or he should consult with Matt.

Q And who is Matt?

A I'm guessing, but I assume it is Matt Kirk who was in the Leg Office.

Q I see. So in other words you were, among other things, you were directing that the Leg Office should be consulted as well?

A Yes. That's how I would read that.

Q Uh-huh. Uh-huh. Do you have any idea why Mr. Rove was fine with replacing Mr. Graves?

A No.

Q Now, the e-mail goes on to say that Kyle Sampson indicates that DOJ is willing to accede in replacing Mr. Graves. Do you see that?

A Yes.

Q Do you have any information on why DOJ was willing to accede in that?

A No.

Q Or any idea?

A I assume they looked at it and took whatever action they thought they should take.

Q Now, is this why Mr. Graves' name appears on Mr.

Sampson's e-mail just a few weeks later, January 9th, to you, as a candidate for replacement?

A I don't know.

Q You just don't know one way or the other?

A We would have to ask Mr. Sampson.

Q But we do know this e-mail preceded Mr. Graves being put on the list, correct?

A I believe that is correct based on these dates, but I don't know if Mr. Graves was put on the list earlier. This is December of '05. So I don't know whether he was on earlier lists for various reasons. I would have to check the record on that. But clearly nothing was going to be done that DOJ didn't concur was appropriate.

Q Uh-huh. And again the record will reflect that. I won't take your time to go over where he was. But I think it is a fair representation that January 9th is, in fact, the first time that Mr. Graves is on one of the removal lists. But the e-mail -- your e-mail also -- in addition to consulting with Matt, you say "until and if you feel I should speak with the Senator." Do you see that?

A Uh-huh.

Q Did you in fact speak with the Senator?

A I don't believe I did, but I don't have a recollection of it. So --

Q Now, is it correct that Mr. Graves was in fact told to

resign in January, as you recall?

A I don't have a recollection of that.

Q Well, I will represent, and you should feel free to check with me -- on Page 100 of the OIG report --

A I'm sorry, sir. This very first sentence says on the first list that U.S. Attorney Sampson sent to the White House on March 2nd of 2005, Graves was one of many attorneys included in the category of those who had not distinguished themselves either positively or negatively.

Q That's right. And then it goes on to say: However, on the second list, he is one of seven U.S. Attorneys suggested for removal, correct?

A Yes.

Q And then it goes on to say that less than 2 weeks later, on January 19th, Mr. Sampson put into motion what led to Mr. Graves being told to resign in January. Do you have any reason to dispute that?

A I have no way, one way or the other, to know why Mr. Sampson put the gentleman's name on the list or why he was specifically asked to step down.

Q Well, are you aware that it has been suggested by Mr. Graves, among others, that concern about not pursuing alleged voter fraud was one of the reasons that he was removed?

A I don't even think I have heard that.

Q Well, in any event, I take it that you have -- do not

have any information on whether the reasons for Mr. Graves' dismissal, whether by Senator Bond, whether by somebody at the Justice Department, whether by Mr. Rove, or whether by anything else had to do with vote fraud cases; is that correct?

A I don't have any personal knowledge of that. I don't even -- I didn't even recall and don't now recall this happening.

Q When you say you don't recall this happening, do you mean you don't recall the dismissal of Mr. Graves?

A Or his discussion.

Q By "his discussion," you mean what?

A I told you the only thing I do recall, which was the Senator being upset in the aftermath.

Q But we do -- one thing you do recall or know, based on this e-mail, is that it was Senator Bond's request for removal that ultimately was a significant factor leading to his dismissal; is that correct?

A I don't know that.

Q You don't know that?

A I don't know that.

Q So even based on this e-mail, Exhibit 38, you have no idea whether Senator Bond's request had anything to do with Mr. Graves being dismissed?

A I don't know what the grounds were, and therefore I don't know whether that was one of them.

Q Looking at Exhibit 38, do you believe that Senator

Bond's request that Mr. Graves be dismissed was related to his dismissal?

A I don't have any way to form a belief.

Q You have no idea at all?

A I have no way to form a belief as to why he actually was asked to step down.

Q Well, let me ask you to take a look again at Page 114 of the Inspector General's report, and to the middle of the last paragraph beginning with the phrase "while U.S. Attorneys" and I will read it for you, but I want to make sure you're following where I am. Do you see where that is?

A Yes, I see it.

Q Quote, while U.S. Attorneys are often sponsored by their State senators, when they take office, they must make decisions without regard to partisan political ramifications, end quote.

I take it you would agree with that?

A I would agree that their prosecutorial decisions should not be based on partisan political ramifications.

Q Are there other decisions that you think should be based on partisan political ramifications that U.S. Attorneys take?

A It depends, sir, on what you mean by "partisan political ramifications." For example, the death penalty, is that a partisan issue?

Q I see your point. I see your point. Let me ask you to take a look at the next sentence. "To allow Members of Congress

or their staff to obtain the removal of U.S. Attorneys for political reasons, "as apparently occurred here, referring to the Graves case, "severely undermines the independence and nonpartisan tradition of the Department of Justice."

Do you agree with that sentence?

A I am not sure. Again, attorneys -- let me read the sentence to you: Allow Members of the Congress or their staff to obtain the removal of U.S. Attorneys for political reasons, as apparently occurred here, severely undermines the independence and nonpartisan tradition of the Department of Justice. I don't know what "as apparently occurred here" is intended to embrace.

So I can say political reasons should not enter into prosecutorial decisions, one way or the other, as we have earlier discussed.

Q Right. Let's take that sentence and delete the phrase "as apparently occurred here" and just have it read as follows: To allow Members of Congress or their staff to obtain the removal of U.S. Attorneys for political reasons severely undermines the independence and nonpartisan tradition of the Department of Justice.

Would you agree with that?

A I don't know what the writer of this document intended by, quote, "political reasons." And as the indication we just had a minute ago, depending on how they interpret it, I may or may not agree with it.

Q Uh-huh. Fair enough.

Mr. Flood. I would like to interject something. I think the last couple of questions, as with any number of other questions that have been asked and Ms. Miers has responded to today, is outside the scope. And I have not been policing the scope in an especially rigorous way because I didn't think that would be profitable.

But we are now into our seventh hour of questioning and Ms. Miers' opinions and judgments about general prosecutorial policy are, I suppose, interesting in their own right; but they are not facts relating to decisions or evaluations or replacements, and they are not testimony made by the Department of Justice officials. And I would just like to get this done today, as we all projected we wanted to do, and I hope we can do that.

Ms. Miers. I will say as the witness, I am -- I have difficulty not knowing what somebody means by certain terms and being asked about what they meant by them.

Mr. Mincberg. Thank you for that, Ms. Miers. And again, if you have any questions about any of the questions we asked, please let us know. I won't respond in detail to counsel's statement, which we would have some difficulty with. But I won't take the time.

Mr. Flores. I will intervene in support of what Mr. Flood stated on the substantive grounds, but also because the Minority was assured it would have an hour to conduct questioning during

the deposition, and we are now nearly a quarter to five. So questions that are outside of the scope are -- I would ask that you refrain from it.

Mr. Mincberg. Again I'm not going to respond for now.

But --

Mr. Manning. Let's move on.

Mr. Mincberg. I couldn't agree more.

BY MR. MINCBERG:

Q Return, if you would, for a moment, Ms. Miers, to Document 38 that we were just discussing. Again in that same second paragraph of Mr. Klinger's e-mail, it refers to Senator Bond's office being told it will be invited to suggest names for replacement in the relatively near future. Do you see that?

A Yes.

Q Do you know what happened with respect to replacing Mr. Graves?

A I don't.

Q Let me ask you --

A Sitting here today, I just couldn't.

Q Okay. Well, let me ask you to take a look at Document 39, which is an NPR story relating to the U.S attorney dismissals. And I want to ask you to look at the second and third paragraphs where there is a reference to the fact that Mr. Graves had left several months after refusing to sign off on a voter lawsuit filed against the State of Missouri. And then it says, less than 2

weeks later, Bradley Schlozman, the gentleman who was involved in that lawsuit, was installed to replace Graves under a PATRIOT Act provision allowing President Bush to place Schlozman in that job without Senate confirmation.

Do you see that?

A I see that in this report, the words.

Q Were you aware of the fact that Mr. Schlozman was put in to replace Mr. Graves under the PATRIOT Act authority?

A I don't recall whether I knew or didn't know at the time.

Q Did you or anyone at the White House have any knowledge or involvement in the decision to appoint Mr. Schlozman?

A I just don't recall.

Q To your knowledge, was there any discussion or communication relating to appointing Mr. Schlozman before Mr. Graves was asked to resign?

A I don't recall.

Q Now, on a number of the removal lists we've been discussing, there are references to Carol Lamb of the Southern District of California.

Do you recall that generally?

A I also recall some discussion of Carol Lam. The particulars of it I don't recall.

Q Okay. Well, let me ask you to turn to Document 7 in the -- in the Exhibit 1 notebook, labeled HJC 00026. Do you see

the top e-mail is an e-mail from Mr. Sampson to Mr. Kelley? I think you indicated he was your deputy; is that correct?

A Correct.

Q And Mr. Sampson asks Mr. Kelley to call him about several items, the third one of which he says is, quote, the real problem we have right now with Carol Lam that leads me to conclude that we should have someone ready to be nominated on 11/18, the day her 4-year term expires.

Do you see that?

A I see that.

Q Do you have any idea what Mr. Sampson was referring to by the "real problem we have right now with Carol Lam"?

A I do not.

Q Do you recall having any discussions about that with Mr. Kelley or Mr. Sampson or anybody?

A I just don't recall.

Q Now, I won't go through the articles on this in detail, just to save time for the moment, but there have been news articles indicating that literally the day, or day before this e-mail, there were issues that arose with respect to the Duke Cunningham probe concerning the execution of search warrants for a CIA official and the expansion of the probe to include Representative Jerry Lewis.

Do you recall either of those issues ever being discussed in the White House?

A I don't recall them being discussed.

Q So you don't know, one way or the other, whether either of those had anything to do with the, quote, real problem we have right now with Carol Lam?

A Mr. Sampson would have to tell us what he meant.

Q What was your understanding of why Ms. Lam was told to resign?

A I don't have a specific recollection.

Q Did you or anyone else from the White House, to your knowledge, contact Representative Darrell Issa to discuss Carol Lamb?

A I don't recall that myself.

Q Is there anybody else that -- when you say you don't recall it yourself --

A I don't recall it. I don't recall that any such contact was made. I can't say whether it did or didn't.

Q Now, with respect to Ms. Lam, were you aware that some people in the White House had concerns about the Lamb firing because of the Cunningham investigation?

A I have seen those e-mails recently. I don't believe I was aware of it at the time.

Q Let us take a look at just one, if you could. I will ask you to turn to -- it is Document 35, in front of you.

A Yes, sir.

Q This is a series of e-mails marked HJC 422 to 423,

ending with an e-mail from Dana Perino on November 17, 2006. Is this one of those e-mails you were referring to just a minute ago?

A It is one I have seen recently, yes.

Q And if I'm interpreting this correctly, when, among other things, the fact that Carol Lam prosecuted Representative Duke Cunningham, is made known with the Communications Office, Ms. Perino says, "Give me a double shot," referring to of oxygen "I can't breathe." Is that correct?

A That's what she says.

Q Do you recall any discussions with Ms. Perino or anybody else in the Communications Office about these concerns?

A I really don't.

Q Do you know of anybody else in the White House Counsel's Office that may have had such discussions?

A I am assuming -- I guess -- in the White House Counsel's Office?

Q Yes.

A I guess I don't really know. I'm assuming -- yeah, I guess I don't -- I was looking to see if I could tell from the recipients of the e-mail, but I can't.

Mr. Manning. Can you clear it up? I'm not as familiar with this as you are. Wasn't Mr. Cunningham already prosecuted and convicted at this point in time?

Mr. Mincberg. Again, without going into great detail, as we've just gone over, there were aspects of the Cunningham

investigation that were still in fact going on.

Mr. Manning. The trail investigation?

Mr. Mincberg. Call them what you will. But again I'm happy to discuss that with you, but it will take more time if we do that.

BY MR. MINCBERG:

Q But let me ask you this. Certainly you and others at the White House knew about the Cunningham investigation at the time that Ms. Lam was discharged, correct -- at the time she was asked to resign -- excuse me.

A I'm sure that his prosecution would have been mentioned within the White House, whether I personally associated her with it. I don't know whether I associated those two or not. I mean, I may well should have and may well did, but I just don't recall.

Q Don't recall. Do you have any information on any communications within the White House or between anyone at the White House and anyone at DOJ concerning the Cunningham investigation and Ms. Lam's dismissal?

A I don't know --

Q Other than that series of e-mails we just looked at within the Press Office?

A I was looking at that because I was thinking it would be practical that our press people would talk to the DOJ press people and say, you know, have you looked at this and is this something you have analyzed? But I don't see that in here.

Q You're not aware of any such communications yourself?

A I'm not.

Q Do you have any information as to whether the Cunningham investigation, particularly those newer developments concerning Representative Lewis and the search warrants and the CIA official had any relationship at all with the decision to remove Ms. Lam, one way or the other?

A Well, I will answer that question the same way I answered the Congressman; that knowing that people would be sensitive to -- or the dynamics or impact of a particular request to step down, that those issues would have been looked at at the Department of Justice.

Q As you said to the Congressman, you hoped those issues would have been looked at, correct?

A I hoped and believed that these particular recommendations were subject to a rigorous process.

Q But I take it you don't have any knowledge, one way or the other, as to whether these --

A I don't.

Q -- as your counsel called trailing investigations had anything to do with the decision to remove her?

A I would assume that the Department of Justice would be sensitive to whether any ongoing investigation was impacted and consider that, and whether they moved forward with a request for replacement and -- so I would --

Q I would assume that as well. But, again, let me make clear, do you have any information as to whether those investigations relating to Cunningham had anything to do with the decision to remove Ms. Lam?

A I have no reason to believe that they did.

Q Do you have any information that leads you to think that they didn't?

A None that -- other than what I have already said.

Q Let me ask you to take a look at Document No. 3,. which, you know, you've looked at before. This is the series of e-mails on March 2nd, transmitting that initial list of U.S. Attorneys from Mr. Sampson. And starting, if you will, with the very first page, I noticed that -- if you go to the third e-mail from the top, one of the changes Mr. Sampson makes, one of the revisions he makes, is to bold a gentleman named Orwig from Texas. Do you see that?

A Yes.

Q And then your response to that is, "Good to hear about that." I take it you knew Mr. Orwig and thought highly of him?

A Correct.

Q Did you have any reactions to any of the other ratings on the list?

A None that I recall.

Q Let me ask you to flip ahead to Page HJC 20084, towards the back. It starts with Washington Western at the top. And if

I'm interpreting this correctly, John McKay of Washington is crossed out or suggested as a candidate for removal on this list, correct?

A Correct.

Q Now, you knew Mr. McKay from working on the Legal Services Corporation; is that correct?

A I knew him from his work on the Legal Services Corporation, yes.

Q Did you have any reaction or -- what was your reaction to his being listed as a candidate to be removed?

A I really don't know what attention I paid to specific names on the list at that time. I certainly don't recall it.

Q Well, flip, if you would, to the next document, Document No. 4?

A Yes, sir.

Q I think this also you have looked at before. This is an e-mail -- part of this is an e-mail by you to Ms. Taylor on March 10th forwarding a list of locations where we are considering replacing U.S. Attorneys?

A Correct.

Q And you typed that yourself, I assume?

A I suspect so.

Q Okay. And one of the locations was, again, the Western District of Washington where Mr. McKay was, correct?

A Correct.

Q So even after typing this e-mail, you don't recall noticing that Mr. McKay was on the list?

A I don't recall whether I noticed it or not. But I am sure that I pulled these names -- or this list from that source.

Q Right. So you just simply have no recollection of ever seeing Mr. McKay?

A I really don't recall.

Q Okay. Now, although Mr. McKay is not on several of the intervening list, I want to ask you to take a look at Document No. 8, I believe, which is the September 13th e-mail.

RPTS MERCHANT

DCMN ROSEN

[5:00 p.m.]

BY MR. MINCBERG:

Q And look toward the bottom of that first page under the category "U.S. Attorneys we now should consider pushing out." Do you see that?

A Yes.

Q And the last person listed there was John McKay, do you see that?

A I see that.

Q Do you recall what your reaction was at that time to Mr. McKay being listed?

A I don't recall having a reaction.

Q In fact, you and Mr. Kelley had met with John McKay just a few weeks before the September list in August of 2006, is that correct?

A I did meet with Mr. McKay. I don't recall when it was.

Q Just for the record, Document 41, which I would be happy to have you take a look at, looking at this e-mail would it appear that your meeting with him was to be on August 22nd, the day after your August 21st e-mail?

A Yes.

Q Now, as I understand it, Mr. McKay, had asked for the

meeting with respect to his interest to being nominated to a federal judgeship in Washington, is that correct?

A That is correct.

Q At the very beginning of the meeting do you recall that Mr. Kelley asked why Republicans in the State of Washington were so upset with Mr. McKay?

A I don't recall that specifically.

Q You don't recall that?

A I don't recall that specifically. I recall that I was given information of background for that meeting. I don't know what form it took, but I know I was given some background.

Q And what background information were you given?

A I can't be specific about it, but I think I was told that the Commission that is in place in Washington, if it still is, was not recommending John for the position, and that there were other names that were recommended.

Q Do you recall getting information about Republicans in the State of Washington being upset with Mr. McKay?

A I do recall that the Republicans on the committee did not support Mr. McKay's nomination for the judgeship.

Q Did the briefing that you got give you any indication as to what the concerns were with Mr. McKay?

A I really can't recall.

Q What else can you recall about that, the meeting that you had with Mr. McKay and Mr. Kelley on the 22nd of August?

A Well, I can't recall a whole lot of the discussion other than that John wanted an opportunity to make his pitch that he would be a good nominee.

Q Well, let me ask you to take a look at Document 42, which are answers that Mr. McKay submitted to the House Judiciary Committee for the record in response to written questions from subcommittee chair Linda Sanchez.

Mr. Manning. Is there a particular place you would like her to look at?

BY MR. MINCBERG:

Q That's just what I'm getting to. I'm focusing in particular on paragraph number one that refers to the August 22, 2006 meeting. I want to begin with the phrase or the sentence, oh, about eight lines down that begins, "this meeting lasted," do you see that?

A All right.

Q And Mr. McKay says, this meeting lasted approximately 45 minutes and began with Mr. Kelley asking me why Republicans in the State of Washington were upset with me. Does that refresh your recollection about that coming up at the meeting?

A It doesn't.

Q Do you have any reason to dispute what Mr. McKay gives as the account of the meeting?

A I don't.

Mr. Manning. Do you want to read the rest of it?

Mr. Mincberg. I'm about to get to the rest of it in just a minute.

BY MR. MINCBERG:

Q Do you recall whether Mr. McKay suggested that State Republicans were upset because he had failed to "intervene and assist the election of the unsuccessful Republican candidate," in the 2004 election, governors election?

A I just don't recall. I don't have any reason to doubt that that is accurate.

Q Was this the first time that you had heard the claim that there was concern about Mr. McKay allegedly failing to intervene and assist the election of the unsuccessful Republican candidate?

A I don't remember it being said so I can't remember obviously whether it was the first time I heard it.

Q Well, you certainly don't recall hearing it before this meeting?

A I don't recall -- I don't think I recall hearing that even in this meeting.

Q Now, going down a little bit further on the page under number two, Mr. McKay states, "Before seeking a meeting with the White House counsel I was advised that the counsel's office was reporting within the White House that they were aware I had allegedly mishandled the 2004 governors election and was therefore not one of the three recommended candidates for judge." Do you

see that reference?

A I do.

Q Do you have any recollection of -- well, first let me ask, I assume you don't recall your saying anything to that effect within the White House?

A I don't recall that.

Q Are you aware whether anybody else in the White House counsel's office said anything to that effect?

A I had some background before I went into this meeting. I can't recall what it was. And I would want to go back and try and see if we could find what it was to know what exactly I may have said or not said.

Q Who provided that background to you?

A I suspect it was one of my associate counsels.

Q Just based on the division of responsibilities?

A Correct.

Q Who would that have been?

A I'm not sure I recall.

Q Well, I will say for the record that we didn't get any such document in the materials produced. Mr. McKay goes on to state that, and I'm still referring now to number two, that "in response, I submitted a detailed memorandum of activities undertaken by my office in connection with the 2004 governors election and submitted it to the counsel's office." Do you recall any such memorandum being submitted by Mr. McKay one way or the

other?

A I don't recall.

Q Again, you have no reason to dispute that, you just don't have any memory of it?

A That's correct.

Q Do you recall a document being submitted about Mr. McKay's Republican, bona fides, either to your office or the Office of Political Affairs?

A I don't recall that.

Q Are you aware of any communications from anyone outside the counsel's office concerning these claims concerning Mr. McKay by State Republicans?

A Could you state that again, sir.

Q Yes. Are you aware of any communications from anyone outside the counsel's office that came to your attention concerning the claims about Mr. McKay's actions on vote fraud that came from State Republicans?

A I just don't recall it.

Q I won't go back to the document right now, but you recall that the Congressman asked you about one of the press reports that indirectly referred to a statement by Mr. Rove in which, according to that article, it was indicated that New Mexico and Washington State were two places that he conveyed complaints about. Does that help at all in terms of jogging your memory?

A No, it does not.

Q You just again don't recall one way or the other?

A I don't recall it. I really don't recall it.

Q Do you recall either in the -- I'm sorry, let me strike that and rephrase it. Do you recall any discussions at JSC meetings or any other occasion, either in connection with Mr. McKay's application to be a judge or in connection with U.S. Attorney removals of these complaints with state Republicans?

A It's possible it would have come up because I would be thinking that it's possible that Bill and I would have reported in connection with the Washington seat that we had this visit from Mr. McKay and he wanted to be considered. So whether in that context we reported that there were complaints about him, I don't recall.

Q So assuming then Mr. Sampson attended the JSC meetings as he usually did, he would have heard such a report, I assume?

A A lot of ifs in that, but if he was there and something was said, he would have heard it.

Q Do you recall having any communication with anyone at DOJ as to whether Mr. McKay should be replaced?

A I don't recall discussions with DOJ about John McKay vis-a-vis the U.S. Attorney position.

Q Are you aware of any communications by anyone else at the White House with respect to Mr. McKay vis-a-vis the U.S. Attorney position?

A I don't, no, other than obviously he's on the list.

Q Do you have any information on whether the Republican complaints in Washington State had anything to do with Mr. McKay being asked to resign as U.S. Attorney?

A I have no way of knowing that.

Q So I take it you can't rule out that possibility?

A I have no way of knowing it. So what the Department took into consideration I don't know.

Q So therefore, you can neither rule it in nor rule it out, is that correct?

A I would tend to rule it out if the suggestion is that the Department was not basing their judgments on a rigorous process.

Q And what facts with respect to Mr. McKay in particular do you base that assumption?

A I don't have any.

Q Okay. So going back again. I take it, based on your knowledge, you can neither rule in nor rule out whether these Republican complaints about Mr. McKay had anything to do with his removal as U.S. Attorney?

A I can't rule in or rule out anything as having played a role in the decision.

Q I want to ask you about -- actually, the very next document in the series is Document Number 43. And this is a series of e-mails involving yourself, Mr. Sampson and Mr. Kelley, as well as Debbie Fiddelke labeled OAG60.

A Yes, sir.

Q Until you received this e-mail, were you aware of any concerns about the firing of, or the decision to ask Mr. Bogden to resign his post as U.S. Attorney?

A I don't recall this particular e-mail.

Q Putting aside the e-mail, are you aware of any concerns about the firing of Mr. Bogden or the decision to ask Mr. Bogden to leave?

A I just don't recall it.

Q Do you have any information on what was done about the complaints from Senator Ensign that are reflected in Document 43?

A I don't really remember the e-mail or any follow-up to the e-mail.

Q Well, putting aside the e-mail, do you recall anything that was done in terms of approaching Senator Ensign with respect to his concern of the firing of Mr. Bogden other than the conversation reflected in this e-mail?

A I'm trying to recall if I remember anything about this, and I really don't recall. This e-mail appears to be dated after the individuals would have been called. And so I just don't recall any follow-up to it.

Q Do you recall anything that happened with respect to the decision to ask Mr. Bogden to leave what happened before December 07, 2006?

A I don't.

Q Mr. Kelley says in the e-mail in the second paragraph, "I explained to him our thinking at some length." What's your understanding of what that refers to?

A I think you would have to ask Mr. Kelley because I don't know.

Q Now, in particular, the e-mail reflects the fact that Senator Ensign was concerned, or at least his chief of staff was concerned about why leave the office in the hands of an interim person when it could have been Bogden during the period of the new person was to be recruited. Did that subject ever come up in the discussions of the U.S. Attorney replacements?

A I don't recall. I don't remember any discussion of that as to whether Mr. Bogden should continue to serve while a replacement was being sought.

Q Well, let me ask the question more generally. I mean, the issue discussed in this e-mail that interim U.S. Attorneys would be in place for a while until a more permanent replacement was found presumably could apply to other U.S. Attorneys asked to leave as well, is that correct?

A Yes.

Q Was there any discussion of that concern more generally?

A Not that I recall.

Q Not that you recall. Do you recall any discussion or communications with anyone at the White House or DOJ about any cases that Mr. Bogden was involved in?

A I don't recall that.

Q I'm going to mention a few just to see if any of them refresh your memory on that. Do cases involving the following refresh your recollection at all. Cases involving one, Republican Representative John Porter; two, Walter Eddie Floyd; and Nevada Republican Dean Heller; three, James or Erline Forsyth or Lisa Marie or Steve Wark, W-A-R-K. Any of that refresh your memory?

A It does not.

Q Now, I want to ask you about one U.S. Attorney who was, at least for a time on the list, who wound up not being replaced. I'll ask you to go back to Number 3 in the book.

A Yes, sir.

Q And you will see that looking at the third e-mail down, this is where Mr. Sampson refers to the revised chart. Do you see that reference?

A Yes, sir.

Q And we already talked about one of the changes being to put a bold on Mr. Orwig, but he also indicates that one of his changes is to "strike Biskupic, (E.D. Wisconsin)." Do you see that?

A I do.

Q And Mr. Sampson says that he's making these changes based on some additional information he got tonight, do you see that reference just above the name?

A Yes.

Q Do you have any idea what that information was as it related to Mr. Biskupic of Wisconsin?

A I don't recall.

Q Do you recall ever having any discussions with Mr. Sampson or with anybody else about why Mr. Biskupic was on the discharge list?

A I don't recall any discussion of why he was on the list to be asked to step down.

Q Do you recall any other discussion about Mr. Biskupic?

A I really don't. I know there were documents related to Wisconsin that I've seen in recent times, but I don't recall a discussion of Mr. Biskupic.

Q Well, and in fact, you've again anticipated me because that's exactly what I'm going to ask you to take a look at now. I think it's the same that you've been referring to. Turn to Document Number 44. And this is a packet marked HJC00172-A to 00172-Y. Are these the other documents about Wisconsin that you indicated you've seen recently that you were referring to?

A This is certainly one of them.

Q Well, I want to go through this with you, and if you have a memory of any other document, we can ask about that a little bit later. But let me ask you to start with -- well, let me ask you more generally. Do you recall getting the entire document on or about the date of the cover note April 11, 2005?

A I sort of remember getting something from Karl. I'm

assuming this is what I got, but I don't really recall the substance.

Q Well, before we get into the document tell us what you remember about what you got from Mr. Rove?

A I just have a vague memory that I got something from him.

Q Do you remember what it was or what you did with it?

A I would think I forwarded it to the Department of Justice, but I don't have a specific recollection.

Q Do you recall having any conversations about the subject with Mr. Rove?

A I recall a conversation with Karl about a complaint that there were more voters voting than there were people in a particular county or precinct or something. But other than that, I don't know that I remember this specifically.

Q Do you recall anything further about that conversation other than the general subject matter that you just told us?

A I don't recall anything beyond that of the conversation.

Q I think we can figure out what that last part of the document is. If you would take a look towards the end of the document at the page that begins HJC172-V?

A Okay.

Q And at least from what we can tell it appears as though, looking down at the bottom, that this is something that was printed out on Mr. Rove's computer in February, if you just looked

at the scroll at the bottom.

A Okay.

Mr. Manning. That's not a question, right?

Mr. Mincberg. Well, my question is whether it appears that way to her.

Ms. Miers. I don't have a way of knowing that.

BY MR. MINCBERG:

Q Fair enough.

A I don't have any reason to disagree with it, though.

Q Fair enough. In the upper left-hand corner of this page it says, "discussed with Harriet," do you see that?

A I see the discussed with Harriet.

Q Does that appear to be Mr. Rove's handwriting?

A Yes, it does.

Q And does this, this page and the few following that, the part of the document you recall where Mr. Rove discussed the issue of the allegation that there were more votes than voters in Wisconsin somewhere?

A It appears to be that way, yes. I don't know if all this document was all attached or whether this was a separate document.

Q That's quite fair enough. And I will just say for the record that this is the way we received it from the White House and all of it pulled together in this way that we've put it in the document. Do you recall in this discussion with Mr. Rove any

discussion about whether the U.S. Attorney in Wisconsin in Milwaukee was addressing this issue?

A I don't recall any such thing.

Q One way or the other?

A One way or the other.

Q Now, why was it, as you understood it, that Mr. Rove was even raising this issue with you?

A I assume because individuals were raising it with him so he was bringing it to me.

Q And how is it within your portfolio, or how was it within your portfolio as White House counsel?

A He probably intended for me to forward it to DOJ, or I would have told him that's what I was going to do, forward it to DOJ.

Q Do you recall who you sent it to at DOJ?

A No, I don't. And I guess I don't know with certainty whether it was myself who brought it to Paul McNulty's attention or whether Bill Kelley brought it to someone's attention.

Q Now, do you have any information or idea on whether the concerns reflected here or other concerns about alleged vote fraud problems in Wisconsin had anything to do with Mr. Biskupic being put on that initial March 2 termination list?

A I don't.

Q Now, flip, if you would, to the front of the document, the handwritten note from Mr. Rove to you. We're on page 172-A

just for the record. And Mr. Rove says in the second sentence, "I was assured Saturday while I was in Milwaukee that the issue of more voters than people on the registration list is real." Do you see that reference?

A I do.

Q Why was it your understanding that Mr. Rove made that representation to you? Had you previously expressed some skepticism about this?

A I don't have a way of knowing that.

Q So you don't know why he felt like he needed or wanted to make that statement?

A I really don't.

Q Was there anything about the voter fraud issue that generated skepticism?

A I don't know how to answer that. It just appears that he was trying to emphasize that he was taking the complaint seriously.

Q And again, other than possibly forwarding this to the Department of Justice, do you recall anything else that you did with all or part of Document 44?

A I don't know when, but at some point this was passed along to the Department of Justice and we got an answer back that explained why this was not really an issue.

Q And by "this," you mean the allegation that there were more votes than voters?

A Right.

Q And what do you recall about that explanation?

A That the voting precinct in the county lines didn't match. So in fact, there were instances where it really could be people voting in larger numbers than actually was the county population.

Q And from whom did you get that information?

A I believe it was Paul McNulty, but I'm not 100 percent certain now that that's the case.

Q Was that sent to you personally as you recall?

A I don't recall. My recollection is that it was that I learned that it was not a problem, but it may be that it came from Bill Kelley.

Q And I assume that that would have come to you some time after the date that this document bears April 11, 2005?

A I just don't know when it came to me.

Q Okay. Fair enough?

A But I know that we made the inquiry. And given the explanation it was that there was really no issue.

Q What did you do with that information when you got it from Mr. McNulty?

A I assume I passed it along, but I don't have any recollection of doing it.

Q And when you say "pass it along," though, that would be to whom, to Mr. Rove?

A It could have -- I just don't recall. I mean, I've recently seen an e-mail on this and I'm uncertain as to what exactly I did with it.

Q And do you recall whether the issue was followed up any further in any way?

A There wasn't anything to follow up as I recall. The answer was a perfectly acceptable answer, and as far as I was concerned, it was asked and answered and put aside. But that allows whoever was dealing with this I assume to respond to people so they can say, wait a minute, we checked that out and it's not an issue.

Q Now, going back again, and I'll represent, I invite you to take a look at this if you would like, that same press briefing by Mr. Bartlett that we talked about before that's in Document Number 37. He says at the top of page 2 --

Mr. Manning. Is this the one we had a discussion about read the whole thing?

Mr. Mincberg. That's correct.

Mr. Manning. Okay.

BY MR. MINCBERG:

Q At the top of page 2 in the second paragraph he says, "over the course of several years, we've received complaints about U.S. Attorneys, particularly when it comes to election fraud cases, not just New Mexico but also Wisconsin and Pennsylvania." Do you see that?

A Yes.

Q Other than what we've discussed so far, are you aware of any other complaints with respect to Wisconsin?

A With respect to Wisconsin?

Q With respect to U.S. Attorneys when it comes to election fraud?

A As I mentioned earlier, I recall that there were instances where there were a number of complaints. I can't remember how many.

Q Are you talking about Wisconsin now?

A And I can't tell you with certainty what states.

Q Okay.

A Although obviously there was one with respect to Wisconsin.

Q Right. My question was in addition to the document that we've looked at for a few minutes, Document 44, reflecting the communication that you got from Mr. Rove, are you aware of any other complaints relating to U.S. Attorneys and election fraud in Wisconsin?

A I don't know whether Wisconsin came up more than once or not.

Q And by more than once you mean in addition to that Document 44 that we looked at?

A Correct.

Q So you just simply have no recollection on Wisconsin

coming up either way on any occasion?

A I can't remember whether it specifically came up or whether that same issue came up more than once.

Q Now, I take it then that you do not have any information or idea on whether any of such complaints had anything to do with Mr. Biskupic being on the termination list in March of 2005, is that correct?

A I don't.

Q Now, Mr. Biskupic's name was not on the January 9, 2006, version of the list. Do you have any information as to why he was removed from the list?

A I don't.

Q Did you have any knowledge or awareness of the prosecution by Mr. Biskupic of Georgia Thompson, a Wisconsin State official who worked for the Democratic governor?

A I don't recall having information about that.

Q Do you know one way or the other whether Mr. Biskupic's removal from the list may have had something to do with the fact that he brought that case?

A I have no reason to draw that conclusion.

Q Do you have any reason to draw against that conclusion?

A None other than what I've said before.

Q Are you aware that after March of '05 Mr. Biskupic also led an aggressive vote fraud task force in the summer of 2005?

A I don't recall knowing that. I may well have, but I

don't recall it.

Mr. Manning. If it happened.

Ms. Miers. If it happened.

BY MR. MINCBERG:

Q Do you have any information as to whether Mr. Biskupic's removal from the list had anything to do with his bringing those vote fraud cases?

A I don't have any knowledge of that.

Q One way or the other?

A I don't have any knowledge that that was a factor or the factor. I have no knowledge of that.

Q Do you have any knowledge that it was not a factor?

A Not other than I've already described.

Mr. Mincberg. Why don't we take a very short break.

Mr. Schiff. Before you do, I just have one follow-up question and then maybe we can take a very quick break, and that is on Document 38.

BY MR. SCHIFF:

Q And this is a December 21st e-mail at the bottom of the page from Mr. Klingler who was in your office, correct?

A He was an associate attorney, yes, sir.

Q To you. And then at the top of the page your reply to Mr. Klingler. In Mr. Klingler's e-mail, he states among other things, "We could indicate that we have heard and will work to satisfy Senator Bond's request regarding replacement for the U.S.

Attorney in the Western District of Missouri.” That would be Mr. Graves. “Scott Jennings indicates that Karl is fine with replacement. Karl Sampson indicates that DOJ is willing to accede to the replacement.” I wanted to ask you about this. Mr. Klingler is reporting to you here, is he not, that the DOJ is willing to accede in replacement of Mr. Graves?

A That's what the language of the e-mail says.

Q Does that suggest that the idea to remove Mr. Graves did not originate within the DOJ but rather that DOJ wouldn't go along with it?

A I don't know enough to be able to reason to that question whether they had already looked at him or not.

Q Well, do you have any reason to believe that when Mr. Klingler on your staff stated that the DOJ was willing to accede to the replacement that he had another meaning than the usual meaning of the term accede to?

A It sounds like they concluded that the replacement was acceptable to them.

Mr. Schiff. What I was going to suggest with Mr. Minberg is maybe we break for 5 or 10 minutes, and then we have our last section of questioning, which I don't think will take that long, and then we'll turn it over to our Republican counsel. Is that acceptable?

Ms. Miers. It is to me.

Mr. Manning. It is what it is.

Mr. Schiff. And I think it would be all of our desire, and perhaps Ms. Miers more than anyone else, that we finish today.

Mr. Manning. It would be nice if the questions were quick and short.

Mr. Schiff. Well, I appreciate that, counsel. We are impaired somewhat by a failure of recollection which takes longer to probe. So we will try to be as swift as we can.

Mr. Manning. That would be great.

[Recess.]

BY MR. SCHIFF:

Q Ms. Miers I would like to ask you a few questions about the removal of Paul Charlton of Arizona who was first put on the list in September of 2006. What is your understanding of why he was designated to be removed?

A I don't have an understanding of why he was designated to be removed other than that the Justice Department concluded to ask him to step down was the right thing.

Q Are you aware that prior to his being placed on the removal list, Mr. Charlton had begun an investigation of Republican Representative Rick Renzi and had asked the Department of Justice for approval of search warrants and wiretaps?

A I recall some discussion I believe surrounding an issue related to the leaks of information, and I have seen documents that indicate those questions may have come up in the context of, and may not have, but they may have come up in the context of the

Renzi investigation.

Q Was the probe of Representative Renzi brought to your attention in the fall of 2006?

A I just don't recall.

Q Did you call Deputy Attorney General McNulty shortly before the 2006 election and raise concerns about wanting to vindicate such Members of Congress when there were election reports of investigations?

A I don't think I can answer that question, but I can say that the issue of leaks before an election came up, and I called Paul McNulty, I believe, and asked him to help us as to what should happen in that sort of situation or why does it happen, and I was told by Mr. McNulty, as I recall, that sometimes if FBI agents believe that there is a legitimate investigation that is not coming to fruition before an election but they view it as important, that people know it exists, that sometimes there are leaks and there's kind of nothing you can do about it. But that's sometimes why it happens, but there's really not anything you can do about it. Because the concern that came up was that there was a leak and then there's no way to defend yourself once the leak occurs and there was angst that it was unfair.

Q And when you say that the issue was raised with you who raised the issue with you?

A I'm not sure how it came to my attention. It may well have been Karl but I don't know that.

Q When you said that there was angst about it who had demonstrated angst about the situation?

A I'm not sure, but the sense of the inquiry was this is happening, it's unfair. I think it was Karl, but I'm not sure.

Q Did the person who raised the issue with you ask you to get in touch with the Department of Justice and see if something could be done about it?

A I don't have the ability to recall that kind of specifics. I just know the issue came up and I asked Mr. McNulty for an explanation and I got one that made sense, but that there wasn't anything that could be done about it.

Q Would there be anyone in the White House other than Mr. Rove who would have prompted you to contact the deputy attorney general?

A Well, I just don't remember who brought it to my attention. It could have been Karl, it could have been one of the associates, it could have been Bill Kelley. I may be misremembering, but I believe that it was Karl, but I'm not 100 percent certain about that.

Q It wasn't often, though, that you would reach out to the deputy attorney general regarding a pending investigation, right? That was an unusual circumstance?

A I wasn't calling him about a specific pending investigation, Congressman, I was calling him about why is it that there are leaks that happened that run the risk of impairing

people's reputation.

Q And did you raise the Renzi investigation in that context?

A I don't recall whether that was the context or not.

Q Do you recall that the party that raised the concern with you raised it in the context of Mr. Renzi?

A I don't recall.

Q Were there any other pending investigations that were leaked around the election in 2006 or were there any other election -- excuse me, let me start again. Were there any other investigations that were leaked around the time of the 2006 election that you might have been referring to other than the investigation of Mr. Renzi?

A I just don't have a way of recalling that.

Q So the Renzi investigation was the only one you recall being disclosed at the time?

A I'm sorry, I don't personally have that recollection either.

Q Let me turn your attention, if I could, to Document 32. And this is stamped a HJC00344 and 345. We can start at the bottom of the page. The very bottom e-mail, which is at the bottom of the first page and carries on to the second page is an e-mail from Jeffery Jennings to you. And who is Mr. Jennings?

A That's Scott Jennings who is in the Political Affairs office.

Q Now, Mr. Jennings wrote, I guess in the initial e-mail exchange, the person I called you about said the U.S. Attorney in his area as well as the local FBI office said they were unaware of any investigation. Do you know what investigation he was referring to there?

A I don't have a personal recollection of that.

Q Your reply which takes place a couple hours later, subject regarding our call, Scott, I just finished speaking with Paul McNulty. He said what we expected he would. He's been contacted by a number of frustrated Members of Congress asking why people can't be vindicated in the event nothing is going on. He acknowledged that the situation is frustrating but reiterated their position that they cannot confirm or deny the existence of an investigation. He said the AG did an interview last week to put things in as good as a perspective as possible by explaining that no one should be talking and that a refusal to deny should be given no meaning beyond that Justice does not admit or deny the existence of any investigation.

I observed that at some point immediately preceding an election unattributed statements about the existence of an investigation was frankly unfair. He is continuing to think about the situation but I did not get a lot of encouragement that they will deviate from normal course. Now, what course were you hoping that they would deviate from?

A That they would try to do something to clarify that

there should not be read into anything -- I mean, just exactly what the e-mail says, and what the attorney general said, that they should not take any reading from a refusal to either confirm or deny.

Q So in the normal course of business, the Department of Justice wouldn't confirm or deny an investigation, right?

A That's correct.

Q And in this case, you wrote that you didn't get a lot of encouragement that they would deviate from that course. How were you hoping he would deviate?

A I didn't hope one way or the other. I simply related what they said and that there wasn't more that could be done.

Q Looking at the e-mail just above that from Mr. Jennings to you about an hour later, FYI hitting blogs now. And there's an article which at the end of the string indicates sitting on Renzi. Does that refresh your recollection about whether your discussion with Mr. McNulty may have involved the Renzi investigation?

A It doesn't refresh my recollection, but you can draw that conclusion from this e-mail. And obviously, I didn't remember correctly the communication came from Mr. Jennings and not Mr. Rove.

Q Well, is it possible that you also spoke to Mr. Rove?

A I just don't, obviously, recall. Because I would have guessed Karl and that's obviously wrong.

Q Well, is it obviously wrong or is it possible that you

spoke with Mr. Rove and received an e-mail from Mr. Jennings?

A I just can't speculate on that. His e-mail to me is "re: Our call," so I just can't recall.

Q Is it possible that Mr. Rove was one of the parties on the call with you and Mr. Jennings?

A I can't rule that out.

Q In your e-mail responding a few minutes after the last e-mail that cited the blog on Renzi you wrote, perhaps this presents a different situation where the U.S. Attorney can knock it down because the article impugns his conduct of his office. Will be interesting to see. Did you make the case with respect to Representative Renzi that this should be an exception because it was a different situation of some sort?

A I would have to go back and think about what I was trying to convey, but it sounds like, I was just saying, this was a peculiar situation and just was aware of our concern, and if they did anything different it would be interesting to see.

RPTS KESTERSON

DCMN HOFSTAD

[6:03 p.m.]

BY MR. SCHIFF:

Q And the top e-mail on the page from Raul Damas, what office was he in?

A I really don't recall if I have ever seen that name other than on this e-mail.

Q You don't know whether he was in Mr. Rove's office?

A I really don't.

Q And you can't recall whether, in the conversation with Mr. McNulty, you raised the Renzi investigation specifically?

A I don't recall one way or the other.

Q Did you ever raise with the Justice Department a desire to vindicate or clarify an investigation regarding a Democrat who is the subject of a DOJ leak?

A I don't recall that fact situation coming up, where a defendant -- or a Democrat was at issue.

Q Do you think it is appropriate for a White House political official like Mr. Jennings, through you or otherwise, to press the Department of Justice to make statements about pending investigations for political advantage?

A That is a very charged question. And what I reported in my e-mail was, I thought, very appropriate, which was to ask was there any explanation for why this sort of thing happens, or how

do you protect someone who is being unduly hurt, if there were a way? And the answer was, there is nothing we can do about it.

Q Mr. Renzi was under investigation around the time of the election. Wouldn't it have benefited him if the Department of Justice made a statement along the lines you were inquiring, that people should not read anything into the fact that he was being investigated?

A I don't think that is a fair characterization, with all due respect, of what I reported back to Mr. Jennings of what I had discussed with Mr. McNulty.

And my recollection of it is we did what we should do with inquiries about what is appropriate and what is not. We took it to the Department of Justice. And they responded basically that this sort of thing happens and there is a reason why it happens and there is not much that can be done about it.

Q But certainly for an elected official around election time that is under investigation, it would be beneficial if the Department of Justice made a clarifying statement, wouldn't it?

A Again, if there wasn't an investigation -- I just don't know how I can comment on anything other than what I ask and what the answer was.

Q Well, let me just ask you about the general proposition. Would it be helpful to an elected official under investigation around the time of an election for the Department of Justice to come out with a statement saying that people should not read

anything into the fact that the person was under investigation? Wouldn't that be politically useful for that elected official?

A Well, I don't believe that is what is being referred to here, unless I am misreading it.

Q Well, divorce yourself from this particular e-mail, and I'm asking you about the general proposition. Wouldn't it be helpful for an elected official under investigation at the time of an election for the Department of Justice to clarify that the voters in that district should read nothing into the fact of the investigation?

A I would think that they would not acknowledge that an investigation existed. So I'm having difficulty with your question.

Q You don't think that would be helpful to the elected official?

A I'm having difficulty because I wouldn't anticipate that there would be a confirmation of the existence of an investigation.

Q But in the circumstances where an investigation has been leaked about an elected official soon to face the voters, wouldn't it be politically advantageous for the Department of Justice to clarify that voters should read nothing into the fact of an investigation, wouldn't that be politically advantageous to the elected official?

A Well, I would have to say if clarifying the

circumstances around something that had been improperly divulged could be done, then I would have to agree that, if it could be done, it would be favorable.

Q And wasn't that exactly what you were hoping would be done here in the case of the Renzi investigation?

A I was hoping that we would get advice from the Department of Justice, the authority on these kinds of issues as to, for one thing, I assume, just, is there anything that is appropriate in this kind of situation. And the answer was, it's frustrating, but no, there is nothing that can be done if someone, I assume that is unidentified, leaks something, because the Department won't confirm or deny the existence of an investigation.

Q Were you aware of the fact that, after your phone call on October 24th, somebody at the Department of Justice did, in fact, state that there were inaccuracies in the media reports on the subject of the investigation?

A I don't recall that.

Q Can you take a look at Document 33? This is an article in The Arizona Republic dated October 26, 2006, "Inquiry on Renzi: Real Deal or Campaign Trickery?" is the title.

If you will look at, sort of, the middle of that first page, the paragraph reads, "A Justice Department official in Washington, D.C., confirmed a preliminary inquiry of allegations about Renzi. The official also cautioned Wednesday that initial media reports

contained significant inaccuracies. Officials said the Justice Department contacted at least two newspapers Wednesday about 'chunks of stuff in their stories that's wrong?'"

Were you aware that the Department of Justice contacted at least two newspapers that day to let them know that chunks of their stories were wrong?

A I don't recall that I was aware of that.

Q Wouldn't that violate the very policy that Deputy Attorney General McNulty told you about?

A What Deputy Attorney General McNulty indicated was that they would not confirm or deny the existence of an investigation.

Q So that if a Justice Department official in Washington confirmed the preliminary inquiry of allegations and Justice Department officials contact at least two newspapers to tell them chunks of their stories is wrong, that would have violated policy that the Deputy Attorney General told you about, right?

A It appears so, if that happened.

Q If you look at the second page, I think it is about the sixth or seventh paragraph, beginning with the word "however." It says, "However, the official said" -- this is referring to a Federal official -- "the official said it is unusual for the Department to publicly acknowledge concerns about the accuracy of media reports. 'Be careful,' the official said, 'I can confirm to you a very early investigation, but I want to caution you not to chop this guy's [Renzi's] head off."

Those kind of statements coming from a Department of Justice official would violate the Department's policy as Mr. McNulty described it, wouldn't they?

A If it was a Justice Department person. And it looks, just based on this report, that, yes, that would be contrary to saying that they would not admit or deny that an investigation was ongoing.

Q Do you have any reason to believe that the statements that are referred to in this October 26th article by Department of Justice officials to two local newspapers were a result of your conversation with Mr. McNulty 2 days earlier?

A I would ask Mr. McNulty. My e-mail says that he was continuing to think about the situation, but he apparently didn't indicate to me that anything could be done.

Q Did you ever have any communication with the Department of Justice or others in the White House where they informed you that they had taken action based on a conversation you had with Mr. McNulty?

A Not that I recall.

Q If you would turn with me to the next document, No. 34. Were you aware of the fact that there were later reports of delays in the Department of Justice approving certain aspects of the Renzi investigation?

A I wasn't aware of that, and this article is after I had left.

Q This is an article in the Wall Street Journal dated April 25, 2007, "Delays in Renzi Case Raise More Gonzales Questions."

In the second paragraph, it says, "The delays, which postpone key approvals in the case until after the election, raise new questions about whether Attorney General Albert Gonzales or other officials may have weighed political issues in some investigations."

Do you have any information as to whether approvals of further investigative steps by the Department of Justice in the Renzi investigation were delayed because of the election?

A I don't have any information about that.

Q Do you have any information as to whether the Renzi investigation had anything to do with the decision to remove Mr. Charlton?

A I don't.

Q Do you have any information on whether Representative Renzi's father, General Renzi, had contacted anyone at the White House about the Renzi case or Mr. Charlton?

A I have no knowledge of that that I can recall.

Q Did you ever have any conversations with Mr. Renzi about Mr. Charlton or the investigation?

A Not that I recall.

Q I'd like to turn your attention again to Document 3, March 2, 2004, the removal list that we previously discussed.

A I'm sorry, Congressman --

Q Oh, I'm sorry. Document 3, March 2005. And specifically about the ranking given to U.S. Attorney Patrick Fitzgerald. He is neither bolded nor stricken out in this chart, meaning that he had not distinguished himself positively or negatively.

Did you consider that an accurate summary of Mr. Fitzgerald's performance?

A I don't recall the extent to which I studied the individual's chart. I don't remember whether I had a reaction to it or not.

Q And what, if you recall, was your evaluation of Mr. Fitzgerald's performance? Was he viewed as a strong performer, in your view? What was your opinion at the time?

A Well, again, the Department of Justice is looking at a wide range of issues in terms of management and other aspects of their office. And so, I can tell you what my personal view of Mr. Fitzgerald was at the time that all of this was happening.

Q Please.

A My involvement with Mr. Fitzgerald, both -- well, involved -- or aware of his involvement when I was staff secretary and then deputy chief of staff and then the counsel, I always had a positive view of Mr. Fitzgerald.

Q Would you have expected him to have been given a stronger ranking in the evaluation based on your impression of

him?

A I wouldn't have had an expectation because I wouldn't have known everything else that they were looking at.

Q During this period, Mr. Fitzgerald was handling very sensitive case that involved a number of White House figures, including Karl Rove. Is that correct?

A Yes.

Q That was the Valerie Plame investigation?

A Yes.

Q Do you know whether Mr. Sampson failed to give Mr. Fitzgerald a higher ranking because Mr. Fitzgerald was investigating Karl Rove?

A I have no way to know that.

Q Did you ever have any discussions with Kyle Sampson about including Patrick Fitzgerald on the firing list?

A I can tell you what I recall, and that was an instance where there was a time when Kyle Sampson suggested that he might recommend that Patrick Fitzgerald be on a list to be asked to step down.

Q And where did Mr. Sampson raise this issue with you?

A I don't have a recollection of that.

Q Do you recall who else was in the meeting?

A I'm not sure it was a meeting or whether it was, like -- I don't remember the context of exactly where we were when he recommended that. I do think that Bill Kelley was present and --

but I can't tell you where it was with accuracy.

Q And did Mr. Sampson indicate that he thought Mr. Fitzgerald should be on the list to be fired?

A Again, it was a list to ask people to step down. And, as I recall, he was suggesting that he be considered to be asked to step down.

Q Did he tell you why he thought Mr. Fitzgerald should be considered to be asked to step down?

A I don't recall that he said why.

Q Did he tell you why he was making this suggestion orally and not including Mr. Fitzgerald on the written list of those who should be considered for replacement?

A I don't recall him addressing that.

Q Was there ever any occasion where Mr. Sampson raised the possible removal of the U.S attorney orally instead of doing it in writing?

A I don't recall an instance of that.

Q To your knowledge, did Mr. Sampson raise this orally because he didn't want a written record of suggesting that Mr. Fitzgerald be removed?

A I don't know. I can't say that.

Q Mr. Sampson testified to the Senate Judiciary Committee that he raised this issue with you and Mr. Kelley after a judicial selection meeting in the summer of 2006. Do you have any reason to believe it was done at a different time or with other parties?

A I don't.

Q And what was your reaction to Mr. Sampson's suggestion?

A It was not one I would support.

Q Did you tell him that?

A I believe I did.

Q And did you tell him why you would not support that suggestion?

A I don't know that I felt like I had to.

Q And that was because you would presume that he would already know or you didn't think he deserved an answer?

A I really can't get back in my head exactly what was going through my mind at that time, but it was certainly that I wouldn't support that recommendation were it to be made.

Q Do you believe that Mr. Sampson proposed the potential removal of Mr. Fitzgerald because of his handling the Plame matter?

A I don't know.

Q Are you aware of any other reason why he would have proposed that?

A I'm not aware of any reason at all why he would have recommended that.

Q Did the suggestion by Mr. Sampson that someone you thought was a strong U.S attorney should be considered for removal cause you any concern about the basis upon which Mr. Sampson was recommending others be removed?

A I had a positive view of Mr. Fitzgerald and didn't think that it would make sense to recommend that he be replaced.

Q Did the suggestion cause you to question Mr. Sampson's judgment about his other recommendations?

A I have to say it was a disquieting suggestion, but I didn't understand that Mr. Sampson alone was making the suggestions that either we had gotten previously or would ultimately get. I understood it would be a Department recommendation, and I had every reason to believe that.

Q And did anyone other than Mr. Sampson ever recommend that to you, that Mr. Fitzgerald be considered for replacement?

A Not that I recall, and I think I would recall that.

Q Let me ask you a couple of final questions, if I could.

Do you have any documents in your possession relating to the issues we have discussed today that were not provided earlier in response to the subpoena?

A No, sir, not that I'm aware of after a diligent search.

Q And did you tell us when the last conversation you had was with Mr. Rove on the subject of the issues we have discussed today?

A I really couldn't.

Q Can you tell us the most recent discussion you had with Mr. Rove on the subject matter of the issues we've discussed today?

A I really couldn't. I have no idea when it was.

Q Have you discussed the issues we've talked about today with Mr. Rove since you left the White House?

A I don't have a recollection of doing so, other than maybe a flip comment that may have gotten said. But I don't recall any instance of talking to Karl about the U.S. Attorneys matters since I left the White House.

Q And a flip comment, I assume, by you, not by Mr. Rove -- or, I'm sorry, by Mr. Rove, not by you?

Mr. Manning. Where have you been sitting all day?

Mr. Schiff. You don't strike me as the flip type.

Ms. Miers. I don't really recall even that. But, you know, I can't recall anything specific.

BY MR. SCHIFF:

Q What makes you think there may have been a flip comment made in a conversation between you and Mr. Rove about the subject of our questions today?

A Knowing Karl, that -- but I really don't have a recollection of any particular thing coming up that I can recall.

Mr. Schiff. Before we turn it over to our colleagues, any further -- no?

Well, at this point, unless you would like a break, I was going to turn it over to our Republican colleague, so whenever you want to get started.

Mr. Flores. Would you like a break?

Ms. Miers. No. Thank you.

[Discussion off the record.]

Mr. Schiff. Ms. Miers, I wanted to mention I will have votes coming up in about 20 minutes and I won't want to interrupt my fellow colleague, so you will excuse me if I go and vote. I don't mean any disrespect.

And I appreciate your sitting with us at length today. And I want to extend my thanks to counsel, as well, for the long day and your willingness to work in cooperation with us on this. So thank you.

Ms. Miers. Thank you.

Mr. Flores. Just bear with me a second.

#### EXAMINATION

BY MR. FLORES:

Q Ms. Miers, my name is Daniel Flores. I'm one of the subcommittee chief counsels for the Republican staff on Judiciary.

I wanted to thank you for your graciousness and patience today. I know it has been a long day, so I will try and be brief. I have a number of documents I would like to work with quickly first. And then I would like to ask you a number of questions, not based on the documents.

First, I would like to ask you to turn to Exhibit 11 of the majority's exhibits. And I may also ask you to refer to -- actually, no. Exhibit 11, please. And if you could take a look quickly at Pages OAG 47 and 48, beginning with Step 4 and continuing through Step 5, paragraphs entitled as such. And I

would like to ask you a couple of questions about that.

A Steps 4 and 5?

Q Steps 4 and 5, yes, ma'am.

A Yes, sir, I have read them.

Q During the prior questioning, there was a good deal of questioning about the situation concerning Bud Cummins and Tim Griffin in the Eastern District of Arkansas and whether, in that instance or generally, there had been a policy adopted by the Department of Justice, or proposed, to use the Attorney General's interim authority under the PATRIOT Act to appoint interim U.S. Attorneys that could serve out the remainder of the Bush administration's second term. I think the suggestion was made that that would be to avoid the presidentially appointed, Senate-confirmed process for U.S Attorney slots.

If I could just read to you, this is a document that is attached to an e-mail from Kyle Sampson to Bill Kelley and copied to you. It is the U.S Attorney replacement plan description as of December 4th at 6:26 p.m.

Step 4 reads, "Evaluation and selection of interim candidates. During December 2006 to 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," which attorneys, of course, would be the handful

who were asked to leave on December 7th.

Do you see the paragraph to which I'm referring?

A Yes, sir.

Q Do you understand that, to refer to the Attorney General's interim appointment authority that was discussed earlier by which allegedly he would install U.S Attorneys to serve out the remainder of the Bush administration?

A I'd have to ask what was intended. It appears to be both Attorney General appointment -- I'm not clear whether that would be an ordinary appointment or the new authority -- and then it talks about somebody becoming acting U.S Attorney by operation of law.

Q Okay, I think that is adequate.

If you could turn to Step 5 on Page 48 and read that briefly for the record. It reads, "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."

Does that describe to you the ordinary presidentially appointed and Senate-confirmed process for installing a new U.S

Attorney?

A Generally.

Q Is that not dated as a process to have begun as soon as possible in November of 2006, at least a month prior to the request for the U.S Attorneys' resignations?

A That's what it says.

Q Is there any limitation to this Step 5 that would exclude Bud Cummins and Tim Griffin in the Eastern District of Arkansas from being included within its scope?

A There doesn't appear to be.

Q Is it instead simply a broad procedure to be applied to all of the U.S attorney slots at issue, in your opinion?

A It is consistent with what certainly I was thinking.

Q Okay. Let me just ask you then, to conclude, are the descriptions of Steps 4 and 5 of this plan for the full process that was initiated with requests for resignations consistent with your view that there was not a Department or an administration policy to use the Attorney General's interim appointment authority to skirt the presidentially appointed, Senate-confirmed process for replacing any of these U.S. Attorneys?

A It was consistent with my understanding that we'd be working towards the presentation of nominations and confirmations.

Q In all cases?

A That was my general view. And I didn't know at the time or wasn't thinking of any instance where there would be an

exception.

Q Okay. Can I ask you now please to turn to the majority's Exhibit 6? And the second page, it is No. HJC00022?

A Yes, sir.

Q Could I ask you, please, to direct your attention to the next-to-the-last paragraph and read it to yourself?

A I've read it.

Q Okay. This is an e-mail from Kyle Sampson to you, Ms. Miers, and CC'ed to Bill Kelley on January 9, 2006, at 10:13 a.m. regarding U.S Attorney appointments.

And the paragraph that I asked you to read, it states as follows. Mr. Sampson writing, it says, "I list these folks" -- meaning various U.S. Attorneys who will be replaced -- "based on my review of the evaluations of their offices conducted by EOUSA and my interviews with officials in the Office of the Attorney General, Office of the Deputy Attorney General, and the Criminal Division." That is the relevant passage which I would like you to bear in mind.

I wanted to ask you if you believe that this representation by Mr. Sampson was related to -- from a prior question and answer, it appears to have been your presumption that the Department of Justice's process of identifying potential U.S Attorneys to be replaced and vetting them for replacement or not was a thorough, professional process consistent with the expectations that you and the White House would have of the Department.

A Well, we got this e-mail, and, again, I can't go back this many years and remember exactly what I read and what I thought at the time. But there is no question in my mind that my understanding was that the Department would have a thorough review before they would make recommendations.

And I understood that the U.S attorneys are in offices where there are lots of people in the office. So those people know a lot about what is going on. The main Justice offices include an executive office of the USAs and a raft of people who have been involved with U.S. Attorneys for a very long time. And it was certainly my belief and understanding that all of that resource would be brought to bear on making recommendations.

Q In your opinion, is the passage I read to you consistent with that view that you formed?

A Yes.

Q Thank you.

Now I would like to ask you, please, to refer to majority Exhibit 15.

Mr. Mincberg. Just for the record, I want to make clear that each of these is not a separate exhibit. It is Document 15 within Exhibit 1.

Mr. Flores. Okay. Very good. Thank you.

BY MR. FLORES:

Q So Document 15, this is a one-page document, No. HJC10061. Could I ask you, please, to briefly review this

document, particularly the passage at the top of the page that it appears that you wrote to Bill Kelley to yourself quietly.

A I have read it.

Q Thank you. This is an e-mail from yourself to Bill Kelley dated January 16, 2007, at 10:50 a.m. It is titled, "Re: Leahy-Feinstein letter re: USA appointments."

If I could just read for the record, your comments to Mr. Kelley read as follows: "I believe the letter implies that there was removal for cause, too much for my appetite. So I can't sign off on the letter. I believe we should treat these actions as matter-of-fact management of the Department and the desire to have USAs in place who are recommended by the AG. I certainly think we can make the point about not interfering...that any such interference is without justification."

If I can ask you, Ms. Miers, this refers, does it not, to a letter sent by the Department of Justice to Senators trying to explain the Department's decisions regarding the group of U.S. Attorneys asked to resign on December 7th, does it not?

A It indicates that it is a final draft of a letter that I assume they were intending to send.

Q And the statement in the first sentence, that "the letter implies that there was removal for cause, too much for my appetite," is what that is referring to, the view you stated earlier today, that you did not feel it was appropriate in these personnel matters to be piercing the veil and describing publicly

any problems related to removal for cause for these U.S. Attorneys?

A My concern was what has become fairly standard process, that personnel decisions don't get talked about. You simply say that they are personnel matters and you're not going to discuss them.

I take it from my last sentence that there was some indication that the Department wanted to react because there was an accusation that maybe there was some interference or interfering with ongoing prosecutions. And I felt like that was easy to knock down by itself without doing what was extremely, in my view, inappropriate, which was to be negative about all these folks.

Q Okay. Your last sentence, would that have also potentially included interference alleged with ongoing investigations, not just prosecutions?

A I would have considered those two the same.

Q Okay. During the day, as we all know, because these events are sometime in the past, there has been some instances where it has not been possible for you to recall what was on your mind at a particular time about a particular issue. This e-mail is nearly a contemporaneous statement of your thinking at the time of the U.S Attorney dismissals, is it not?

A Well, it was in January of '07. So it was close to the time when there started to be reported criticism from Senators, as

I recall.

Q Do you have any reason to believe that, at the time you wrote this statement, any of your memory regarding whether anything that you had learned of during the process of the recommendation and execution of these requests for resignation had come to your attention regarding potential interference with prosecutions or investigations?

A I would have had the impression -- well, I have to say, from the totality of the circumstances, that there was no intent to interfere with either, as you said, investigations or prosecutions. And it was my strong conviction that the Justice Department would not have tolerated such.

Q Okay. And just if I can ask one last question, is it your view that, at the time of this e-mail, this statement would have been an accurate representation of what you had learned during the process that we have been discussing today?

A I would like to think so.

Q Okay. Let me ask you now, please, to turn to Document 16, to the page identified as HN0007.

A Yes, sir.

Q You can see that at the bottom of that set of notes there is a phrase that reads "no suggestion except politically motivated." There was questioning about this passage earlier today, and I just want to make sure that the record is crystal-clear about what allegations this was responding to and

what this note was intended to record.

As I recall, it was your testimony earlier, or the intent of your testimony earlier, to state that during the discussion you had with I believe it was Mr. Oprison and Mr. Scudder that you had asked them what allegations were being bandied about regarding the reasons for the dismissals, either bandied about here on the Hill or in the press.

A Well, I think, sir, that I would interpret that as being responsive to my question, what are they -- what are people suggesting could have been wrong?

Q And is it the case that the note "no suggestion except politically motivated" is your recording of Mr. Oprison's and Mr. Scudder's representation to you in response --

A That they would have said that the suggestion that was being made, that the replacements were, quote, "politically motivated."

Q And that suggestion would have been made by people in Congress or in the press but not inside DOJ or the White House?

A It was by anybody other than the White House and the DOJ.

Q Okay.

A I didn't -- I don't know that I specified.

Q Okay. Thank you.

Next I would like to work with a few additional documents. Let's make these Documents 1 through 5 of Exhibit 2, which will

make it --

Mr. Minberg. I think it is going to have to be 3 because the --

Mr. Flores. Yeah, that's fine, Exhibit 3. I will try to move through these quickly so we can wrap up, and I'll pass copies around the table.

[Miers Exhibit No. 3, Document No. 1,  
was marked for identification.]

BY MR. FLORES:

Q I would ask you, Ms. Miers, to quickly review the document to yourself, unless you're sufficiently familiar with it already to feel comfortable answering the questions.

Mr. Minberg. I'm sorry. For the record, what are we calling this?

Mr. Flores. Exhibit 3, Document 1.

Ms. Miers. Okay.

BY MR. FLORES:

Q Okay, thank you.

For the record, this is a letter written by the United States Senate Select Committee on Ethics on April 24, 2008, to the Honorable Pete V. Domenici, a U.S. Senator from New Mexico at the time. It is entitled, "Public Letter of Qualified Admonition." If I could just read a couple of passages in it to you and ask you to answer a question or two, I would appreciate it.

The first passage reads, "The committee finds no substantial

evidence to determine that you," Senator Domenici, "attempted to improperly influence an ongoing investigation." For the record, that would be with regard to Senator Domenici's call to David Iglesias in October of 2006 about the timing of indictments in a public corruption case there.

The passage continues, "The committee does find that you should have known that a Federal prosecutor receiving such a telephone call, coupled with an approaching election which may have turned on or been influenced by the prosecutor's actions in the corruption matter, created an appearance of impropriety that reflected unfavorably on the Senate."

On Page 2 of the document, there is a block quote, paragraph 2 of which reproduces some of Senator Domenici's information represented to the Senate Ethics Committee in the matter. It says, "In retrospect, I regret making the call, and I apologize. However, at no time in that conversation or any other conversation with Mr. Iglesias did I ever tell him what course of action I thought he should take on any legal matter. I have never pressured him nor threatened him in any way."

Ms. Miers, earlier in your interview testimony, you suggested, I believe, that one of your concerns with any calls placed to Senators or others to sitting U.S. Attorneys in the run-up to an election would be that such a call could create an appearance of impropriety, and your recommendation would be not to make such a call.

Is your view, do you find, consistent with the view of the Senate Committee on Ethics in this letter?

A I believe it's consistent.

Q The letter also indicates that neither the Senate Select Committee -- or Senate Committee on Ethics or Senator Domenici had any knowledge indicating that there was any attempt in Senator Domenici's contacts to go further than a contact that might create an appearance of impropriety and actually influence or attempt to influence an investigation or a prosecution.

Do you have any reason to believe that the calls in question in fact went across that line into an attempt to influence an investigation or a prosecution?

A I do not.

Mr. Manning. This has been a very long day. Can we get back to what she is here for, please?

Mr. Flores. I'm doing my best, sir. I was promised an hour of time, and the passage of time ate a good deal into the commitment to me. I will try and be quick.

BY MR. FLORES:

Q The next document I have is an excerpt from an interview by a former Senate staffer, Mr. Preet Bharara, of Kyle Sampson. If we could mark this Exhibit 3, Document 2. Let me pass you a copy now.

[Miers Exhibit No. 3, Document No. 2,  
was marked for identification.]

BY MR. FLORES:

Q If I could ask you, please, Ms. Miers, to read the first page of this document and up through the end of the first paragraph on the second page to yourself.

Mr. Minberg. Sir, could you repeat again which part you are directing the witness's attention to?

Mr. Flores. Yeah. The first page and the first paragraph on the second page.

Ms. Miers. Okay.

BY MR. FLORES:

Q Okay. Just very briefly, as you can see, this material discusses the issue of whether the Attorney General's interim appointment of the U.S. Attorney authority in the PATRIOT Act was used to install Tim Griffin as an interim appointee to serve out the Bush administration. Mr. Sampson is talking about that idea that he floated to you that we discussed earlier regarding that possibility.

At the top of the second page, the second sentence of the first paragraph reads, according to Mr. Sampson, "This was a bad staff idea that ultimately was not adopted by the principals."

Is that fully consistent with the testimony that you offered as to your recollections with what happened with that idea?

A My recollection is that there was not a decision to go forward with the use of the authority that had been given to the Attorney General in the PATRIOT Act as a way of sidestepping the

PAS process.

Q Thank you. Might you have been one of those principals referred to in that quote?

A I doubt it.

Q Who might have the principals have been?

A I assume that is Mr. McNulty and Judge Gonzales.

Q Okay. If I can now ask you to take a quick look at Exhibit 3, Document 3.

[Miers Exhibit No. 3, Document No. 3,  
was marked for identification.]

BY MR. FLORES:

Q If I could ask you, Ms. Miers, particularly to concentrate on the second page of the document. These are excerpts from a Senate hearing in which Senator Specter was questioning Kyle Sampson on the same issue that I discussed with regard to the last document.

A Okay.

Q Ms. Miers, let me just ask you briefly, is this document, or the information to which I direct to your attention on the second page -- this will be after the first -- well, from the first full paragraph to the end of the page, consistent with your recollection of what happened with Mr. Sampson's idea of using that interim appointment authority in the PATRIOT Act to replace U.S. Attorneys?

A It is accurate, as far as I know.

Q Okay, thanks.

And, for the record, one of the questions is, was this idea ever rejected by the Attorney General? And, Ms. Miers, the response from Mr. Sampson is it was rejected by the Attorney General. He thought it was a bad idea and he was right.

For the purpose of saving time, let me just offer for the record Exhibit 3, Document 4, which is an excerpt of another set of another Senate hearing and a colloquy involving Attorney General Gonzales and Senator Schumer that covers the same issue.

[Miers Exhibit No. 3, Document No. 4,  
was marked for identification.]

Mr. Manning. Is there a particular page on that?

Mr. Flores. Yes. Just a second. I will direct your attention to the relevant passages.

The relevant passages here are on the second page, Page 61, starting with the next-to-last question by Senator Schumer, continuing on to the following page and the page after that, so the bottom of Page 61 through Pages 62 and 63.

RPTS MERCHANT

DCMN NORMAN.

Ms. Miers. All right.

BY MR. FLORES:

Q Thanks for taking your time with that.

I really just want to offer this to round out the record on this one point of the interim authority. Is the passage to which I directed you consistent with the testimony earlier that the bad staff idea by Kyle Sampson to use the interim authority was rejected by Attorney General Gonzalez?

Mr. Minberg. I am going to object to that question because you haven't identified the precise passage, and if you look at the entire context I don't think it's quite so clear.

BY MR. FLORES:

Q Ms. Miers, is this document inconsistent at all with your understanding that Attorney General Gonzalez rejected Mr. Sampson's suggestion, the use of the interim PATRIOT authority, to appoint interim U.S. Attorneys serve out the rest of the administration?

A It would be consistent with my knowledge that no decision was made to use that authority in the manner that Kyle Sampson suggested.

Q Thank you. The last document I have -- let's mark it Exhibit 3 Document 5.

[Miers Exhibit No. 3, Document No. 5,

was marked for identification.]

BY MR. FLORES:

Q And I'll be very brief with this document. This is a letter that was written from the Office of the Assistant Attorney General on March 28, 2007, to Chairman John Conyers of the Judiciary Committee and Chairwoman Linda Sanchez of our Subcommittee on Commercial and Administrative Law. It's from the DOJ's Office of Legislative Affairs.

I simply want to introduce this for the record to help clarify issues regarding a draft letter that we talked about earlier during Mr. Schiff's questioning. That letter is at -- Elliot, do you recall which document that draft is at?

Mr. Mincberg. For the record, it's Document 25 which includes both the draft and the final.

Mr. Flores. Thanks. There was some questioning earlier by Mr. Schiff, and perhaps Mr. Mincberg, concerning the content of the draft and final letters. I would just like to introduce this for the record to clarify that through this letter of March 28, 2007 the Department attempted to correct any inaccuracies in that February 23, 2007 letter.

Mr. Mincberg. I'll object for the record to counsel's characterization, but certainly the document can be admitted for whatever it is worth.

Mr. Flores. Very good. Thank you.

BY MR. FLORES:

Q Ms. Miers, I would just like to ask a number of questions if I could to follow up on some of the issues. I won't take very long.

First, with regard to the issues concerning Mr. Iglesias, do you believe that vote fraud is a serious crime?

A I believe that voter fraud is a very important issue, yes.

Q Do you believe that a U.S. Attorney who fails to prosecute vote fraud vigilantly is subject to question concerning his or her performance as a U.S. Attorney?

A I would think that failure to carry out any justifiable prosecution could at least raise questions.

Q Do you believe that a U.S. Attorney who repeatedly fails to prosecute vote fraud vigilantly is subject to serious question about his or her performance as a U.S. Attorney?

A It would depend on the facts.

Q Could it be?

A Well, as we said earlier, anything is possible. And there certainly could be a dereliction of duty that would call into question the performance of an individual.

Q Could I ask you to please very quickly turn to Exhibit 1, Documents 27 through 29? They're very brief.

A I'm sorry; what are we looking at?

Q 27 to 29. You'll see these are a handful of e-mails, some or all of which include you in a communications chain

concerning --

A Yes, I recall looking at these earlier.

Q These deal with vote fraud prosecution issues in the District of New Mexico and concerning David Iglesias and his willingness to prosecute those cases.

Ms. Miers, my question is simply is it consistent -- are these documents consistent with the view that concerns existed within the administration about David Iglesias and his performance as U.S. Attorney with regard to vote fraud or other cases well before 2006 and the cases that were related to Senator Domenici and Congresswoman Wilson's calls to Mr. Iglesias in late 2006?

A Again, I didn't recall those early e-mails so I'm not sure what exactly you're asking me. Certainly if a U.S. Attorney is presented information that indicates voter fraud occurred, there is nothing wrong with questioning why that information wasn't followed up on; or I don't think there's anything improper about reporting information like that to the Department of Justice. And, in fact, that's where it should go, because the Department then has the ability to make an assessment of what is appropriate and what's not.

Q Based on your knowledge of the individuals involved in these communications, do you have any reason to doubt the conclusion that I draw from the documents that concerns about Mr. Iglesias and his performance in the area of vote fraud prosecution generally were known well before 2006?

A Could you restate that, please?

Q Yeah sure. Is it based on --

A Sorry.

Q That's all right. It was a long question. Based on your knowledge of the individuals involved in the communications --

A Correct.

Q -- do you have any reason to doubt the validity of the conclusion which I reached upon reviewing these documents that individuals within the administration had concerns about Mr. Iglesias' performance in the area of vote fraud prosecutions well before 2006?

A It appears that way from the e-mails, because Mr. Jennings and Mr. Griffin are communicating about voter fraud.

Q The next question is simply whether you believe that since vote fraud always raises questions that impact competing political parties in elections it is unreasonable to presume that complaints about a U.S. Attorney's failure to prosecute vote fraud cases must necessarily stem from improper partisan purposes?

A I would not conclude that complaints of failure to prosecute necessarily has to be motivated by improper concerns. I mean, you certainly could have facts that justify the investigation and prosecution of voter fraud, and that should happen in order to protect the system.

Q One of the other issues that came up with regard to Mr.

Iglesias was complaints regarding his effectiveness in prosecuting public corruption cases in New Mexico.

Given the nature of public corruption cases and their involvement of public officials from competing parties, would you also believe that it's unreasonable to presume that one party's communication, one political party's communication of complaints about failures to prosecute public corruption effectively must come from improper partisan purposes?

A One would hope that whether you're a Republican or a Democrat, if there is corruption in the system and it's identified, that everyone would be supportive of it being prosecuted. I'm not sure if that's responsive to your question.

Q It is, it is.

If I could ask you briefly to refer to Exhibit 1, Document 13. I apologize. I thought I was done with documents.

A That's okay.

Q If I could ask you to look briefly at pages 3 to 4 of this document, starting at the bottom of page 3, the last heading of Senior Administration Official, and continuing on to page 5 -- I'm sorry; it's page 4 of the document that's reprinted, page 4 of 5. So page 4 through the end of the first response by the senior administration official.

A Okay.

Q If you'll recall, some of the questioning you received earlier was on this document. And the passages to which I pointed

you refer to the question of whether the President was personally involved in receiving advice about firing, the firing of the U.S. Attorneys, and approving the list or adjusting the list, and their statements suggesting statements by the senior administration official saying that the President had no personal involvement.

There was some questioning earlier about what you thought "personal involvement" meant. I just wanted to ask you whether you have any reason to be certain whether your personal definition of, quote, personal involvement, unquote, is the same as President Bush's or Tony Fratto as the press official involved with this briefing, or the, quote, senior administration official at the time that briefing might have had in mind when that statement was made?

A I have no way of knowing that what their-- how they were using the term or what they intended to convey with it.

Q So it's reasonable to conclude their definition might be quite different from your definition, is it not?

A I hope I said at the time - if I didn't I should have -- that I don't know what was in their mind when they used that term.

Q Just bear with me a second. I just want to review a few of these questions.

Turning back to the issue of Mr. Griffin and Mr. Cummins in the Eastern District of Arkansas, let me ask you if I'm recalling correctly; is it your testimony that you objected to the idea of using, or specifically objected to the idea of using the AG's

interim appointment authority under the PATRIOT Act to fill the Eastern District of Arkansas U.S. Attorney position after Mr. Cummins had left? Is that the only instance in which you specifically objected to the use of that authority?

A Well, I think what I said was that I would not have been for using that authority to appoint Mr. Griffin and allow him to continue to serve without coming to grips with what Senator Pryor and Senator Lincoln's position was, and what their position was with respect to Mr. Griffin.

Q And did not Mr. Griffin eventually withdraw from consideration to be the permanent replacement for Mr. Cummins as the Eastern District of Arkansas U.S. Attorney and leave that office?

A That's my understanding.

Q After the Presidentially appointed and Senate-confirmed process that we discussed earlier in the interview surfaced resistance to Mr. Griffin's appointment on the part of the Arkansas senatorial delegation?

A It was certainly -- I think he withdrew at some point after it became clear that the Senators were not going to support him, and that whatever his performance was, it wasn't going to make a difference.

Q So, then, is it your view that, regardless of whether someone within the administration may or may not have advocated the use of the interim PATRIOT Act authority to install Mr.

Griffin through the end of the Bush administration, the bottom line is that the Presidentially approved and Senate-confirmed process was engaged and worked to end the idea of installing Mr. Griffin as the replacement in Arkansas?

A I don't think that there was ever a conclusion to use the AG appointment authority created in the PATRIOT Act as a means of allowing Mr. Griffin to continue to serve, even in the face of Senate opposition.

Q Just a very small handful of questions left. Returning to Mr. Iglesias -- and we discussed in some of your earlier questions the complaints about Mr. Iglesias' performance going back at least to 2005. Is it your belief that Mr. Iglesias -- or the request that Mr. Iglesias step down from the position could have been based on the conclusion by the Department that those complaints about his performance were valid?

A I can't speak to what their process included in terms of reaching a conclusion. I couldn't rule it out, and I couldn't rule it in.

Q And I think that just about concludes my questioning. I wanted to ask you before we stopped if there are any individual questions that you were asked earlier for which you would like to add anything additional to your prior answers.

I can open that question up to counsel as well. Is there anything you would like to be clarified before we close?

A Well, we possibly ought to discuss that. But it's been

a really long day and a really large number of questions, and I would have a hard time pinpointing anything specific without having a chance to look at the transcript.

Q Okay.

Mr. Manning. But I do have three questions, if you don't mind.

Mr. Francisco. Let me start out.

EXAMINATION

BY MR. FRANCISCO:

Q Harriet, very early on in the day you were discussing with Congressman Schiff a series of transition briefings when you were moving from deputy chief of staff to the Office of Counsel to the President. And at the tail end of that discussion about the transition meetings, you and Congressman Schiff had the following colloquy, and I'm going read it. It's from the rough draft of the transcript that we've been provided, pages 31 to 32 of the rough draft.

Question: Did you discuss with Karl Rove at all whether all the U.S. Attorneys should be removed?

Answer: It would surprise me if Karl was involved in discussions about that subject.

Question: So you don't have any specific recollection of discussing it with him?

Answer: I don't have a specific recollection of actually speaking to Karl. It would not surprise me if he was involved.

Question: Do you recall --

I'm sorry, say that again?

Answer: It would not surprise me if he was involved in conversations about that topic and had actually seen e-mails that indicate he was. I'm not remembering that myself. I'm remembering having seen documents. And you can refer to that if you would like.

My only question is: Is there anything you would like to add to that colloquy?

A I think initially I was referring to the transition meetings and whether, in the context of those transition meetings, Karl would have participated. And I would have been surprised if he was involved in those transition meetings. In other words, those were principally with the Counsel's Office and internal to the Counsel's Office.

#### EXAMINATION

BY MR. MANNING:

Q Ms. Miers, you asked a series of questions about the Judicial Selection Committee, and the focus of today's events have been on the U.S. Attorneys. What other positions are covered in the Judicial Selection Committee?

A Well, as the name implies, it's principally the judicial nominations that are discussed. But the Counsel's Office has responsibility, and associate counsels are designated with responsibility for the judges, U.S. Attorneys and marshals. So

the selection committee could deal with all of those.

Q Those are judges from the Supreme Court down to the District Court, correct?

A Somewhat on the Supreme Court, but that's pretty much a little more isolated process.

Q If you could look at Exhibit 1, Document 3 in your book, please. And the first exhibit which is HJC00013 and 14 is a series of e-mails from Mr. Sampson in around March 2nd of 2005; is that correct?

A Yes, sir.

Q And attached to this is what purports to be a partially redacted list of United States attorneys' appointment summaries. And the date of the attachment is February 24, 2005; is that correct, Ms. Miers?

A That is correct.

Q And that goes from 20081 through 20087.

I would like to direct your attention to the first page, 20081 of the attachment. And I would like to direct your attention to the Eastern District of Arkansas. Do you see the name Mr. Cummins there?

A I do.

Q And is this the first list that you received from the DOJ with respect to the U.S. Attorneys?

A I believe it is, the best I can recall.

Q Do you recall when, for the first time, that you met and

had a substantive conversation with Tim Griffin?

A I would have met him in March of '05.

Q Now, this document is dated March 2nd of '05. Was it before or after this March 2nd of '05 when you met Mr. Griffin?

A The e-mails are dated March '02 of 2005 and the attachment is dated 2-24-05 and --

Q And my question -- I'm sorry.

A What is your question?

Q When did you meet Mr. Griffin for the first time and have a substantive conversation?

A I believe it was in March of '05.

Q Was it in early March or late March?

A Closer to late.

Q After Mr. Sampson's e-mails of March 2nd; is that correct?

A Correct.

Mr. Manning. I don't have any further questions.

BY MR. FLORES:

Q Let me just ask you lastly, Ms. Miers, if you at all would like to give us any additional summary of your role in the whole U.S. Attorney dismissal process and explanation of that to Congress, or if there are any points you would like to highlight as we close to make sure that we understand what you think are the most important points about your involvement in all of this?

A That's an awfully broad question, and --

Q You don't have to offer anything. I'm just asking if there's anything you want to highlight before we close.

Mr. Manning. I really would ask you not to even begin a round-up answer to that question.

Ms. Miers. I beg your pardon?

Mr. Manning. I think we're done.

Ms. Miers. Can I speak with my counsel before we adjourn?

Mr. Flores. Yes.

Mr. Mincberg. I just want to make a statement for the record when we're back, but it can wait.

[Discussion off the record.]

Mr. Francisco. I just want to clarify one other point. Earlier there was an exchange about documents provided in response to the subpoena. As I mentioned in a telephone call that I had with Elliot, with the exception of the notes that are in your notebook, Harriet did conduct a search of her documents and she found one arguably responsive document that we provided to the White House Counsel's Office.

Mr. Mincberg. And as I understand, it was the one that was included within the four pages of withheld material?

Mr. Flood. Yes. It was one of four documents that I discussed with committee staff and is falling into the category of sufficiently privileged, that I thought it better to describe them than to make them available. And you guys understand our reserving on that.

Mr. Mincberg. All parties are reserving on those issues.

Mr. Flores. Yes.

Mr. Mincberg. Anything else?

Mr. Manning. We're done.

Mr. Schiff. Again, Mrs. Miers, I want to thank you again for the long hours today. It wasn't an easy afternoon, but I appreciate your patience. And, counsel, I appreciate also your willingness to work with us the way you did, and I want to wish you all a good night.

Ms. Miers. Thank you very much, Congressman.

[Whereupon, at 7:35 p.m., the interview was concluded.]